NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

EXHIBIT
GF-713A

To all to whom these presents shall come. Greeting:

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NAME: KENT C. CARTER
DATE: 9-22-98
TITLE: for Regional Director

NAME AND ADDRESS OF DEPOSITORY
Office of Regional Records Services
Southwest Region
501 W. Felix St., Bldg. 1
Fort Worth, TX 76115

NA FORM 13040 (10-86)

U.S. 95-387-782/03529

...County, Texas,

(2) COMBUSTION ENGINEERING, INC., a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(3) R. & I. REFRACTORY AND INSULATION CORPORATION, a corporation organized, created and existing under and by virtue of the laws of some state, with an agent for service; however, plaintiff does not know the name and address of such agent for service;

(4) JOHNS-MANVILLE PRODUCTS CORPORATION, a corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, Prentice-Hall Corporation System, Littlefield Building, Austin, Travis County, Texas;

(5) OWENS-CORNING FIBER GLASS CORPORATION, a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(6) EAGLE-PICHER INDUSTRIES, INC., a corporation duly organized, created and existing under and by virtue of the laws of the State of Ohio, with an agent for service, towit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(7) PITTSBURGH CORNING CORPORATION, a corporation duly organized, created and existing under and by virtue of the laws of the State of Pennsylvania, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

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 :

FILED
MAY 27 1969
M 19
James R. Cooney, Clerk, U. S. Court
By Margaret Driver DEPUTY

COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW SAMUEL R. POTTER, hereinafter called Plaintiff, complaining of:

(1) FIBREBOARD PAPER PRODUCTS CORPORATION, a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(2) COMBUSTION ENGINEERING, INC., a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(3) R. & I. REFRACTORY AND INSULATION CORPORATION, a corporation organized, created and existing under and by virtue of the laws of some state, with an agent for service; however, plaintiff does not know the name and address of such agent for service;

(4) JOHNS-MANVILLE PRODUCTS CORPORATION, a corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, Prentice-Hall Corporation System, Littlefield Building, Austin, Travis County, Texas;

(5) OWENS-CORNING FIBER GLASS CORPORATION, a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(6) EAGLE-PICHER INDUSTRIES, INC., a corporation duly organized, created and existing under and by virtue of the laws of the State of Ohio, with an agent for service, towit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(7) PITTSBURGH CORNING CORPORATION, a corporation duly organized, created and existing under and by virtue of the laws of the State of Pennsylvania, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(8) UNARCO INDUSTRIES, INC., a corporation duly organized, created and existing under and by virtue of the laws of the State of Illinois, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(9) PHILIP CAREY CORPORATION, a corporation duly organized, created and existing under and by virtue of the laws of the State of Ohio, with an agent for service, to-wit, Prentice-Hall Corporation System, Littlefield Building, Austin, Travis County, Texas;

(10) ARMSTRONG CONTRACTING AND SUPPLY CORPORATION, a corporation organized and existing under the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas,

hereinafter called Defendants; and for cause of action, the plaintiff alleges:

1.

That the ground upon which jurisdiction of this Court depends is diversity of citizenship of the parties hereto.

2.

That the amount in controversy herein exceeds the sum of Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs.

3.

That plaintiff is a resident of the State of Texas, and resides in Orange County, Texas.

4.

That defendants during all the times herein mentioned and for a long time prior thereto, have been and now are engaged in the manufacture of materials used for insulation containing asbestos; that the products manufactured, compounded and prepared by defendants, acting through their servants, employees, representatives and agents were and are placed on the market to be purchased and used by the public.

5.

The p laintiff says that during the years 1940 to 1967, inclusive, he was employed as an insulator, and that in the performance

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of his duties as an insulator, he was required to handle large quantities of the products manufactured and distributed by the above named defendants. That in addition to the fact that the plaintiff actually used the products manufactured by the above named defendant, and many more, as an insulator, and specifically many and various products containing asbestos, the plaintiff says that on many of the jobs, while not using himself the specific products manufactured by the defendants, he was nevertheless exposed to the dangerous materials and especially asbestos dust and fibers which were used by other workers in the same area at which plaintiff was working.

6.

That during the period of time in which plaintiff was employed as an insulator from the year 1940 to 1967, inclusive, in the course of his employment, due to the negligence and carelessness of the defendants, he was caused to come in contact with the insulation produced and manufactured and distributed by the defendants, and its chemical compounds, deleterious substances and matter, and directly in consequence of said negligence and carelessness of the defendants, did sustain severe, permanent and disabling injuries as hereinafter set forth.

7.

That the injuries and damages complained of herein were directly and proximately caused by the negligence and carelessness of the defendants in the following additional particulars:

(a) That the defendants knew or in the exercise of ordinary or reasonable care ought to have known that the insulation they so prepared, manufactured and distributed were deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, and that plaintiff would

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not know of such danger to his health, notwithstanding which, defendants negligently failed to take any reasonable precautions or exercise reasonable care to warn plaintiff of the danger and harm to which he was exposed while handling the defendants' said insulation.

(b) That the defendants knew or in the exercise of ordinary care ought to have known that their said insulation was deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, and that plaintiff would not know of such dangerous character, notwithstanding which defendants failed and omitted to provide plaintiff with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there was any, to protect him from being poisoned and disabled as he was by exposure to such deleterious and harmful compound substances and other material contained in said defendants' insulation.

(c) That the defendants knew or in the exercise of ordinary or reasonable care ought to have known that their insulation was deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, notwithstanding which defendants negligently and carelessly packaged said insulation so that in the ordinary handling for installation thereof, this plaintiff would come in contact with such deleterious, poisonous and highly harmful compound substances and other material contained in said defendants' insulation.

(d) That the defendants knew or in the exercise of ordinary or reasonable care ought to have known that the insulation they produced contained deleterious, poisonous and highly harmful substances to the human body, lungs, respiratory system, skin and health, notwithstanding which defendants

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negligently failed to take any reasonable precautions or exercise reasonable care by placing any warnings on their containers of said insulation to warn the handlers thereof of the dangers to health in coming in contact with said insulation.

(e) That the defendants knew or in the exercise of reasonable care ought to have known that their insulation contained deleterious and highly harmful substances to plaintiff's health, body, lungs, respiratory system and skin, and defendants knew or in the exercise of ordinary or reasonable care should have known that plaintiff would not know the dangerous characteristics of their said insulation, notwithstanding which defendants negligently failed to take reasonable precautions or exercise reasonable care to warn plaintiff of said danger and to instruct the plaintiff in the proper handling of their said insulation, or to take any reasonable precautions or exercise any reasonable care to protect plaintiff from harm and negligently failed to adopt and enforce a reasonable safe plan and method of handling and installing said insulation.

8.

In addition, the plaintiff says that the defendants breached their warranties to plaintiff in the following respects:

(a) That the defendants knew or in the exercise of reasonable care ought to have known that their insulation was defective and that such insulation was not suitable for the purposes for which it was intended.

(b) That the defendants should have tested their products, especially those containing asbestos, to ascertain the safe or dangerous nature of such products before offering them for sale, or in the alternative, should have removed such products from the market upon ascertaining that such products would cause asbestosis.

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(c) That the defendants should have devised a method of application of their products, especially those containing asbestos, that would have kept those using such products from contracting asbestosis if the defendants would not remove such products from sale to the public.

(d) That the products of the defendants, especially those containing asbestos, were warranted, either expressly or impliedly, to be merchantable, when in truth they were not, and therefore the defendants breached to the plaintiff, as well as to others, the warranty of merchantability.

9.

The plaintiff would further show unto the Court that at all the times material hereto, over the period of years in which plaintiff has been employed as an insulator, the manufacture, sale and distribution of insulation materials with which plaintiff came in contact, was under the exclusive control of the defendants, their agents, servants and employees, and that had the defendants herein not been guilty of negligence as hereinabove set forth, plaintiff would not have sustained his injuries and damages as herein set forth, and therefore, plaintiff says that he is entitled to recover from the defendants under the doctrine of res ipsa loquitur.

10.

That as a direct and proximate cause of the aforesaid occurrence and circumstances and the negligence and carelessness of the defendants, and the defendants' breach of warranties, the plaintiff was permanently and severely injured; that he has sustained a very serious and permanent injury to his lungs and respiratory system, which has affected other parts of his body; that he is suffering from the disease asbestosis; that he suffers from shortness of breath, inability to breathe, clubbing of the

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fingers and toes; that it is necessary that plaintiff have available to him at all times a container containing oxygen in order that he may be able to breathe; that plaintiff has extreme difficulty sleeping; that he tires easily; that he constantly coughs; that his future outlook is very dim; that he has sought the services of physicians in an effort to cure or arrest the condition from which he is suffering, but to no avail; that the plaintiff has lost his good health, all of which is permanently disabling to him.

11.

That by reason of the negligence and carelessness of the defendants, and each of them, and their breach of warranties as hereinabove alleged, and because of the harm and injury to plaintiff's health and the resulting disability therefrom, the plaintiff has suffered a total loss of wages and earnings and will continue to suffer such loss; that he was unable to continue in his employment as an insulator, an employment that he had been engaged in for many years, or to engage in any gainful activity at the present time, and his earning capacity has been greatly and forever permanently diminished and impaired.

12.

That in an effort to treat, relieve and heal himself of said injuries and to regain his health, the plaintiff was obliged to incur and will incur in the future an expense amounting to a considerable sum of money for medical and hospitalization care, expenses for medicines, supplies, and so forth, the amount of which plaintiff is unable to accurately estimate at this time.

13.

That by reason of the facts hereinabove alleged, plaintiff has suffered and sustained at the hands of the defendants, and

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each of them, general and special damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

14.

The plaintiff further says that his injuries and damages were directly and proximately caused by the gross negligence, omission, conscious indifference and utter disregard for the welfare of plaintiff on the parts of the defendants herein, their agents, servants, employees, managers, superintendents, supervisors and officers; that the award for this count should be in such an amount that it would act as a deterrent to the defendants and others from the future commission of like offenses and wrongs; and plaintiff further says that if each of the acts of negligence alleged above did not independently and of themselves constitute gross negligence, then certainly all of said acts of negligence combined and in the aggregate constituted gross negligence, and the proximate cause of the plaintiff's injuries; that as a result of plaintiff's injuries, he has suffered actual damages as herein shown, which were the direct and proximate cause of his injuries, for which plaintiff is entitled to recover exemplary damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

15.

That by reason of the facts hereinabove alleged, plaintiff has suffered and sustained at the hands of the defendants, and each of them, general and special damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants and each of them in the sum of Five Hundred Thousand ($500,000.00) Dollars general and special damages, together with the sum of Five Hundred Thousand ($500,000.00) Dollars exemplary damages, together with his costs and disbursements herein, and interest on said judgment

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from the date thereof until paid at the rate of six (6%) per cent per annum, and such other and further relief to which he may be entitled to receive.

STEPHENSON, THOMPSON AND MORRIS

By _____
Attorneys for Plaintiff
Stephenson Building
P. O. Box 68
Orange, Texas 77630

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

FILED
JUN 20 1969
James R. [illegible]
By [illegible]
DEPUTY

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6329

ORIGINAL ANSWER OF DEFENDANT
ARMSTRONG CONTRACTING AND SUPPLY CORPORATION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Armstrong Contracting and Supply Corporation, one of the defendants herein, and for answer to plaintiff's Complaint says:

FIRST DEFENSE

The complaint fails to state a claim against your defendant upon which relief may be granted, and therefore should be dismissed.

SECOND DEFENSE

1. Your defendant admits the allegations of paragraph (1) of the complaint.

2. Your defendant admits the allegations of paragraph (2) of the complaint.

3. Your defendant admits the allegations of paragraph (3) of the complaint.

4. Your defendant admits the allegations of paragraph (4) of the complaint.

5. With respect to the allegations of paragraph (5) of the complaint your defendant says that it is without knowledge or information sufficient to form a belief as to the truth thereof and therefore denies the same.

6. With respect to the allegations of paragraph (6) of the complaint your defendant says that it is without knowledge or information sufficient to form a belief as to the truth thereof and therefore denies the same.

7. With respect to the allegations to paragraph (7) of the complaint your defendant denies the same.

8. With respect to the allegations to paragraph (8) of the complaint your defendant denies the same.

9. With respect to the allegations to paragraph (9) of the complaint your defendant denies the same.

10. With respect to the allegations of paragraph (10) of the complaint your defendant says that it is without knowledge or information sufficient to form a belief as to the truth thereof and therefore denies the same.

11. With respect to the allegations of paragraph (11) of the complaint your defendant says that is is without knowledge or information sufficient to form a belief as to the truth thereof and therefore denies the same.

12. With respect to the allegations of paragraph (12) of the complaint your defendant says that is is without knowledge or information sufficient to form a belief as to the truth thereof and therefore denies the same.

13. With respect to the allegations of paragraph (13) of the complaint your defendant denies the same.

14. With respect to the allegations of paragraph (14) of the complaint your defendant denies the same.

15. With respect to the allegations of paragraph (15) of the complaint your defendant denies the same.

WHEREFORE, PREMISES CONSIDERED, your defendant prays that on a hearing that plaintiff take nothing and that your defendant go hence and recover its costs.

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FULBRIGHT, CROOKER, FREEMAN
BATES & JAWORSKI

P.S. Carey

Attorneys for Defendant Armstrong
Contracting and Supply
Corporation

Address:

800 Bank of the Southwest Building
Houston, Texas 77002

I, W. N. Arnold, Jr., one of the attorneys of record for the Defendant, Armstrong Contracting and Supply Corporation, hereby certify that a true and correct copy of the above and foregoing answer was on this the 19 day of June, 1969, mailed to Messrs. Stephenson, Thompson and Morris, P. O. Box 68, Orange, Texas 77630, attorneys of record for the Plaintiff, by mailing same through the United States mail properly stamped and addressed as above.

W. N. Arnold, Jr.

Attorney for Defendant Armstrong
Contracting and Supply
Corporation

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

FILED
June 23 1969
James R. Cooney, Clerk, U. S. Court
By Inga Barker DEPUTY

SAMURL R. POTTER :

VS. : CIVIL NO. 6329

FIBREBOARD PAPER PRODUCTS :
CORPORATION ET AL :

PLAINTIFF'S MOTION TO DISMISS R. & I.
REFRACTORY AND INSULATION CORPORATION
AS PARTY DEFENDANT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the plaintiff in the above entitled civil action, and files this his motion to dismiss as party defendant R. & I. Refractory and Insulation Corporation, because the plaintiff has ascertained that said defendant is no longer a separate entity, but has been absorbed by corporate consolidation with Combustion Engineering Corporation, Inc., and that Combustion Engineering Corporation, Inc. is responsible for all liabilities for R. & I. Refractory and Insulatior Corporation.

WHEREFORE, plaintiff prays that said defendant be dismissed without prejudice as party defendant.

STEPHENSON, THOMPSON AND MORRIS

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas 77630

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

FILED
M. June 23 1969
James R. Cooney, Clerk, U. S. [illegible]
By Myra Barton DEPUTY

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL.

CIVIL ACTION NO. 6329

ORIGINAL ANSWER OF DEFENDANT PHILIP CAREY CORPORATION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Philip Carey Corporation, one of the defendants herein, and for answer to plaintiff's complaint says:

FIRST DEFENSE

The complaint fails to state a claim against your defendant upon which relief may be granted, and, therefore, should be dismissed.

SECOND DEFENSE

1. Your defendant admits the allegations of paragraph (1) of the complaint.

2. Your defendant admits the allegations of paragraph (2) of the complaint.

3. Your defendant admits the allegations of paragraph (3) of the complaint.

4. Your defendant admits the allegations of paragraph (4) of the complaint.

5. With respect to the allegations of paragraph (5) of the complaint, your defendant says that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, denies the same.

6. With respect to the allegations of paragraph (6) of the complaint, your defendant says that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, denies the same.

7. With respect to the allegations of paragraph (7) of the complaint, your defendant denies the same.

8. With respect to the allegations of paragraph (8) of the complaint, your defendant denies the same.

9. With respect to the allegations of paragraph (9) of the complaint, your defendant denies the same.

10. With respect to the allegations of paragraph (10) of the complaint, your defendant says that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, denies the same.

11. With respect to the allegations of paragraph (11) of the complaint, your defendant says that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, denies the same.

12. With respect to the allegations of paragraph (12) of the complaint, your defendant says that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, denies the same.

13. With respect to the allegations of paragraph (13) of the complaint, your defendant denies the same.

14. With respect to the allegations of paragraph (14) of the complaint, your defendant denies the same.

15. With respect to the allegations of paragraph (15) of the complaint, your defendant denies the same.

WHEREFORE, premises considered, your defendant prays that on a hearing that plaintiff take nothing and that your defendant go hence and recover its costs.

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI

By: _____

Bank of the Southwest Building
Houston, Texas 77002
Attorneys for defendant Philip Carey Corporation

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I, W. N. Arnold, Jr., one of the attorneys of record for the defendant, Philip Carey Corporation, hereby certify that a true and correct copy of the above and foregoing answer was on this the 20 day of June, 1969, mailed to Messrs. Stephenson, Thompson and Morris, P. O. Box 68, Orange, Texas, 77630, attorneys of record for the plaintiff, by mailing same through the United States mail properly stamped and addressed as above.

W. N. Arnold, Jr.

Attorney for defendant
Philip Carey Corporation

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

FILED
— M. July 2 1969
James R. Cooney, Clerk, U. S. Court
By Joyce Ulrich
DEPUTY

SAMUEL R. POTTER	§	
	:	
vs.	§	
	:	CIVIL ACTION
FIBREBOARD PAPER PRODUCTS	§	NO. 6329
CORPORATION, ET AL	:	
	§	

ORIGINAL ANSWER OF PITTSBURGH CORNING CORPORATION
TO PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now PITTSBURGH CORNING CORPORATION, named as the seventh Defendant in the above-styled and numbered cause, and files this its Original Answer to Plaintiff's Original Complaint, and for such Answer this Defendant would show the Court as follows:

1.

Answering Paragraphs 1, 2 and 3 of Plaintiff's Original Complaint, this Defendant admits the same.

2.

Answering Paragraph 4 of said Complaint, and only on behalf of Pittsburgh Corning Corporation, it is admitted that Pittsburgh Corning Corporation is now engaged in the manufacture of materials used for pipe insulation, which contain a small amount of asbestos. It is denied that this Defendant, during all of the times mentioned in said Complaint, and for a long time prior thereto, was engaged in the manufacture of materials used for insulation containing asbestos. It is further denied that this Defendant now, or at any time, manufactured said insulation products and placed the same on the market to be purchased and used by the general public, and it is affirmatively alleged that this Defendant, Pittsburgh Corning Corporation, sells its product to insulation contractors who employ experienced insulation workers in the application of said product.

3.

This Defendant denies each and every, all and singular, the allegations contained in Paragraphs 5, 6, 7, including literary sub-paragraphs (a) through

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(e), inclusive, 8, including literary sub-paragraphs (a) through (d), inclusive, 9, 10, 13, 14 and 15, and demands strict proof thereof, if relevant to any alleged cause of action against this Defendant, Pittsburgh Corning Corporation.

4.

Answering Paragraph 11 of said Original Complaint, Pittsburgh Corning Corporation denies that, its agents, servants or employees, were in any way negligent or careless, as alleged therein, and further denies that there was any breach of warranty as between this Defendant and the said Plaintiff, or that the Plaintiff suffered any harm and injury to his health and resulting disability therefrom, as a result either of any negligence or breach of warranty on the part of this Defendant, its agents, servants or employees. For lack of sufficient knowledge or information to constitute a belief, this Defendant can neither admit nor deny the allegations contained in Paragraph 11 regarding Plaintiff's alleged loss of wages and earnings, or that he will continue to suffer such loss, or that he is unable to continue in his employment as an insulator, or that he is able to engage in any gainful activity at the present time, or that his earning capacity has been greatly and forever permanently diminished and impaired, and therefore, demands strict proof thereof, by the Plaintiff, if relevant.

5.

Answering paragraph 12 of said Complaint, for lack of sufficient knowledge or information to constitute a belief, this Defendant, Pittsburgh Corning Corporation, denies the allegations of Paragraph 12 of said Complaint.

6.

Answering the prayer to Plaintiff's Complaint, Defendant denies that Plaintiff is entitled to any of the relief sought.

7.

This Defendant denies each and every allegation contained in said Original Complaint, not heretofore admitted, controverted, or denied.

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AFFIRMATIVE DEFENSES

First Affirmative Defense

This Defendant, Pittsburgh Corning Corporation, denies that the Plaintiff sustained any injury as a result of contact or use of any product manufactured by it.

Second Affirmative Defense

Further answering herein, and by way of affirmative defense, this Defendant, Pittsburgh Corning Corporation, says that the products which this Defendant manufactured and sold were at all times reasonably safe and fit for the purposes for which they were made, manufactured and sold. It is denied that the same were in anywise defective for the use for which they were manufactured.

Third Affirmative Defense

This Defendant, Pittsburgh Corning Corporation, denies that any product which it manufactured and sold in anywise caused, or brought about any injury or illness to Plaintiff, and this Defendant further says that the physical condition of which Plaintiff complains, is the result, in whole or in part, of prior or subsequent injuries, diseases, bodily conditions and infirmities, for which, or for the consequence of which, this Defendant is in nowise liable or responsible.

Fourth Affirmative Defense

If Plaintiff did sustain any injury as a result of the use of any product manufactured by this Defendant, which is expressly denied, then such injury was sustained as a result of the occupation of the Plaintiff, in that he had been engaged as an insulator or worker in the insulation field for a number of years, and at all times knew that he was working in dust-laden air, which contained asbestos dust, as well as other dust particles, part of which were created by his own work, and the work of other insulators, and by the failure of his employer or owner of the premises on which he was working to provide facilities for the elimination of dust-laden air, and therefore, any such injury as he may have sustained, was an occupational disease from his long-continued occupation as an insulator, and not as a result of any isolated incident or contact

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with any product manufactured by Pittsburgh Corning Corporation. This Defendant says that it is not legally liable or responsible for any occupational disease which was suffered or sustained by Plaintiff in the course of his employment over a number of years; and further, Defendant, Pittsburgh Corning Corporation denies that the Plaintiff worked with products manufactured by it.

Fifth Affirmative Defense

Pittsburgh Corning Corporation, denies that any product or products which it manufactured and sold for heat insulation purposes in anywise caused or brought about injury or illness, if any, to the Plaintiff, and this Defendant says that the physical conditions of which Plaintiff complains were in nowise caused or brought about by any product manufactured or sold by this Defendant, but such condition was due solely to disease and other causes, or to the acts and omissions of third persons, and the acts of the Plaintiff.

Sixth Affirmative Defense

Further answering herein, and while denying that the Plaintiff sustained any injury as a result of contact or use of any product manufactured by Pittsburgh Corning Corporation, if he did sustain injury or did sustain an occupational disease as a result of the use of any insulation product manufactured by this Defendant, which is specifically denied, either separately, or in conjunction with products manufactured by any of the other Defendants, then this Defendant would show that the injuries, conditions and damages of which Plaintiff complains, were due solely and alone, or, in the alternative, were proximately caused by the negligent acts, wrongs and omissions of the Plaintiff, and that at all times material hereto, Plaintiff failed to exercise ordinary care for his own safety, all of which proximately caused the injuries and conditions of which he now complains, all of which is plead in bar hereof.

Seventh Affirtmative Defense

For further answer herein, if such be necessary, and as an affirmative defense, this Defendant says that Plaintiff was fully advised of the condition of which he now complains in 1961 or 1962; that said Plaintiff at that time was suffering from respiratory problems, weakness and shortness of

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breath; that he received medical treatment therefor, and that nevertheless, the Plaintiff failed and refused to use and utilize any safety devices, such as a mask or respirator for breathing; that he failed to request the use of such mask and respirator; that he failed to request his employer to furnish blowers and other equipment to remove the dust-laden air, and he worked in dust-laden air subsequent to his medical treatments and, despite the admonitions of the doctor of his own choice, with full knowledge that he was inhaling such dust-laden air; that he continued to work with insulation material containing some asbestos after he knew, or in the exercise of ordinary care, should have known that it was affecting his health.

Eighth Affirmative Defense

For further answer and affirmative defense, if such be necessary, this Defendant, Pittsburgh Corning Corporation, says that if the Plaintiff did sustain any injury as the result of the use of any product manufactured by this Defendant, that Plaintiff used the product with full knowledge of the fact that he was creating dust from the insulation product, and that he continued to work in dust, despite the warnings of a physician of his own choice; but nevertheless, continued to work in and around materials, or in areas where he was exposed to the inhalation of dust or other foreign substances, but that he continued to work under such conditions, knowing that he would breathe the dust, and that it was, or would be harmful to him, which bars him from any recovery under the theory that any risk was open and obvious to him, and he is likewise barred under the doctrine of volenti non fit injuria.

Ninth Affirmative Defense

If Plaintiff did sustain any injury, as a result of the use of any product manufactured by this Defendant, Pittsburgh Corning Corporation, which is denied, then such occurred more than two years prior to the filing of this suit on May 27, 1969, and such cause of action for personal injury is barred by the two (2) year statute of limitations for the State of Texas.

Tenth Affirmative Defense

If Plaintiff did sustain any injury as the result of the use of any product manufactured by this Defendant, which is affirmatively denied, then such

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occurred more than four (4) years prior to the filing of this suit on May 27, 1969, and such cause of action for personal injury is barred by the four (4) year statute of limitations of the State of Texas.

Eleventh Affirmative Defense

Further answering herein, Defendant, Pittsburgh Corning Corporation, says that Plaintiff was an experienced insulation worker, according to his allegations, and knew at all times that he was working with asbestos and products containing asbestos, as well as other products, which were harmful to him, or, in the alternative, if he did not know this, his employers knew, at all times, that they were working with insulation materials which contain some asbestos, and said employers had knowledge of the fact that particles of said products could enter the air when said products were cut or applied, and the employer likewise had knowledge that if blowers or fans were not used in the area, that their employees would be subject to the dust hazard and inhalation of dust; and further, the failure or refusal of his employer or employers to provide some means whereby the dust was removed from the air as a safety measure, was due to the negligence of his said employer or employers, for which, or for the consequences of which, this Defendant is not liable.

Twelfth Affirmative Defense

For further answer herein, and by way of affirmative defense, this Defendant says that if Plaintiff sustained any injury, as the result of the use of any product manufactured by Pittsburgh Corning Corporation, there existed no duty on the part of this Defendant to warn Plaintiff of any potential danger in the handling of the insulating materials and pr[illegible]nd this Defendant denies that it owed any duty to Plaintiff to giv[illegible] with respect to such products.

Thirteenth Affirmative Defense

This Defendant, Pittsburgh Corning Corpor[illegible] of any warranty on its part, and denies any fault or [illegible] for part of this Defendant, but on the contrary, says t[illegible]orporation, or products manufactured by it were at all times [illegible] relationship as

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the purpose of the insulation which was the purpose for which they were manufactured and sold, and the Plaintiff's injury, if any, did not result from any defect of such products. Further, any and all dust conditions which resulted from use of the products were created during the application thereof, at which time the products were cut or changed from the original form in which they were manufactured by this Defendant, and the conditions under which the Plaintiff worked were at all times prescribed by his employer, or the owner of the premises where the Plaintiff was employed. This Defendant had no responsibility for the condition or conditions at the place of employment where Plaintiff was performing his work.

Fourteenth Affirmative Defense

Further answering herein, and in the alternative, this Defendant says that the Plaintiff's alleged injuries and damages, if any, were caused solely, or, in the alternative, were proximately caused by acts, wrongs, omissions and negligence of third parties, or a third party, for whose acts this Defendant is in nowise liable or responsible; or, in the alternative, if Plaintiff sustained any injuries from the use of any products or from any breach of warranty, none of which are admitted, but denied, then such was the result of the fault or breach of warranty of third parties, other than this Defendant.

Fifteenth Affirmative Defense

For further answer herein, and by way of affirmative defense, this Defendant says that Plaintiff's injuries and damages, if any, were the result of an unavoidable accident.

Sixteenth Affirmative Defense

Further answering herein, and in the alternative, Defendant, Pittsburgh Corning Corporation would show that there is and was no legal liability on the part of this Defendant, in that the alleged happenings in question were brought about or caused by transitory conditions arising in the course of the work which the Plaintiff was doing, and ordinarily incident thereto; and Plaintiff and his employers used their own manner, method and means for performing such work, and this Defendant, Pittsburgh Corning Corporation, owed no duty with respect to such work, nor was there any relationship as

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between Plaintiff and Pittsburgh Corning Corporation, which created any duty on the part of it as to the manner or method in which the work was done, or the conditionsunder which the Plaintiff performed such work.

Seventeenth Affirmative Defense

For further answer herein, Defendant says that if the Plaintiff should recover any judgment herein (and this Defendant, Pittsburgh Corning Corporation specifically denies that Plaintiff is entitled to recover judgment as against it), then, and in such event, and under the provisions of Article 2212 of Vernon's Annotated Civil Statutes of the State of Texas, as well as at common law, Defendant is entitled to judgment for indemnity and/or contribution over and against the co-defendants herein, and each of them, jointly and severally.

WHEREFORE Defendant, PITTSBURGH CORNING CORPORATION, moves and prays the Court that upon trial hereof Plaintiff recover nothing, as against this Defendant and, in the alternative, for judgment against the co-defendants for indemnity and/or contribution over, and for such other and further relief in the premises as this Defendant may show itself just entitled to receive.

Respectfully submitted,

WELLS, DUNCAN, BEARD,
GREENBERG AND HUNT

By George E. Duncan
515 Beaumont Savings Building
Beaumont, Texas

Attorneys for Defendant, PITTSBURGH CORNING CORPORATION

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CROSS-ACTION OF DEFENDANT, PITTSBURGH CORNING CORPORATION

TO SAID HONORABLE COURT:

Comes now PITTSBURGH CORNING CORPORATION, one of the Defendants in the above-styled and numbered cause, and files this its Cross-Action against FIBREBOARD PAPER PRODUCTS CORPORATION, COMBUSTION ENGINEERING, INC., R & I REFRACTORY AND INSULATION CORPORATION, JOHNS-MANVILLE PRODUCTS CORPORATION, OWENS-CORNING FIBER GLASS CORPORATION, EAGLE-PICHER INDUSTRIES, INC., UNARCO INDUSTRIES, INC., PHILIP CAREY CORPORATION and ARMSTRONG CONTRACTING AND SUPPLY CORPORATION, all hereinafter called Cross-Defendants, and for said Cross-Action would show this Honorable Court the following:

1.

Defendant, PITTSBURGH CORNING CORPORATION alleges and avers that if Plaintiff sustained any injury as a result of any act or omission on the part of this Defendant, Pittsburgh Corning Corporation, which this Defendant specifically denies, then such injury was caused and proximately caused and contributed to be caused by the acts and omissions of the remaining Defendants above-named and each of them, and Defendant, UNARCO INDUSTRIES, INC., being a successor in interest to the Union Asbestos and Rubber Company, and if any Judgment is entered herein against this Defendant, Pittsburgh Corning Corporation, then, and in such event, this Defendant is entitled to indemnity from each and all of the other co-defendants; or, in the alternative, is entitled to contribution against each and all of the other co-defendants in accordance with the provisions of Article 2212 of Vernon's Annotated Civil Statutes of Texas.

2.

This Defendant adopts and alleges each and every act against the Cross-Defendants herein, as is alleged in the Plaintiff's Original Complaint

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against each and all of said Defendants.

WHEREFORE, this Defendant prays Judgment of the Court that Plaintiff take nothing against it, and that it go hence with its costs; in the alternative, that it have Judgment for indemnity; on the further alternative, that it have Judgment for contribution as set out above, and for such other and further relief in the premises as this Defendant may show itself justly entitled to receive.

Respectfully submitted,

WELLS, DUNCAN, BEARD,
GREENBERG AND HUNT

By George E. Duncan
515 Beaumont Savings Building
Beaumont, Texas 77701

Attorneys for Defendant,
PITTSBURGH CORNING CORPORATION

Certificate of Service

I hereby certify that a copy of the above and foregoing Original Answer of Defendant, PITTSBURGH CORNING CORPORATION, to Plaintiff's Original Complaint, as well as the Cross-Action of PITTSBURGH CORNING CORPORATION against all other Defendants, was mailed by certified mail, return receipt requested, on this the 1st day of July, 1969, to the following attorneys of record:

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

Mr. Gerald Coley
Vinson, Elkins, Searles & Connally
First City National Ban k Building
Houston, Texas 77002

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

Mr. Gordon R. Pate
1119 Beaumont Savings Building
Beaumont, Texas 77701

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

Mr. George A. Weller
Weller, Wheelus & Green
P. O. Box 350
Beaumont, Texas 77704

Mr. John D. Rienstra
King, Sharfstein & Rienstra
707 Beaumont Savings Building
Beaumo nt, Texas 77701

George E. Duncan
George E. Duncan, Attorney for
Defendant, PITTSBURGH CORNING
CORPORATION

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS,

BEAUMONT DIVISION.

FILED

M. Feb. 7 1967

James R. Cooney, Clerk, U. S. [illegible]

By [illegible] DEPUTY

SAMUEL R. POTTER	§	
VS.	§	CIVIL ACTION NO. 6329
FIBREBOARD PAPER PRODUCTS	§	
CORPORATION ET AL.	§	

ANSWER OF DEFENDANT, COMBUSTION ENGINEERING, INC.

Now comes Combustion Engineering, Inc., one of the defendants in the above-entitled and numbered cause, and makes and files this, its Answer to the Complaint of the plaintiff, and for such answer says:

This defendant admits the allegations of paragraph (2) under the first unnumbered paragraph of said Complaint, being the preamble thereof, and denies the allegations of paragraph (3) thereof; as to paragraphs (1), (4), (5), (6), (7), (8), (9) and (10), these paragraphs do not relate to this defendant and defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity thereof.

1.

As to the allegations of paragraph 1 of said Complaint, this defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity thereof, inasmuch as it does not have knowledge as to the citizenship of the parties other than this defendant.

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2.

This defendant admits the allegations of paragraph 2 of said Complaint to the effect that the amount in controversy herein exceeds the sum of Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs, but denies that the plaintiff is entitled to any recovery herein against this defendant in any amount.

3.

This defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations of paragraph 3 of said Complaint.

4.

With reference to the allegations of paragraph 4 of said Complaint, this defendant denies that it was engaged in the manufacture of materials used for insulation prior to December 31, 1967, but admits that since said date it has been and is now engaged in the manufacture of materials used for insulation, some of which contain asbestos. Defendant denies that the insulation products manufactured by this defendant are placed on the market to be purchased and used by the general public, but to the contrary, this defendant sells its products to insulation contractors who employ experienced insulation workers in the application of the products.

This defendant does not purport to answer said allegations for or as to the other defendants named in this cause.

5.

This defendant denies the allegations of Paragraph 5 of said Complaint.

6.

This defendant denies the allegations of Paragraph 6 of said Complaint.

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7.

Answering the allegations contained in paragraph 7, this defendant denies that any injury and damage complained of by plaintiff were directly and proximately caused by any negligence or carelessness of this defendant.

In reply to the allegations contained in Paragraph 7 (a), this defendant, answering only for itself, denies said allegations.

This defendant denies the allegations of Paragraph 7 (b), (c), (d) and (e) and each of them.

8.

Answering the allegations of paragraph 8, this defendant denies that it breached any warranty to the plaintiff or any other person in any respect, and denies the allegations of Par. 8 and of subsections (a), (b), (c) and (d) and each of them.

9.

This defendant denies the allegations of paragraph 9 of said Complaint.

10.

Answering the allegations of Paragraph 10, this defendant denies the allegations reading, "That as a direct and proximate cause of the aforesaid occurrence and circumstances and the negligence and carelessness of the defendants, and the defendants' breach of warranties, the plaintiff was permanently and severely injured", and denies that it was guilty of any negligence or carelessness and denies any breach of warranties on its part, and denies that any injury or disability from which plaintiff is suffering, if any, has resulted from any act or omission of this defendant or from the use of any product manufactured by this defendant, or from any breach of warranty, if any, by this defendant. As to the remaining allegations of Par. 10, this defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity thereof.

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11.

This defendant denies the allegations of paragraph 11 of said Complaint.

12.

This defendant denies the allegations of paragraph 12 of said Complaint.

13.

This defendant denies the allegations of paragraph 13 of said Complaint, and denies that the plaintiff is entitled to any recovery against this defendant.

14.

This defendant denies the allegations of paragraph 14 of said Complaint, and denies that the plaintiff is entitled to any recovery against this defendant.

15.

This defendant denies the allegations of paragraph 15 of said Complaint, and denies that the plaintiff is entitled to any recovery against this defendant.

This defendant denies the allegations of the prayer of said Complaint, and denies that the plaintiff is entitled to recover any damages or any relief against this defendant.

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AFFIRMATIVE DEFENSES.

16.

Further answering, and by way of affirmative defense, this defendant says that the products which this defendant manufactured and sold were at all times reasonably fit and suitable for the purposes for which manufactured and sold, and defendants deny that the same were in anywise defective for the use for which they were manufactured.

17.

Defendant denies that the plaintiff sustained any injury as the result of contact with or use of any product manufactured by this defendant, and denies that any product or products which it manufactured and sold in anywise caused or brought about any injury or illness, if any, to the plaintiff, and defendant further says that the physical condition of which plaintiff complains was in nowise caused or brought about by any product manufactured and sold by this defendant, and that such condition was due solely to disease and other causes.

18.

Further answering herein, defendant alleges that if the plaintiff did sustain any injury as the result of the use of any product manufactured by this defendant, which is not admitted but expressly denied, then such injury was sustained as a result of the occupation of the plaintiff as an insulator or worker in the insulation field for a number of years; and at

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all times he knew that he was working in dust laden air which contained asbestos dust and other dust particles, created by his own work and the work of other insulators, and by the failure of his employers of the owners of the premises on which he was working to provide facilities and means for the elimination of dust laden air, and therefore, any such injury as he may have sustained was some occupational disease resulting from his continued occupation over a long period of time as an insulator, and not as a result of any isolated incident or contact with any product manufactured by this defendant; and this defendant is not legally liable therefor; and further, this defendant denies that the plaintiff worked with products manufactured by this defencant.

19.

Further answering herein, if need be, and by way of further affirmative defense, the defendant, Combustion Engineering, Inc., specially denies that the plaintiff sustained any injury as a result of contact or use with or of any product manufactured by this defendant, and specially denies any fault or breach of warranty on the part of this defendant, and specially denies that it or any of its servants, agents or employees, were guilty of any negligence proximately causing or contributing to cause the plaintiff's alleged injuries and damages, if any; but on the contrary this defendant alleges that the plaintiff himself was guilty of various acts, wrongs and omissions, each and all amounting to negligence, which, acting together or separately,

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were the sole proximate cause of his alleged injuries and damages, if any, or in the alternative, were a proximate cause thereof.

20.

Further answering herein, and in the alternative, defendant alleges that the plaintiff's alleged injuries and damages, if any, were caused solely, or in the alternative, were proximately caused by acts, wrongs, omissions and negligences of third parties or a third party, for whose acts this defendant is in nowise liable or responsible; or, in the alternative, the physical condition of which plaintiff complains was due solely to causes other than any negligence, fault or breach of warranty, none of which are admitted but denied, on the part of this defendant.

21.

Further answering herein, and in the alternative, defendant would show unto the Court that all situations and conditions, and the danger, if any, arising from the continued use of such insulating material or materials were open and obvious to the plaintiff, and if any dangers existed as claimed by him, which are not admitted but denied, same, if existing, were apparent and were easily discernible by him, and the plaintiff knew as much about same as did the defendant, and such matters were well known to him or should have been known to him; but nevertheless, he continued to work as an insulator and continued to subject himself to air which was laden with insulation material, and such conditions, if existing, were not such that this defendant would be legally liable to the plaintiff therefor.

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22.

In the alternative, defendant alleges that the plaintiff at all times knew of the dangers involved with insulation materials containing asbestos and in working in dust laden air where insulation materials were in use, and he had actual notice and knowledge thereof, or in the alternative should have known of same, and he knew and appreciated the nature or extent of such dangers, if any, and he continued to use and to work with such materials and under such conditions with such knowledge, and therefore, this defendant owed him no duty to warn him of any potential dangers involved, and defendant pleads the doctrine of volenti non fit injuria herein.

23.

Further answering herein, in the alternative, this defendant says that any cause of action, if any, which the plaintiff has or may ever have had against this defendant, which is not admitted but denied, accrued more than two years prior to the commencement of this suit against this defendant, and is barred by the Texas Two-Year Statute of Limitations, Article 5526, Vernon's Texas Civil Statutes, and defendant pleads same in bar to this suit.

24.

Further answering herein, in the alternative, this defendant says that any cause of action, if any, which the plaintiff has or may ever have had against this defendant, which is not admitted but denied, accrued more than four years prior to the

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commencement of this suit against this defendant, and is barred by the Texas Four-Year Statute of Limitations, Article 5529, Vernon's Texas Civil Statutes, and defendant pleads same in bar to this suit.

25.

Further answering herein, in the alternative, defendant would show that there is and was no legal liability on the part of this defendant, because of the fact that the alleged happenings in question were broughr about or caused by transitory conditions arising in the course of the work the plaintiff was doing, and ordinarily incident thereto, the plaintiff and his employers using their own manner, method and means of doing the work, and defendant owed no duty with respect thereto.

26.

Further answering herein, in the alternative, this defendant says that the plaintiff's alleged injuries and damages, if any, were the result of an unavoidable accident.

27.

As a further grounds of relief and pleading in the alternative, this defendant says that if any judgment is entered herein jointly and severally against it and other defendants, that in such event this defendant is entitled to contribution against such other defendants in accordance with the provisions of Article 2212 of Vernon's Annotated Civil Statutes of the State of Texas.

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CROSS-CLAIM.

Now comes Combustion Engineering, Inc., one of the defendants in the above-entitled and numbered cause, and files this, its Cross-Claim or Cross-action against the other defendants herein, Fibreboard Paper Products Corporation, Johns-Manville Products Corporation, Owens-Corning Fiber Glass Corporation, Eagle-Pitcher Industries, Pittsburgh Corning Corporation, Unaraco Industries, Inc., Philip Carey Corporation and Armstrong Contracting and Supply Corporation, all hereinafter called cross-defendants, and says if the plaintiff sustained any injury as the result of any act or omission on the part of this defendant, Combustion Engineering, Inc., which is not admitted but denied, then such injury was caused and brought about and contributed to and proximately caused by the acts and omissions of the remaining defendants above-named, and if any judgment is entered herein against this defendant, then in such event this defendant is entitled to indemnity from each and all of the other defendants; or, in the alternative, is entitled to contribution against each and all of the other defendants in accordance with the provisions of Article 2212, Vernon's Annotated Civil Statutes of Texas.

WHEREFORE, this defendant prays judgment that plaintiff take nothing against it herein and that it go hence with its costs, without day; and in the alternative, that it have judgment for indemnity, or in the alternative, for contribution as set out above.

ATTORNEY FOR DEFENDANT,
COMBUSTION ENGINEERING, INC;
1014 San Jacinto Bldg.,P.O.Box 1632,
Beaumont,Texas.

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CERTIFICATE OF SERVICE.

I hereby certify that the above and foregoing answer has been served on the plaintiff and his attorneys of record by placing a true and correct copy thereof, in a correctly addressed, stamped and sealed envelope, addressed to Messrs. Stephenson, Thompson & Morris, Attorneys at Law, Stephenson Building, Orange, Texas, plaintiff's attorneys of record, and by depositing same in the United States Mail at Beaumont, Texas, this 2nd day of July, 1969; and copies have likewise been furnished to all counsel of record for the defendants.

ATTORNEY FOR DEFENDANT.

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

FILED
AUG 29 1969
M 19
James R. Cooney, Clerk, U. S. Court
By DEPUTY

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL.

CIVIL ACTION NO. 6329.

DEFENDANT RUBEROID COMPANY'S
ORIGINAL ANSWER

COMES NOW the Defendant "Ruberoid Company" and files the following answer to Plaintiff's First Amended Original Complaint, and as grounds therefor would respectfully represent unto the Court the following:

MOTION TO DISMISS

This Defendant, "Ruberoid Company", denies that it is a corporation and further denies that the C. T. Corporation System of Dallas, Texas, is an agent for service upon said named Defendant, and for such good and sufficient reasons Plaintiff's complaint as to "Ruberoid Company" should be dismissed.

Robert E. Barnes.

Sworn to and subscribed before me the undersigned authority on this the 29th day of August, 1969.

Beatrice L. Engel
Notary Public in and for
Jefferson County, Texas.

Respectfully submitted,

BARNES & BARNES

BY Robert E. Barnes

2315 Calder - P.O. Box 5098,
Beaumont, Texas,
Telephone 833-8601,
Attorneys for the Defendant.

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FIRST DEFENSE

This Defendant admits the allegations contained in paragraph No. 1.

SECOND DEFENSE

This Defendant admits the allegations contained in paragraph No. 2.

THIRD DEFENSE

This Defendant admits the allegations contained in paragraph No. 3.

FOURTH DEFENSE

Since this named Defendant is not a corporation nor an entity of any kind, it cannot admit nor deny the allegations contained in paragraph No. 4, nor does this named Defendant have any knowledge as to the other Defendants, and for such reason this named Defendant can neither admit nor deny the allegations contained in paragraph No. 4.

FIFTH DEFENSE

This Defendant has no knowledge about the matters alleged in paragraph No. 5 and therefore can neither admit nor deny the same.

SIXTH DEFENSE

This Defendant denies the allegations contained in paragraph No. 6.

SEVENTH DEFENSE

This Defendant denies the allegations contained in paragraph No. 7.

EIGHTH DEFENSE

This Defendant denies the allegations contained in paragraph No. 8.

NINTH DEFENSE

This Defendant denies the allegations contained in paragraph No. 9.

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TENTH DEFENSE

This Defendant denies the allegations contained in paragraph No. 10.

ELEVENTH DEFENSE

This Defendant denies the allegations contained in paragraph No. 11.

TWELFTH DEFENSE

This Defendant denies the allegations contained in paragraph No. 12.

THIRTEENTH DEFENSE

This Defendant denies the allegations contained in paragraph No. 13.

FOURTEENTH DEFENSE

This Defendant denies the allegations contained in paragraph No. 14.

FIFTEENTH DEFENSE

This Defendant denies the allegations contained in paragraph No. 15.

SIXTEENTH DEFENSE

This Defendant denies the allegations contained in Plaintiff's prayer.

SEVENTEENTH DEFENSE

This Defendant says that Plaintiff's cause of action is barred by the two year Statutes of Limitations and that for such good and sufficient reason Plaintiff's pleadings should be dismissed, at least as to this Defendant.

WHEREFORE, premises considered, this Defendant prays that it be dismissed and go hence without day and recover its costs.

Respectfully submitted,

BARNES & BARNES

BY Robert E. Barnes

2315 Calder - P.O. Box 5098,
Beaumont, Texas,
Telephone 833-8601,
Attorneys for the Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon counsel for the Plaintiff by depositing the same in the United States mail addressed to Mr. Ward Stephenson, Stephenson Building, P.O. Box 68, Orange, Texas 77630, on the 29th day of August, 1969.

Robert E. Barnes.

Robert E. Barnes.

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

FILED
May 21 1969
James R. Cooney, Clerk, U. S. Court
By Mrs. Ruth Barton DEPUTY

SAMUEL R. POTTER :

VS. : CIVIL ACTION NO. 6329

FIBREBOARD PAPER PRODUCTS :
CORPORATION, ET AL :

PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now SAMUEL R. POTTER, hereinafter called plaintiff, leave of the Court having been first had and obtained, and files this his first amended original complaint, complaining of:

(1) FIBREBOARD PAPER PRODUCTS CORPORATION, a corporation organized, created and existing under and by virtue of the laws of of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(2) COMBUSTION ENGINEERING, INC., a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(3) JOHNS-MANVILLE PRODUCTS CORPORATION, a corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, Prentice-Hall Corporation System, Littlefield Building, Austin, Travis County, Texas;

(4) OWENS-CORNING FIBER GLASS CORPORATION, a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(5) EAGLE-PICHER INDUSTRIES, INC., a corporation duly organized, created and existing under and by virtue of the laws of the State of Ohio, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(6) PITTSBURGH CORNING CORPORATION, a corporation duly organized, created and existing under and by virtue of the laws of the State of Pennsylvania, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(7) UNARCO INDUSTRIES, INC., a corporation duly organized, creasted and existing under and by virtue of the laws of the State of Illinois, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

(8) PHILIP CAREY CORPORATION, a corporation duly organized, created and existing under and by virtue of the laws of the State of Ohio, with an agent for service, to-wit, Prentice-Hall Corporation System, Littlefield Building, Austin, Travis County, Texas;

(9) ARMSTRONG CONTRACTING AND SUPPLY CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(10) STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY, a corporation duly organized, created and existing under and by virtue of the laws of the State of Missouri, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(11) RUBEROID COMPANY, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

hereinafter called defendants; and for cause of action, plaintiff alleges:

1.

That the ground upon which jurisdiction of this Court depends is diversity of citizenship of the parties hereto.

2.

That the amount in controversy herein exceeds the sum of Ten Thousand Dollars, exclusive of interest and costs.

3.

That plaintiff is a resident of the State of Texas, and resides in Orange County, Texas.

4.

That defendants during all the times herein mentioned and for a long time prior thereto, have been and now are engaged in the manufacture of materials used for insulation containing asbestos; that the products manufactured, compounded and prepared by defendants, acting through their servants, employees, representatives and agents were and are placed on the market to be purchased and used by the public.

5.

The plaintiff says that during the years 1940 to 1967, inclusive, he was employed as an insulator, and that in the performance

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of his duties as an insulator, he was required to handle large quantities of the products manufactured and distributed by the above named defendants. That in addition to the fact that the plaintiff actually used the products manufactured by the above named defendant, and many more, as an insulator, and specifically many and various products containing asbestos, the plaintiff says that on many of the jobs, while not using himself the specific products manufactured by the defendants, he was nevertheless exposed to the dangerous materials and especially asbestos dust and fibers which were used by other workers in the same area at which plaintiff was working.

6.

That during the period of time in which plaintiff was employed as an insulator from the year 1940 to 1967, inclusive, in the course of his employment, due to the negligence and carelessness of the defendants, he was caused to come in contact with the insulation produced and manufactured and distributed by the defendants, and its chemical compounds, deleterious substances and matter, and directly in consequence of said negligence and carelessness of the defendants, did sustain severe, permanent and disabling injuries as hereinafter set forth.

7.

That the injuries and damages complained of herein were directly and proximately caused by the negligence and carelessness of the defendants in the following additional particulars:

(a) That the defendants knew or in the exercise of ordinary or reasonable care ought to have known that the insulation they so prepared, manufactured and distributed were deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, and that plaintiff would

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not know of such danger to his health, notwithstanding which, defendants negligently failed to take any reasonable precautions or exercise reasonable care to warn plaintiff of the danger and harm to which he was exposed while handling the defendants' said insulation.

(b) That the defendants knew or in the exercise of ordinary care ought to have known that their said insulation was deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, and that plaintiff would not know of such dangerous character, notwithstanding which defendants failed and omitted to provide plaintiff with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there was any, to protect him from being poisoned and disabled as he was by exposure to such deleterious and harmful compound substances and other material contained in said defendants' insulation.

(c) That the defendants knew or in the exercise of ordinary or reasonable care ought to have known that their insulation was deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, notwithstanding which defendants negligently and carelessly packaged said insulation so that in the ordinary handling for installation thereof, this plaintiff would come in contact with such deleterious, poisonous and highly harmful compound substances and other material contained in said defendants' insulation.

(d) That the defendants knew or in the exercise of ordinary or reasonable care ought to have known that the insulation they produced contained deleterious, poisonous and highly harmful substances to the human body, lungs, respiratory system, skin and health, notwithstanding which defendants

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negligently failed to take any reasonable precautions or exercise reasonable care by placing any warnings on their containers of said insulation to warn the handlers thereof of the dangers to health in coming in contact with said insulation.

(e) That the defendants knew or in the exercise of reasonable care ought to have known that their insulation contained deleterious and highly harmful substances to plaintiff's health, body, lungs, respiratory system and skin, and defendants knew or in the exercise of ordinary or reasonable care should have known that plaintiff would not know the dangerous characteristics of their said insulation, notwithstanding which defendants negligently failed to take reasonable precautions or exercise reasonable care to warn plaintiff of said danger and to instruct the plaintiff in the proper handling of their said insulation, or to take any reasonable precautions or exercise any reasonable care to protect plaintiff from harm and negligently failed to adopt and enforce a reasonable safe plan and method of handling and installing said insulation.

8.

In addition, the plaintiff says that the defendants breached their warranties to plaintiff in the following respects:

(a) That the defendants knew or in the exercise of reasonable care ought to have known that their insulation was defective and that such insulation was not suitable for the purposes for which it was intended.

(b) That the defendants should have tested their products, especially those containing asbestos, to ascertain the safe or dangerous nature of such products before offering them for sale, or in the alternative, should have removed such products from the market upon ascertaining that such products would cause asbestosis.

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(c) That the defendants should have devised a method of application of their products, especially those containing asbestos, that would have kept those using such products from contracting asbestosis if the defendants would not remove such products from sale to the public.

(d) That the products of the defendants, especially those containing asbestos, were warranted, either expressly or impliedly, to be merchantable, when in truth they were not, and therefore the defendants breached to the plaintiff, as well as to others, the warranty of merchantability.

9.

The plaintiff would further show unto the Court that at all the times material hereto, over the period of years in which plaintiff has been employed as an insulator, the manufacture, sale and distribution of insulation materials with which plaintiff came in contact, was under the exclusive control of the defendants, their agents, servants and employees, and that had the defendants herein not been guilty of negligence as hereinabove set forth, plaintiff would not have sustained his injuries and damages as herein set forth, and therefore, plaintiff says that he is entitled to recover from the defendants under the doctrine of res ipsa loquitur.

10.

That as a direct and proximate cause of the aforesaid occurrence and circumstances and the negligence and carelessness of the defendants, and the defendants' breach of warranties, the plaintiff was permanently and severely injured; that he has sustained a very serious and permanent injury to his lungs and respiratory system, which has affected other parts of his body; that he is suffering from the disease asbestosis; that he suffers from shortness of breath, inability to breathe, clubbing of the

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fingers and toes; that it is necessary that plaintiff have available to him at all times a container containing oxygen in order that he may be able to breathe; that plaintiff has extreme difficulty sleeping; that he tires easily; that he constantly coughs; that his future outlook is very dim; that he has sought the services of physicians in an effort to cure or arrest the condition from which he is suffering, but to no avail; that the plaintiff has lost his good health, all of which is permanently disabling to him.

11.

That by reason of the negligence and carelessness of the defendants, and each of them, and their breach of warranties as hereinabove alleged, and because of the harm and injury to plaintiff's health and the resulting disability therefrom, the plaintiff has suffered a total loss of wages and earnings and will continue to suffer such loss; that he was unable to continue in his employment as an insulator, an employment that he had been engaged in for many years, or to engage in any gainful activity at the present time, and his earning capacity has been greatly and forever permanently diminished and impaired.

12.

That in an effort to treat, relieve and heal himself of said injuries and to regain his health, the plaintiff was obliged to incur and will incur in the future an expense amounting to a considerable sum of money for medical and hospitalization care, expenses for medicines, supplies, and so forth, the amount of which plaintiff is unable to accurately estimate at this time.

13.

That by reason of the facts hereinabove alleged, plaintiff has suffered and sustained at the hands of the defendants, and

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each of them, general and special damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

14.

The plaintiff further says that his injuries and damages were directly and proximately caused by the gross negligence, omission, conscious indifference and utter disregard for the welfare of plaintiff on the parts of the defendants herein, their agents, servants, employees, managers, superintendents, supervisors and officers; that the award for this count should be in such an amount that it would act as a deterrent to the defendants and others from the future commission of like offenses and wrongs; and plaintiff further says that if each of the acts of negligence alleged above did not independently and of themselves constitute gross negligence, then certainly all of said acts of negligence combined and in the aggregate constituted gross negligence, and the proximate cause of the plaintiff's injuries; that as a result of plaintiff's injuries, he has suffered actual damages as herein shown, which were the direct and proximate cause of his injuries, for which plaintiff is entitled to recover exemplary damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

15.

That by reason of the facts hereinabove alleged, plaintiff has suffered and sustained at the hands of the defendants, and each of them, general and special damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants and each of them in the sum of Five Hundred Thousand ($500,000.00) Dollars general and special damages, together with the sum of Five Hundred Thousand ($500,000.00) Dollars exemplary damages, together with his costs and disbursements herein, and interest on said judgment

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from the date thereof until paid at the rate of six (6%) per cent per annum, and such other and further relief to which he may be entitled to receive.

STEPHENSON, THOMPSON AND MORRIS

By _____
Attorneys for Plaintiff
Stephenson Building
P. O. Box 68
Orange, Texas 77630

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CHARTER OAK FIRE INSURANCE COMPANY

Ward Stephenson
WARD STEPHENSON

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

FILED
NOV 21 1969
James R. Cooney, Clerk
By Margaret [illegible]
DEPUTY

SAMUEL R. POTTER

VS.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL

CIVIL ACTION NO. 6329.

DEFENDANT RUBEROID COMPANY'S
FIRST AMENDED ORIGINAL ANSWER

COMES NOW the Defendant "Ruberoid Company" and files its First Amended Original Answer to Plaintiff's First Amended Original Complaint, and as grounds therefor would respectfully represent unto the Court the following:

MOTION TO DISMISS

This Defendant, "Ruberoid Company," denies that it is a corporation, and further denies that the C. T. Corporation System of Dallas, Texas, is an agent for service upon said named Defendant, and for such good and sufficient reasons Plaintiff's complaint as to "Ruberoid Company" should be dismissed.

Robert E. Barnes.

Sworn to and subscribed before me, the undersigned authority, on this 21 day of November, A. D. 1969.

Gladys B. Barnes.
Notary Public in and for
Jefferson County, Texas.

FIRST DEFENSE

This Defendant admits the allegations contained in paragraph No. 1.

SECOND DEFENSE.

This Defendant admits the allegations contained in paragraph No. 2.

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THIRD DEFENSE.

This Defendant admits the allegations contained in paragraph No. 3.

FOURTH DEFENSE.

Since this named Defendant is not a corporation nor an entity of any kind, it cannot admit nor deny the allegations contained in paragraph No. 4, nor does this named Defendant have any knowledge as to the other Defendants, and for such reason this named Defendant can neither admit nor deny the allegations contained in paragraph No. 4.

FIFTH DEFENSE.

This Defendant has no knowledge about the matters alleged in paragraph No. 5, and therefore can neither admit nor deny the same.

SIXTH DEFENSE.

This Defendant denies the allegations contained in paragraph No. 6.

SEVENTH DEFENSE.

This Defendant denies the allegations contained in paragraph No. 7.

EIGHTH DEFENSE

This Defendant denies the allegations contained in paragraph No. 8.

NINTH DEFENSE.

This Defendant denies the allegations contained in paragraph No. 9.

TENTH DEFENSE.

This Defendant denies the allegations contained in paragraph No. 10.

ELEVENTH DEFENSE.

This Defendant denies the allegations contained in paragraph No. 11.

TWELFTH DEFENSE.

This Defendant denies the allegations contained in paragraph No. 12.

THIRTEENTH DEFENSE.

This Defendant denies the allegations contained in paragraph No. 13.

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FOURTEENTH DEFENSE.

This Defendant denies the allegations contained in paragraph No. 14.

FIFTEENTH DEFENSE.

This Defendant denies the allegations contained in paragraph No. 15.

SIXTEENTH DEFENSE.

This Defendant denies the allegations contained in Plaintiff's Prayer.

SEVENTEENTH DEFENSE.

This Defendant says that Plaintiff's cause of action is barred by the two-year Statute of Limitations and that for such good and sufficient reason, Plaintiff's pleadings should be dismissed, at least as to this Defendant.

EIGHTEENTH DEFENSE.

This Defendant says further that Plaintiff is guilty of acts and omissions of negligence proximately causing his condition which he makes the basis of this suit.

NINETEENTH DEFENSE.

This Defendant says further that Plaintiff voluntarily exposed himself to a known risk which he appreciated and did so as the result of deliberate choice, and therefore is barred from recovery by the doctrine of volenti non fit injuria.

TWENTIETH DEFENSE.

This Defendant says further that Plaintiff's condition which is made the basis of this lawsuit was caused solely by acts of parties other than this Defendant.

TWENTY-FIRST DEFENSE.

This Defendant says further, in the alternative, that Plaintiff's condition which is made the basis of this lawsuit is the result of an unavoidable accident as between the Plaintiff and this Defendant, since this Defendant was guilty of no negligence proximately causing the same.

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WHEREFORE, premises considered, this Defendant prays that it be dismissed and go hence without day and recover its costs.

Respectfully submitted,

BARNES & BARNES

BY Robert E. Barnes

2315 Calder - P. O. Box 5098,
Beaumont, Texas,
Telephone 833-8601,
Attorneys for said Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record by depositing the same in the United States mail properly addressed, with postage paid, on the 21 day of November, A. D. 1969.

Robert E. Barnes.
Robert E. Barnes.

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS, BEAUMONT DIVISION.

FILED
AUG 8 1969
M
James R. Cooley, Clerk, U. S. District Court
By _____ DEPUTY

SAMUEL R. POTTER	§	
VS.	§	CIVIL ACTION NO. 6329
FIBREBOARD PAPER PRODUCTS	§	
CORPORATION ET AL.	§	

ANSWER OF DEFENDANT, COMBUSTION ENGINEERING, INC., TO PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT.

Now comes Combustion Engineering, Inc., one of the devendants in the above-entitled and numbered cause, and makes and files this, its Answer to the First Amended Original Complaint of the Plaintiff, and for such answer says:

This defendant admits the allegations of paragraph (2) under the first unnumbered paragraph of said Complaint, being the preamble thereof; and as to paragraphs (1), (3), (4), (5), (6), (7), (8), (9), (10), and(11), these paragraphs do not relate to this defendant and defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity thereof.

1.

As to the allegations of paragraph 1 of said Complaint, this defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity thereof, inasmuch as it does not have knowledge as to the citizenship of the parties other than this defendant.

2.

This defendant admits the allegations of paragraph 2 of said Complaint to the effect that the amount in controversy herein exceeds the sum of Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs, but denies that the plaintiff is entitled to any recovery herein against this defendant in any amount.

3.

This defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations of paragraph 3 of said Amended Complaint.

4.

With reference to the allegations of paragraph 4 of said Amended Complaint, this defendant denies that it was engaged in the manufacture of materials used for insulation prior to December 31, 1967, but admits that since said date it has been and is now engaged in the manufacture of materials used for insulation, some of which contain asbestos. Defendant denies that the insulation products manufactured by this defendant are placed on the market to be purchased and used by the general public, but to the contrary, this defendant sells its products to insulation contractors who employ experienced insulation workers in the application of the products.

This defendant does not purport to answer said allegations for or as to the other defendants named in this cause.

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5.

This defendant denies the allegations of paragraph 5 of said Amended Complaint.

6.

This defendant denies the allegations of Paragraph 6 of said Amended Complaint.

7.

Answering the allegations contained in paragraph 7, this defendant denies that any injury and damage complained of by plaintiff were directly and proximately caused by any negligence or carelessness of this defendant.

In reply to the allegations contained in Paragraph & (a), this defendant, answering only for itself, denies said allegations.

This defendant denies the allegations of Paragraph 7 (b), (c), (d) and (e) and each of them.

8.

Answering the allegations of paragraph 8, this defendant denies that it breached any warranty to the plaintiff or any other person in any respect, and denies the allegations of Par. 8 and of subsections (a), (b), (c) and (d) and each of them.

9.

This defendant denies the allegations of paragraph 9 of said Amended Complaint.

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10.

Answering the allegations of Paragraph 10, this defendant denies the allegations reading, "That as a direct and proximate cause of the aforesaid occurrence and circumstances and the negligence and carelessness of the defendants, and the defendants' breach of warranties, the plaintiff was permanently and severely injured", and denies that it was guilty of any negligence or carelessness and denies any breach of warranties on its part, and denies that any injury or disability from which plaintiff is suffering, if any, has resulted from any act or omission of this defendant or from the use of any product manufactured by this defendant, or from any breach of warranty, if any, by this defendant. As to the remaining allegations of Par. 10, this defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity thereof.

11.

This defendant denies the allegations of paragraph 11 of said Amended Complaint.

12.

This defendant denies the allegations of paragraph 12 of said Amended Complaint.

13.

This defendant denies the allegations of paragraph 13 of said Amended Complaint, and denies that the plaintiff is entitled to any recovery against this defendant.

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14.

This defendant denies the allegations of paragraph 14 of said Amended Complaint, and denies that the plaintiff is entitled to any recovery against this defendant.

15.

This defendant denies the allegations of paragraph 15 of said Amended Complaint, and denies that the plaintiff is entitled to any recovery against this defendant.

This defendant denies the allegations of the prayer of said Complaint, and denies that the plaintiff is entitled to recover any damages or any relief against this defendant.

AFFIRMATIVE DEFENSES.

16.

Further answering, and by way of affirmative defense, this defendant says that the products which this defendant manufactured and sold were at all times reasonably fit and suitable for the purposes for which manufactured and sold, and defendants deny that the same were in anywise defective for the use for which they were manufactured.

17.

Defendant denies that the plaintiff sustained any injury as the result of contact with or use of any product manufactured by this defendant, and denies that any product or products which it manufactured and sold in anywise caused or brought about any injury or illness, if any, to the plaintiff, and defendant further says that

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the physical condition of which plaintiff complains was in nowise caused or brought about by any product manufactured and sold by this defendant, and that such condition was due solely to disease and other causes.

18.

Further answering herein, defendant alleges that if the plaintiff did sutain any injury as the result of the use of any product manufactured by this defendant, which is not admitted but expressly denied, then such injury was sustained as a result of the occupation of the plaintiff as an insulator or worker in the insulation field for a number of years; and at all times he knew that he was working in dust laden air which contained asbestos dust and other dust particles, created by his own work and the work of other insulators, and by the failure of his employers or the owners of the premises on which he was working to provide facilities and means for the elimination of dust laden air, and therefore, any such injury as he may have sustained was some occupational disease resulting from his continued occupation over a long period of time as an insulator, and not as a result of any isolated incident or contact with any product manufactured by this defendant; and this defendant is not legally liable therefor; and further, this defendant denies that the plaintiff worked with products manufactured by this defendant.

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19.

Further answering herein, if need be, and by way of further affirmative defense, this defendant, Combustion Engineering, Inc., specially denies that the plaintiff sustained any injury as a result of contact with or use of any product manufactured by this defendant, and specially denies any fault or breach of warranty on the part of this defendant, and specially denies that it or any of its servants, agents or employees, were guilty of any negligence proximately causing or contributing to cause the plaintiff's alleged injuries and damages, if any; but on the contrary this defendant alleges that the plaintiff himself was guilty of various acts, wrongs and omissions, each and all amounting to negligence, which, acting together or separately, were the sole proximate cause of his alleged injuries and damages, if any, or in the alternative, were a proximate cause thereof.

20.

Further answering herein, and in the alternative, defendant alleges that the plaintiff's alleged injuries and damages, if any, were caused solely, or in the alternative, were proximately caused by acts, wrongs, omissions and negligences of third parties or a third party, for whose acts this defendant is in nowise liable or responsible; or, in the alternative, the physical condition of which plaintiff complains was due solely to causes other than any negligence, fault or breach of warranty, none of which are admitted but denied, on the part of this defendant.

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21.

Further answering herein, and in the alternative, defendant would show unto the Court that all situations and conditions, and the danger, if any, arising from the continued use of such insulating material or materials were open and obvious to the plaintiff, and if any dangers existed as claimed by him, which are not admitted but denied, same, if existing, were apparant and were easily discernible by him, and the plaintiff knew as much about same as did the defendant, and such matters were well known to him or should have been known to him; but nevertheless, he continued to work as an insulator and continued to subject himself to air which was laden with insulation material, and such conditions, if existing, were not such that this defendant would be legally liable to the plaintiff therefor.

22.

In the alternative, defendant alleges that the plaintiff at all times knew of the dangers involved with insulation materials containing asbestos and in working in dust laden air where insulation materials were in use, and he had actual notice and knowledge thereof, or in the alternative should have known of same, and he knew and appreciated the nature or extent of such dangers, if any, and he continued to use and to work with such materials and under such conditions with such knowledge, and therefore, this defendant owed him no duty towarn him of any potential

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dangers involved, if any, and defendant pleads the doctrine of volenti non fit injuria herein.

23.

Further answering herein, in the alternative, this defendant says that any cause of action, if any, which the plaintiff has or may ever have had against this defendant, which is not admitted but denied, accrued more than two years prior to the commencement of this suit against this defendant, and is barred by the Texas Two-Year Statute of Limitations, Article 5526, Vernon's Texas Civil Statutes, and defendant pleads same in bar to this suit.

24.

Further answering herein, in the alternative, this defendant says that any cause of action, if any, which the plaintiff has or may ever have had against this defendant, which is not admitted but denied, accrued more than four years prior to the commencement of this suit against this defendant, and is barred by the Texas Four-Year Statute of Limitations, Article 5529, Vernon's Texas Civil Statutes, and defendant pleads same in bar to this suit.

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25.

Further answering herein, in the alternative, defendant would show that there is and was no legal liability on the part of this defendant, because of the fact that the alleged happenings in question were brought about or caused by transitory conditions arising in the course of the work the plaintiff was doing, and ordinarily incident thereto, the plaintiff and his employers using their own manner, method and means of doing the work, and defendant owed no duty with respect thereto.

26.

Further answering herein, in the alternative, this defendant says that the plaintiff's alleged injuries and damages, if any, were the result of an unavoidable accident.

27.

As a further grounds of relief and pleading in the alternative, this defendant says that if any judgment is entered herein jointly and severally against it and other defendants, that in such event this defendant is entitled to contribution against such other defendants in accordance with the provisions of Article 2212 of Vernon's Annotated Civil Statutes of the State of Texas.

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CROSS-CLAIM.

Now comes Combustion Engineering, Inc., one of the defendants in the above-entitled and numbered cause, and files this, its Cross-Claim against the other defendants herein, Fibreboard Paper Products Corporation, Johns-Manville Products Corporation, Owens-Corning Fiber Glass Corporation, Eagle-Pitcher Industries, Pittsburgh Corning Corporation, Unarco Industries, Inc., Philip Carey Corporation, Armstrong Contracting and Supply Corporation,Standard Asbestos Manufacturing and Insulating Company and Ruberoid Company, all hereinafter called cross-defendants, and says if the plaintiff sustained any injury as the result of any act or omission on the part of this defendant, Combustion Engineering, Inc., which is not admitted but denied, then such injury was caused and brought about and contributed to and proximately caused by the acts and omissions of the remaining defendants above-named, and if any judgment is entered herein against this defendant, then in such event this defendant is entitled to indemnity from each and all of the other defendants; or, in the alternative, is entitled to contribution against each and all of the other defendants in accordance with the provisions of Article 2212, Vernon's Annotated Civil Statutes of Texas.

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WHEREFORE, this defendant prays judgment that plaintiff take nothing against it herein and that it go hence with its costs, without day; and in the alternative, that it have judgment for indemnity, or in the alternative, for contribution as set forth above.

ATTORNEY FOR DEFENDANT,
COMBUSTION ENGINEERING, INC;
1014 San Jacinto Bldg., P.O.Box 1632,
Beaumont,Texas.

CERTIFICATE OF SERVICE.

I hereby certify that the above and foregoing answer has been served on the plaintiff and his attorneys of record by placing a true and correct copy thereof, in a correctly addressed, stamped and sealed envelope, addressed to Messrs. Stephenson,Thompson & Morris, Attorneys at Law, Stephenson Building, Orange, Texas, plaintiff's attorneys of record, and by depositing same in the United States Mail at Beaumont,Texas, this 8th day of August, 1969; and copies have likewise been furnished to all counsel of record for the defendants.

ATTORNEY FOR DEFENDANT,COMBUSTION
ENGINEERING, INC.

FILED

FEB 17 1970

James R. County, ... Court

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 :

PLAINTIFFS' SECOND AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now SAMUEL R. POTTER, hereinafter called plaintiff, leave of the Court having been first had and obtained, and files this his second amended original complaint, complaining of:

(1) FIBREBOARD PAPER PRODUCTS CORPORATION, a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(2) COMBUSTION ENGINEERING, INC., a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(3) JOHNS-MANVILLE PRODUCTS CORPORATION, a corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, Prentice-Hall Corporation System, Littlefield Building, Austin, Travis County, Texas;

(4) OWENS-CORNING FIBER GLASS CORPORATION, a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(5) EAGLE-PICHER INDUSTRIES, INC., a corporation duly organized, created and existing under and by virtue of the laws of the State of Ohio, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(6) PITTSBURGH CORNING CORPORATION, a corporation duly organized, created and existing under and by virtue of the laws of the State of Pennsylvania, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(7) UNARCO INDUSTRIES, INC., a corporation duly organized, created and existing under and by virtue of the laws of the State of Illinois, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(8) PHILIP CAREY CORPORATION, a corporation duly organized, created and existing under and by virtue of the laws of the State of Ohio, with an agent for service, to-wit, Prentice-Hall Corporation System, Littlefield Building, Austin, Travis County, Texas;

(9) ARMSTRONG CONTRACTING AND SUPPLY CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(10) STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY, a corporation duly organized, created and existing under and by virtue of the laws of the State of Missouri, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(11) RUBEROID COMPANY, a Division of GAF CORPORATION, a corporation organized, created and existing under the laws of the State of Delaware, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

(12) ARMSTRONG CORK COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas;

hereinafter called defendants; and for cause of action, plaintiff alleges:

1.

That the ground upon which jurisdiction of this Court depends is diversity of citizenship of the parties hereto.

2.

That the amount in controversy herein exceeds the sum of Ten Thousand Dollars, exclusive of interest and costs.

3.

That plaintiff is a resident of the State of Texas, and resides in Orange County, Texas.

4.

That defendants during all the times herein mentioned and for a long time prior thereto, have been and now are engaged in the manufacture of materials used for insulation containing asbestos; that the products manufactured, compounded and prepared by defendants, acting through their servants, employees, agents and

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representatives were and are placed on the market to be purchased and used by the public.

5.

The plaintiff says that during the years 1940 to 1967, inclusive, he was employed as an insulator, and that in the performance of his duties as an insulator, he was required to handle large quantitites of the products manufactured and distributed by the above named defendants. That in addition to the fact that plaintiff actually used the products manufactured by the above named defendant, and many more, as an insulator, and specifically many and various products containing asbestos, the plaintiff says that on many of the jobs, while not using himself the specific products manufactured by the defendants, he was nevertheless exposed to the dangerous materials and especially aabestos dust and fibers which were used by other workers in the same area at which plaintiff was working.

6.

That during the period of time in which plaintiff was employed as an insulator from the year 1940 to 1967, inclusive, in the course of his employment, due to the negligence and carelessness of the defendants, he was caused to come in contact with the insulation produced and manufactured and distributed by the defendants, and its chemical compounds, deleterious substances and matter, and directly in consequence of said negligence and carelessness of the defendants, did sustain severe, permanent and disabling injuries as hereinafter set forth.

7.

That the injuries and damages complained of herein were directly and proximately caused by the negligence and carelessness of the defendants in the following additional particulars:

(a) That the defendants knew or in the exercise of ordinary

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or reasonable care ought to have known that the insulation they so prepared, manufactured and distributed were deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, and that plaintiff would not know of such danger to his health, notwithstanding which, defendants negligently failed to take any reasonable precautions or exercise reasonable care to warn plaintiff of the danger and harm to which he was exposed while handling the defendants' said insulation.

(b) That the defendants knew or in the exercise of ordinary care ought to have known that their said insulation was deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, and that plaintiff would not know of such dangerous character, notwithstanding which defendants failed and omitted to provide plaintiff with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there was any, to protect him from being poisoned and disabled as he was by exposure to such deleterious and harmful compound substances and other material contained in said defendants' insulation.

(c) That the defendants knew or in the exercise of ordinary or reasonable care ought to have known that their insulation was deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, notwithstanding which defendants negligently and carelessly packaged said insulation so that in the ordinary handling for installation thereof, this plaintif f would come in contact with such deleterious, poisonous and highly harmful compound substances and other material contained in said defendants' insulation;

(d) That the defendants knew or in the exercise of ordinary or reasonable care ought to have known that the insulation they produced contained deleterious, poisonous and

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highly harmful substances to the human body, lungs, respiratory system, skin and health, notwithstanding which defendants negligently failed to take any reasonable precautions or exercise reasonable care by placing any warnings on their containers of said insulation to warn the handlers thereof of the dangers to health in coming in contact with said insulation.

(e) That the defendants knew or in the exercise of reasonable care ought to have known that their insulation contained deleterious and highly harmful substances to plaintiff's health, body, lungs, respiratory system and skin, and defendants knew or in the exercise of ordinary or reasonable care should have known that plaintiff would not know the dangerous characteristics of their said insulation, notwithstanding which defendants negligently failed to take reasonable precautions or exercise reasonable care to warn plaintiff of said danger and to instruct the plaintiff in the proper handling of their said insulation, or to take any reasonable precautions or exercise any reasonable care to protect plaintiff from harm and negligently failed to adopt and enforce a reasonable safe plan and method of handling and installing said insulation.

8.

In addition, plaintiff says that the defendants breached their warranties to plaintiff in the following respects:

(a) That the defendants knew or in the exercise of reasonable care ought to have known that their insulation was defective and that such insulation was not suitable for the purposes for which it was intended.

(b) That the defendants should have tested their products, especially those containing asbestos, to ascertain the safe or dangerous nature of such products before offering them for sale, or in the alternative, should have removed such products from the

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market upon ascertaining that such products would cause asbestosis.

(c) That the defendants should have devised a method of application of their products, especially those containing asbestos, that would have kept those using such products from contracting asbestosis if the defendants would not remove such products from sale to the public.

(d) That the products of the defendants, especially those containing asbestos, were warranted, either expressly or implied, to be merchantable, when in truth they were not, and therefore, the defendants breached to the plaintiff, as well as to others, the warranty of merchantability.

8-A.

In addition, plaintiff says that the defendants, and each of them, knew that their insulating products containing asbestos would be sold to the public and would be used by persons such as the plaintiff and would be relied on by such persons to safely do the job for which they were manufactured; that the defendants, and each of them, knew that the insulating products containing asbestos manufactured and distributed by them would cause harm to the plaintiff, and the defendants, because of their positions as manufacturers, owed a strict duty to the plaintiff not to harm the plaintiff through the use of defendants' products; that the defendants placed on the market products in a defective condition that were unsafe for their intended use or which were unreasonably dangerous; that the defendants placed the products on the market knowing that they would be used without inspection for defects; that the plaintiff used the defendants' insulating products containing asbestos in a manner that was reasonably foreseeable; that the defects in the products of the defendants were a proximate cause of the plaintiff's injuries; that as a result of the use of the defendants' products by plaintiff, he suffered serious, severe, disabling and permanent injuries, and as a result thereof, defendants, and each of them, are strictly

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liable to the plaintiff for their failure to deliver a product to the plaintiff that would not cause the plaintiff harm.

9.

The plaintiff would further show unto the Court that at all the times material hereto, over a period of years in which plaintiff has been employed as an insulator, the manufacture, sale and distribution of insulation materials with which plaintiff came in contact, was under the exclusive control of the defendants, their agents, servants and employees, and that had the defendants herein not been guilty of negligence as hereinabove set forth, plaintiff would not have sustained his injuries and damages as herein set forth, and therefore, plaintiff says that he is entitled to recover from the defendants under the doctrine of res ipsa loquitur.

10.

That as a direct and proximate cause of the aforesaid occurrence and circumstances and the negligence and carelessness of the defendants, and the defendants' breach of warranties and breach of strict liability, the plaintiff was permanently and severely injured; that he has sustained very serious and permanent injuries to his lungs and respiratory system, which has affected other parts of his body; that he is suffering from the disease asbestosis; that he suffers from shortness of breath, inability to breathe, clubbing of the fingers and toes; that it is necessary that plaintiff have available to him at all times a container of oxygen in order that he may be able to breathe; that plaintiff has extreme difficulty sleeping; that he tires easily; that he constantly coughs; that his future outlook is very dim; that he has soughtrthe services of physicians in an effort to cure or arrest the condition from which he is suffering, but to no avail; that the plaintiff has lost his good health, all of which is permanently disabling to him.

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11.

That by reason of the negligence and carelessness of the defendants, and each of them, and their breach of warranties as above alleged, and their breach of strict liability, and because of the harm and injury to plaintiff's health and the resulting disability therefrom, the plaintiff has suffered a total loss of wages and earnings, and will continue to suffer such loss; that he was unable to continue in his employment as an insulator, an employment that he had been engaged in for many years, or to engage in any gainful activity at the present time, and his earning capacity has been greatly and forever permanently diminished and impaired.

12.

That in an effort to treat, relieve and heal himself of said injuries and to regain his health, the plaintiff was obliged to incur and will incur in the future an expense amounting to a considerable sum of money for medical and hospitalization care, expenses for medicines, supplies, and so forth, the amount of which plaintiff is unable to accurately estimate at this time.

13.

That by reason of the facts hereinabove alleged, plaintiff has suffered and sustained at the hands of the defendants, and each of them, general and special damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

14.

Plaintiff further says that his injuries and damages were directly and proximately caused by the gross negligence, omission, conscious indifference and utter disregard for the welfare of plaintiff on the parts of the defendants herein, their agents, servants, employees, managers, superintendents, supervisors and officers; that the award for this count should be in such an amount that it would act as a deterrent to the defendants and others from the future commission of like offenses and wrongs; and plaintiff further says that if each of the acts of negligence alleged above

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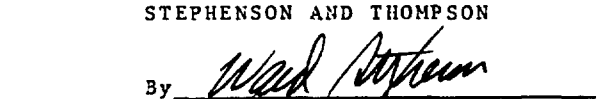
did not independently and of themselves constitute gross negligence, then certainly all of said acts of negligence combined and in the aggregate constituted gross negligence, and the proximate cause of the plaintiff's injuries; that as a result of plaintiff's injuries, he has suffered actual damages as herein shown, which were the direct and proximate cause of his injuries, for which plaintiff is entitled to recover exemplary damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

15.

That by reason of the facts hereinabove alleged, plaintiff has suffered and sustained at the hands of the defendants, and each of them, general and special damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants and each of them in the sum of Five Hundred Thousand ($500,000.00) Dollars general and special damages, together with the sum of Five Hundred Thousand ($500,000.00) Dollars exemplary damages, together with his costs and disbursements herein, and interest on said judgment from the date thereof until paid at the rate of six (6%) per cent per annum, and such other and further relief to which he may be entitled to receive.

STEPHENSON AND THOMPSON

By 

Attorneys for Plaintiff
Stephenson Building
P. O. Box 68
Orange, Texas 77630

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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 12 day of February, 1970, mailed [redacted] to the following named attorneys:

Mr. George E. Duncan
Attorney at Law
P. O. Box 3708
Beaumont, Texas 77704
Attorney for Defendant
PITTSBURGH CORNING CORPORATION

Mr. W. N. Arnold, Jr.
Attorney at Law
Fulbright, Crooker, Freeman,
Bates & Jaworski
Bank of the Southwest Bldg.
Houston, Texas 77002
Attorney for Defendant
ARMSTRONG CONTRACTING AND
SUPPLY CORPORATION

Mr. W. N. Arnold, Jr.
Attorney at Law
Fulbright, Crooker, Freeman,
Bates & Jaworski
Bank of the Southwest Bldg.
Houston, Texas 77002
Attorney for Defendant
PHILIP CAREY CORPORATION

Mr. Robert E. Barnes
Attorney at Law
P. O. Box 5098
Beaumont, Texas 77706
Attorney for Defendant
RUBEROID COMPANY, A DIVISION
OF GAF CORPORATION

Mr. Charles S. Pipkin
Attorney at Law
P. O. Box 1632
Beaumont, Texas 77704
Attorney for Defendant
COMBUSTION ENGINEERING, INC.

Mr. Dale Dowell
Attorney at Law
707 Beaumont Savings Bldg.
Beaumont, Texas77701
Attorney for Defendant
OWENS-CORNING FIBERGLAS
CORPORATION

Mr. George A. Weller
Attorney at Law
P. O. Box 350
Beaumont, Texas 77704
Attorney for Defendant
FIBREBOARD PAPER PRODUCTS
CORPORATION

Mr. Gerald P. Coley
Attorney at Law
Vinson, Elkins, Searls & Connally
First City National Bank Bldg.
Houston, Texas 77002
Attorney for Defendant
UNARCO INDUSTRIES, INC.

Mr. James W. Mehaffy
Attorney at Law
San Jacinto Building
Beaumont, Texas 77701
Attorney for Defendant
STANDARD ASBESTOS MANUFACTURING
AND INSULATING COMPANY

Mr. Ben L. Reynolds
Attorney at Law
Royston, Rayzor and Cook
877 San Jacinto Building
Houston, Texas 77002
Attorney for Defendant
EAGLE-PICHER INDUSTRIES, INC.

Mr. Gordon R. Pate
Attorney at Law
1119 Beaumont Savings Bldg.
Beaumont, Texas 77701
Attorney for Defendant
JOHNS-MANVILLE PRODUCTS
CORPORATION

Mr. George E. Murphy
Attorney at Law
615 San Jacinto Building
Beaumont, Texas
Attorney for Intervenor
NATIONAL SURETY CORPORATION

Ward Stephenson

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

SAMUEL R. POTTER	I	
VS.	I	CIVIL ACTION NO. 6329
FIBREBOARD PAPER PRODUCTS	I	
CORPORATION ET AL	I	

ANSWER OF DEFENDANT, COMBUSTION ENGINEERINC, INC., TO PLAINTIFF'S SECOND AMENDED ORIGINAL COMPLAINT

Now comes Combustion Engineering, Inc., one of the defendants in the above-entitled and numbered cause, and makes and files this, its Answer to the Second Amended Original Complaint of the Plaintiff, and for such answer says:

This defendant admits the allegations of paragraph (2) under the first unnumbered paragraph of said Complaint, being the preamble thereof; and as to paragraphs (1), (3), (4), (5), (6), (7), (8), (9), (10),(11) and (12), these paragraphs do not relate to this defendant and defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity thereof.

1.

As to the allegations of paragraph 1 of said Complaint, this defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity thereof, inasmuch as it does not have knowledge as to the citizenship of the parties other than this defendant.

2.

This defendant admits the allegations of paragraph 2 of said Complaint to the effect that the amount in controversy herein exceeds the sum of Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs, but denies that the plaintiff is entitled to any recovery herein against this defendant in any amount.

3.

This defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations of paragraph 3 of said Amended Complaint.

4.

With reference to the allegations of paragraph 4 of said Amended Complaint, this defendant denies that it was engaged in the manufacture of materials used for insulation prior to December 31, 1967, but admits that since said date it has been and is now engaged in the manufacture of materials used for insulation, some of which contain asbestos. Defendant denies that the insulation products manufactured by this defendant are placed on the market to be purchased and used by the general public, but to the contrary, this defendant sells its products to insulation contractors who employ experienced insulation workers in the application of the products.

This defendant does not purport to answer said allegations for or as to the other defendants named in this cause.

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5.

This defendant denies the allegations of Paragraph 5 of said Amended Complaint.

6.

This defendant denies the allegations of Paragraph 6 of said Amended Complaint.

7.

Answering the allegations contained in paragraph 7, this defendant denies that any injury and damage complained of by plaintiff were directly and proximately caused by any negligence or carelessness of this defendant.

In reply to the allegations contained in Paragraph 7 (a), this defendant, answering only for itself, denies said allegations.

This defendant denies the allegations of Paragraph 7 (b), (c), (d) and (e) and each of them.

8.

Answering the allegations of paragraph 8, this defendant denies that it breached any warranty to the plaintiff or any other person in any respect, and denies the allegations of Par. 8 and of subsections (a), (b), (c) and (d) and each of them.

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8-A.

This defendant denies the allegations of Paragraph 8-A of said amended Complaint.

9.

This defendant denies the allegations of paragraph 9 of said amended Complaint.

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10.

Answering the allegations of Paragraph 10, this defendant denies the allegations reading, "That as a direct and proximate cause of the aforesaid occurrence and circumstances and the negligence and carelessness of the defendants, and the defendants' breach of warranties, the plaintiff was permanently and severely injured", and denies that it was guilty of any negligence or carelessness and denies any breach of warranties on its part, and denies that any injury or disability from which plaintiff is suffering, if any, has resulted from any act or omission of this defendant or from the use of any product manufactured by this defendant, or from any breach of warranty, if any, by this defendant. As to the remaining allegations of Par. 10, this defendant does not have sufficient knowledge or information upon which to base a belief as to the truth or falsity thereof.

11.

This defendant denies the allegations of paragraph 11 of said Amended Complaint.

12.

This defendant denies the allegations of paragraph 12 of said Amended Complaint.

13.

This defendant denies the allegations of paragraph 13 of said Amended Complaint, and denies that the plaintiff is entitled to any recovery against this defendant.

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14.

This defendant denies the allegations of paragraph 14 of said Amended Complaint, and denies that the plaintiff is entitled to any recovery against this defendant.

15.

This defendant denies the allegations of paragraph 15 of said Amended Complaint, and denies that the plaintiff is entitled to any recovery against this defendant.

This defendant denies the allegations of the prayer of said Complaint, and denies that the plaintiff is entitled to recover any damages or any relief against this defendant.

AFFIRMATIVE DEFENSES.

16.

Further answering, and by way of affirmative defense, this defendant says that the products which this defendant manufactured and sold were at all times reasonably fit and suitable for the purposes for which manufactured and sold, and defendants deny that the same were in anywise defective for the use for which they were manufactured.

17.

Defendant denies that the plaintiff sustained any injury as the result of contact with or use of any product manufactured by this defendant, and denies that any product or products which it manufactured and sold in anywise caused or brought about any injury or illness, if any, to the plaintiff, and defendant further says that

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the physical condition of which plaintiff complains was in nowise caused or brought about by any product manufactured and sold by this defendant, and that such condition was due solely to disease and other causes.

18.

Further answering herein, defendant alleges that if the plaintiff did sutain any injury as the result of the use of any product manufactured by this defendant, which is not admitted but expressly denied, then such injury was sustained as a result of the occupation of the plaintiff as an insulator or worker in the insulation field for a number of years; and at all times he knew that he was working in dust laden air which contained asbestos dust and other dust particles, created by his own work and the work of other insulators, and by the failure of his employers or the owners of the premises on which he was working to provide facilities and means for the elimination of dust laden air, and therefore, any such injury as he may have sustained was some occupational disease resulting from his continued occupation over a long period of time as an insulator, and not as a result of any isolated incident or contact with any product manufactured by this defendant; and this defendant is not legally liable therefor; and further, this defendant denies that the plaintiff worked with products manufactured by this defendant.

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19.

Further answering herein, if need be, and by way of further affirmative defense, this defendant, Combustion Engineering, Inc., specially denies that the plaintiff sustained any injury as a result of contact with or use of any product manufactured by this defendant, and specially denies any fault or breach of warranty on the part of this defendant, and specially denies that it or any of its servants, agents or employees, were guilty of any negligence proximately causing or contributing to cause the plaintiff's alleged injuries and damages, if any; but on the contrary this defendant alleges that the plaintiff himself was guilty of various acts, wrongs and omissions, each and all amounting to negligence, which, acting together or separately, were the sole proximate cause of his alleged injuries and damages, if any, or in the alternative, were a proximate cause thereof.

20.

Further answering herein, and in the alternative, defendant alleges that the plaintiff's alleged injuries and damages, if any, were caused solely, or in the alternative, were proximately caused by acts, wrongs, omissions and negligences of third parties or a third party, for whose acts this defendant is in nowise liable or responsible; or, in the alternative, the physical condition of which plaintiff complains was due solely to causes other than any negligence, fault or breach of warranty, none of which are admitted but denied, on the part of this defendant.

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21.

Further answering herein, and in the alternative, defendant would show unto the Court that all situations and conditions, and the danger, if any, arising from the continued use of such insulating material or materials were open and obvious to the plaintiff, and if any dangers existed as claimed by him, which are not admitted but denied, same, if existing, were apparant and were easily discernible by him, and the plaintiff knew as much about same as did the defendant, and such matters were well known to him or should have been known to him; but nevertheless, he continued to work as an insulator and continued to subject himself to air which was laden with insulation material, and such conditions, if existing, were not such that this defendant would be legally liable to the plaintiff therefor.

22.

In the alternative, defendant alleges that the plaintiff at all times knew of the dangers involved with insulation materials containing asbestos and in working in dust laden air where insulation materials were in use, and he had actual notice and knowledge thereof, or in the alternative should have known of same, and he knew and appreciated the nature or extent of such dangers, if any, and he continued to use and to work with such materials and under such conditions with such knowledge, and therefore, this defendant owed him no duty towarn him of any potential

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dangers involved, if any, and defendant pleads the doctrine of volenti non fit injuria herein.

23.

Further answering herein, in the alternative, this defendant says that any cause of action, if any, which the plaintiff has or may ever have had against this defendant, which is not admitted but denied, accrued more than two years prior to the commencement of this suit against this defendant, and is barred by the Texas Two-Year Statute of Limitations, Article 5526, Vernon's Texas Civil Statutes, and defendant pleads same in bar to this suit.

24.

Further answering herein, in the alternative, this defendant says that any cause of action, if any, which the plaintiff has or may ever have had against this defendant, which is not admitted but denied, accrued more than four years prior to the commencement of this suit against this defendant, and is barred by the Texas Four-Year Statute of Limitations, Article 5529, Vernon's Texas Civil Statutes, and defendant pleads same in bar to this suit.

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25.

Further answering herein, in the alternative,defendant would show that there is and was no legal liability on the part of this defendant, because of the fact that the alleged happenings in question were brought about or caused by transitory conditions arising in the course of the work the plaintiff was doing, and ordinarily incident thereto, the plaintiff and his employers using their own manner, method and means of doing the work, and defendant owed no duty with respect thereto.

26.

Further answering herein, in the alternative, this defendant says that the plaintiff's alleged injuries and damages, if any, were the result of an unavoidable accident.

27.

As a further grounds of relief and pleading in the alternative, this defendant says that if any judgment is entered herein jointly and severally against it and other defendants, that in such event this defendant is entitled to contribution against such other defendants in accordance with the provisions of Article 2212 of Vernon's Annotated Civil Statutes of the State of Texas.

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CROSS-CLAIM.

Now comes Combustion Engineering, Inc., one of the defendants in the above-entitled and numbered cause, and files this, its Cross-Claim against the other defendants herein, Fibreboard Paper Products Corporation, Johns-Manville Products Corporation, Owens-Corning Fiber Glass Corporation, Eagle-Pitcher Industries, Pittsburgh Corning Corporation, Unarco Industries, Inc., Philip Carey Corporation, Armstrong Contracting and Supply Corporation, Standard Asbestos Manufacturing and Insulating Company and Ruberoid Company, and Armstrong Cork Company all hereinafter called cross-defendants, and says if the plaintiff sustained any injury as the result of any act or omission on the part of this defendant, Combustion Engineering, Inc., which is not admitted but denied, then such injury was caused and brought about and contributed to and proximately caused by the acts and omissions of the remaining defendants above-named, and if any judgment is entered herein against this defendant, then in such event this defendant is entitled to indemnity from each and all of the other defendants; or, in the alternative, is entitled to contribution against each and all of the other defendants in accordance with the provisions of Article 2212, Vernon's Annotated Civil Statutes of Texas.

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WHEREFORE, this defendant prays judgment that plaintiff take nothing against it herein and that it go hence with its costs, without day; and in the alternative, that it have judgment for indemnity, or in the alternative, for contribution as set forth above.

ATTORNEY FOR DEFENDANT,
COMBUSTION ENGINEERING, INC;
1014 San Jacinto Bldg.,P.O.Box 1632,
Beaumont,Texas.

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CERTIFICATE OF SERVICE

I hereby certify that on this 20 day of February, 1970, a true and correct copy of the foregoing instrument was mailed to the following named attorneys of record:

Mr. Ward Stephenson, Attorney,
Stephenson and Thompson,
Stephenson Building,
Orange, Texas. 77630
ATTORNEY FOR PLAINTIFF, S.R.Potter

Mr. W.N.Arnold, Jr., Attorney,
Fulbright, Crooker, Freeman, Bates
& Jaworski,
Bank of the Southwest Bldg.,
Houston, Texas 77002
ATTORNEY FOR DEFENDANT, ARMSTRONG CONTRACTING AND SUPPLY CORP.,
AND PHILIP CAREY CORPORATION

Mr. Robert E. Barnes, Attorney,
P.O.Box 5098,
Beaumont, Texas 77706
Attorney for Defendant,
RUBEROID COMPANY, A DIVISION
OF GAF CORPORATION

Mr. Dale Dowell, Attorney,
707 Beaumont Savings Bldg.,
Beaumont, Texas 77701
Attorney for Defendant,
OWENS-CORNING FIBERGLAS CORP.

Mr. George A. Weller, Attorney,
P.O.Box 350,
Beaumont, Texas 77704
Attorney for Defendant
FIBREBOARD PAPER PRODUCTS
CORPORATION

Mr. Gerald P. Coley, Attorney,
Vinson, Elkins, Searls & Connally,
First City National Bank Bldg.,
Houston, Texas 77002
Attorney for Defendant
UNARCO INDUSTRIES, INC.

Mr. James W. Mehaffy, Attorney,
San Jacinto Bldg.,
Beaumont, Texas 77701
Attorney for Defendant,
STANDARD ASBESTOS MANUFACTURING
AND INSULATING COMPANY

Mr. Ben L. Reynolds, Attorney,
Royston, Rayzor and Cook,
877 San Jacinto Bldg.,
Houston, Texas 77002
Attorney for Defendant,
EAGLE-PICHER INDUSTRIES, INC.

Mr. Gordon R. Pate, Attorney,
1119 Beaumont Savings Bldg.,
Beaumont, Texas 77701
Attorney for Defendant,
JOHNS-MANVILLE PRODUCTS CORP.

Mr. George E. Murphy, Attorney,
615 San Jacinto Bldg.,
Beaumont, Texas
Attorney for Intervenors,
NATIONAL SURETY CORPORATION and
CHARTER OAK FIRE INSURANCE CO.

ATTORNEY FOR DEFENDANT,
COMBUSTION ENGINEERING, INC.

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

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
FEB 27 1970
JAMES R. COONEY, CLERK
BY DEPUTY Myra Barton

SAMUEL R. POTTER, PLAINTIFF	X	
VS.	X	CIVIL ACTION NO. 6329
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL, DEFENDANTS	X	

FIRST AMENDED ORIGINAL ANSWER OF DEFENDANT OWENS-CORNING FIBERGLAS CORPORATION TO PLAINTIFF'S SECOND AMENDED ORIGINAL COMPLAINT

Comes now Owens-Corning Fiberglas Corporation, one of the defendants in the above styled and numbered action, and answering Plaintiff's Second Amended Original Complaint on file herein respectfully says:

1.

Answering Paragraph 1, this defendant says that it does not know whether this Court has jurisdiction of this controversy inasmuch as it does not have knowledge as to the citizenship of parties defendant other than this defendant.

2.

Defendant admits the facts stated in Paragraphs 2 and 3 of said complaint.

3.

Answering Paragraph 4, this defendant admits that it manufactured and sold insulation materials but denies that any of them caused any injury to the plaintiff.

4.

This defendant denies the facts stated in Paragraphs 5, 6, 7, 8, 8-a, 9, 10, 11, 12, 13, 14 and 15 of said complaint.

5.

This defendant denies that plaintiff is entitled to the relief prayed for in the concluding paragraph of said complaint.

6.

For further affirmative defense herein, this defendant says that the products which this defendant manufactured and sold were at all times reasonably fit and suitable for the purposes for which manufactured and sold, and this defendant denies that the same were in anywise defective for the use for which they were manufactured.

7.

For further affirmative defense herein, this defendant denies that the plaintiff sustained any injury as the result of contact with or use of any product manufactured by this defendant, and denies that any product or products which it manufactured and sold in anywise caused or brought about any injury or illness to the plaintiff and this defendant further says that the physical condition of which plaintiff complains herein was in nowise caused or brought about by any product manufactured and sold by this defendant, and that such condition was due solely to disease and other causes.

8.

For further affirmative defense herein, this defendant avers that if the plaintiff did sustain any injury as the result of the use of any product manufactured by this defendant, which is not admitted but expressly denied, then such injury was sustained as a result of the occupation of the plaintiff as an insulator or worker in the insulation field for a number of years, that at all times he knew he was working in dust laden air which contained asbestos dust and other dust particles created by his own work and the work of other insulators, and by the failure of his employers or the owners of the premises on which he was working to provide facilities and means for the elimination of dust laden air, and therefore any such injury as he may have sustained was some occupational disease resulting from his

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continued occupation over a long period of time as an insulator, and not as a result of any isolated incident or contact with any product manufactured by this defendant, and this defendant is not legally liable therefor; that further, this defendant denies that the plaintiff worked with products manufactured by this defendant.

9.

For further affirmative defense herein, this defendant specially denies that the plaintiff sustained any injuries as a result of contact with or use of any product manufactured by this defendant, and specially denies any fault or breach of warranty on the part of this defendant and specially denies that it or any of its agents, servants, or employees were guilty of any negligence proximately causing or contributing to cause the plaintiff's alleged injuries and damages, if any; but on the contrary, this defendant avers that the plaintiff himself was guilty of various acts, wrongs and omissions, each and all amounting to negligence, which, acting together or separately, were the sole proximate cause of his alleged injuries and damages, if any, or in the alternative, were a proximate cause thereof.

10.

For further affirmative defense and in the alternative, this defendant alleges that the plaintiff's alleged injuries and damages, if any, were caused solely, or, in the alternative, were proximately caused by acts, wrongs, omissions and negligence of third parties or a third party for whose act or actions this defendant is in nowise liable or responsible; or in the alternative, the physical condition of which plaintiff complains was due solely to causes other than any negligence, fault or breach of warranty, none of which are admitted but denied, on the part of this defendant.

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11.

For further affirmative defense, and in the alternative, this defendant would show unto the Court that all situations and conditions, and the danger, if any, arising from the continued use of such insulating material or materials, were open and obvious to the plaintiff and if any dangers existed as claimed by him, which are not admitted but denied, same, if existing, were apparent and were easily discernible by him and the plaintiff knew as much about same as did the defendant, and such matters were well known to him or should have been known to him; but nevertheless, he continued to work as an insulator and continued to subject himself to air which was laden with insulation material, and such conditions, if existing, were not such that this defendant would be legally liable to the plaintiff therefor.

12.

For further affirmative defense, and in the alternative, this defendant avers that the plaintiff at all times knew of the dangers involved with insulation materials containing asbestos and in working in dust laden air where insulation materials were in use, and he had actual notice and knowledge thereof, or in the alternative should have known of same, and he knew and appreciated the nature or extent of such dangers, if any, and he continued to use and to work with such materials and under such conditions with such knowledge, and therefore this defendant owed him no duty to warn him of any potential dangers involved, if any, and defendant pleads the doctrine of volenti non fit injuria herein.

13.

For further affirmative defense herein, this defendant says that any cause of action which the plaintiff has or may ever have had against this defendant accrued more

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than two years prior to the commencement of this suit against this defendant and is barred by the Texas two year statute of limitations, Article 5526, Vernon's Civil Statutes of Texas, and defendant pleads same in bar to this suit.

14.

For further affirmative defense herein, this defendant says that any cause of action which the plaintiff has or may ever have had against this defendant accrued more than four years prior to the commencement of this suit against this defendant and is barred by the Texas four year statute of limitations, Article 5529, Vernon's Civil Statutes of Texas, and defendant pleads same in bar to this suit.

15.

For further affirmative defense, and in the alternative, this defendant would show that there is and was no legal liability on the part of this defendant, because of the fact that the alleged happenings in question were brought about or caused by transitory conditions arising in the course of the work the plaintiff was doing, and ordinarily incident thereto, the plaintiff and his employers using their own manner, method and means of doing the work, and defendant owed no duty with respect thereto.

16.

For further affirmative defense herein, and in the alternative, this defendant says that the plaintiff's alleged injuries and damages, if any, were the result of an unavoidable accident.

17.

For further grounds of relief, this defendant says that if any judgment is entered herein jointly and severally against it, and other defendants, then and in such event this defendant is entitled to contribution against such other defendants according to the provisions of Article 2212 of Vernon's Civil Statutes of Texas.

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WHEREFORE, this defendant prays judgment of the Court that plaintiff take nothing against it by his said complaint and that it go hence and recover its costs in this behalf expended, and in the alternative that it have judgment for contribution as set forth above.

Respectfully submitted,

KING, SHARFSTEIN & RIENSTRA

BY: _____

707 Beaumont Savings Building
Beaumont, Texas
Attorneys for Owens-Corning
Fiberglas Corporation

A true copy of the above and foregoing answer was on this the 26th day of February, 1970, served upon counsel for the plaintiff by depositing the same in the United States Mail, postage prepaid, addressed to Honorable Ward Stephenson, Attorney at Law, Stephenson Building, Orange, Texas, and also a true copy served on all other interested counsel of record.

_____

Attorney for Defendant
Owens-Corning Fiberglas
Corporation

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IN THE UNITED STATES DISTRICT COURT

FOR THE

EASTERN DIVISION OF TEXAS - BEAUMONT DIVISION

SAMUEL R. POTTER,

Plaintiff

V.

FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL,

Defendants

CIVIL ACTION NO. 6329

ORIGINAL ANSWER OF DEFENDANT ARMSTRONG CORK COMPANY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Armstrong Cork Company, and for answer to plaintiff's first amended original complaint served upon it on February 24, 1970, says:

FIRST DEFENSE

Your defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of plaintiff's first amended original complaint. If the domicile and place of incorporation of the various defendants are correctly alleged, then your defendant admits that the Court has jurisdiction based upon diversity of citizenship of the parties hereto.

2. It is admitted by your defendant that the claim asserted by the plaintiff herein exceeds the jurisdictional amount of this Honorable Court.

3. Your defendant has no knowledge or information concerning the residence of the plaintiff, and therefore neither admits nor denies the same.

4. Your defendant admits that it has engaged in the manufacture of some materials used for pipe insulation which contain some asbestos. Your defendant, however,

dnies that the insulation products manufactured by it are placed on the market to be purchased and used by the general public. On the contrary, your defendant sells its product to insulation contractors who purportedly employ experienced insulation workers in the application of the product.

5. With respect to the allegations of paragraph 5 your defendant says that it is without knowledge or information as to the employment by plaintiff as an insulator between the years 1940 to 1967. It denies all of the remaining allegations of said paragraph 5.

6. Your defendant denies the allegations in paragraph 6 of the complaint.

7. With respect to the allegations of paragraph 7 your defendant denies that any injury or damage complained of by the plaintiff was directly or proximately caused by any negligence or carelessness of this defendant. It likewise denies the allegations of sub-paragraph a, b, c, d, and e of paragraph 7.

8. Your defendant denies the allegations of paragraph 8 as well as sub-paragraphs a, b, c, and d thereof.

9. Your defendant denies the allegations of paragraph 8a.

10. Your defendant denies the allegations of paragraph 9.

11. With respect to the allegations of paragraph 10 of the complaint your defendant denies that the plaintiff sustained any injury as a result of any act of omission on the part of your defendant, and denies that the plaintiff was injured as a result of any breach of warranty of your defendant. Your defendant has no knowledge or information as to the cause or causes of plaintiff's alleged disability, if any.

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12. Your defendant denies the allegations of paragraph 11 of the complaint.

13. Your defendant denies the allegations of paragraph 12 of the comlaint.

14. Your defendant denies the allegations of paragraph 13 of the complaint.

15. Your defendant denies the allegations of paragraph 14 of the complaint.

16. Your defendant denies the allegations of paragraph 15 of the complaint.

SECOND DEFENSE

Your defendant specially denies that the plaintiff herein sustained any injury as a result of contact with or by virtue of the use of any product manufactured by your defendant.

THIRD DEFENSE

Your defendant alleges and would show unto the Court that all of the products which your defendant manufactured and sold were at all times reasonably fit and suitable for the purposes for which they were manufactured and sold, and your defendant expressly denies that the same were in anywise defective for the use for which they were manufactured.

FOURTH DEFENSE

Your defendant would show to the Court that if the plaintiff sustained any injury as a result of the use of any product manufactured by your defendant, which is not admitted, but expressly denied, then that such injury was sustained as a result of the occupation of the plaintiff, in that the plaintiff herein had been engaged as an insulator or worker in the field of insulation for a vast number of years, and at all times during such period of employment, the plaintiff himself knew

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that he was working in dust-laden air which contained asbestos dust, as well as other dust particles, part of which were created by his own work, or the work of his co-employees, and also by virtue of the failure of his employer at the time, or the owner of the premises on which he was working, to provide facilities for the elimination of dust-laden air, and therefore any such injury as he may have sustained was from an occupational disease resulting from his long continued occupation as an insulator, and not as a result of any isolated incident or contact with any product manufactured by your defendant. And in this connection your defendant further alleges that it is not liable at law, nor is it responsible for any occupational disease which was suffered or sustained by the plaintiff in the course of his employment with various contractors over a number of years.

FIFTH DEFENSE

Your defendant further says that any product or products which it manufactured and sold for insulation purposes in no manner caused or brought about any injury or illness to the plaintiff, and your defendant says that the physical conditions of which your plaintiff now complains were in nowise caused or brought about by any product manufactured or sold by your defendant, but on the contrary such condition was due solely to disease and other causes or to the acts and omissions of third persons as well as the acts of the plaintiff himself.

SIXTH DEFENSE

Your defendant avers and alleges that the plaintiff himself was guilty of various acts, wrongs, and omissions, each and all of which amounted to negligence in the performance of his work and occupation, which acts together or separately were a proximate cause of his alleged injury, in that the plaintiff failed to use and

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utilize any safety device such as masks or respirators for breathing; that he failed to request the use of such masks and respirators; that he failed to request his employer to furnish blowers and other equipment to remove the dust-laden air; that he worked in dust-laden air with full knowledge that he was inhaling such dust-laden air; that he continued to work with insulating materials containing some asbestos after he knew, or in the exercise of ordinary care should have known, that it was affecting his health.

SEVENTH DEFENSE

Your defendant says that if the plaintiff sustained any injury as the use of any material or product manufactured by your defendant, which is denied, the danger, if any, arising from the continued use of such material was open and obvious and was well known to the plaintiff, or should have been known to him, but nevertheless he continued to work as an insulator and continued to subject himself to air which was laden with insulation material.

In the alternative, if any danger existed which was not open and obvious or apparent to the plaintiff at all times, then he knew at all times of the dangers involved with insulation materials containing some asbestos and in working in dust-laden air where insulation materials were in use.

And notwithstanding this fact he continued to use and work with such materials and under such conditions with such knowledge, and therefore your defendant owed him no duty to warn of any potential dangers that might be involved and plaintiff therefore is barred from any recovery under the theory of volenta non fit injuria.

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EIGHTH DEFENSE

Your defendant further alleges that if the defendant did sustain any injury as the result of the use of any product manufactured byyour defendant, which is not admitted but expressly denied, that then and in that event such act occurred more than two years prior to the filing of this suit against your defendant on February 18, 1970, and such cause of action was and is barred by the two-year statute of limitations of the State of Texas.

Further, your defendant says that if the plaintiff sustained any injury as the result of the use of any product manufactured by your defendant in any other state of the Union, then your defendant says that each and all of the statutes of limitation as to said alleged cause of action, were under the laws of the State of Texas, or under the laws of any state where such alleged cause of action arose, constitutes a bar to plaintiff's cause of action herein.

NINTH DEFENSE

Your defendant says that if the defendant sustained any injury as a result of the use of a product manufactured by your defendant which is denied, then such occurred four years prior to the filing of this suit against your defendant on February 18, 1970, and such cause of action is barred by the four-year statute of the State of Texas

TENTH DEFENSE

Your defendant says that the plaintiff herein was an experienced insulating worker, and at all times knew that he was working with asbestos and products containing asbestos, as well as other products which might be harmful to him; if the plaintiff herein did not know

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such products were harmful, then his employers at all times knew that they were working with insulating materials which contained asbestos, and said employers had actual knowledge of the fact that particles of said products could enter the air when said product was cut or applied, and plaintiff's employers likewise had knowledge that if blowers or fans were not used in the area, that their employees would be subject to the dust hazard and inhalation of said dust. That it is common knowledge that if an individual works in an area where the air is laden with dust, that the individual will breathe this dust into his nose and body system unless the employee uses some type of mask, respirator or other protective device, or unless the employer provides some means whereby the dust is removed from the air as a safety measure.

ELEVENTH DEFENSE

Your defendant denies that it made any warranty of any kind or character, and denies the existence of any warranty; it further denies any fault or breach of warranty, but says that the insulation products manufactured by it were at all times reasonably fit and suitable for the purpose of insulation, which was the purpose for which they were manufactured and sold, and plaintiff's injury, if any, did not result from any defect in said product. Any and all dust conditions which may have resulted from the use of the products were created during the application thereof, at which time the product or products were cut or changed from the original form in which they were manufactured by your defendant, and the conditions under which the plaintiff worked were at all times prescribed by his employer or the owner of the premises where the plaintiff was employed.

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Your defendant had no responsibility for the conditions that existed at the place where the work of the plaintiff was being performed.

TWELFTH DEFENSE

Your defendant says, in the alternative, that if the plaintiff sustained any injuries, that same were caused solely, or in the further alternative, were proximately caused by the acts either of commission or omission of third persons, for whose acts your defendant is in no way liable or responsible.

THIRTEENTH DEFENSE

Further answering herein, and inthe alternative, this defendant says that the plaintiff's claims to injury and damage, if any, were the result of an unavoidable accident.

FOURTEENTH DEFENSE

Further answering herein, and in the alternative, this defendant would show that there is and was no legal liability on the part of this defendant because of the fact that the alleged happenings in question were brought about or caused by transitory conditions arising in the course of the work which the plaintiff was doing, and ordinarily incident thereto; and plaintiff and his employers used their own manner, method and means of performing such work, and this defendant owed no duty with respect to such work, nor was there any relationship as between plaintiff and this defendant which created any duty on the part of this defendant as to the manner or method in which the work was done or the conditions under which the plaintiff performed his work.

FIFTEENTH DEFENSE

Further answering herein, this defendant says that during the period of time for which the plaintiff is

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asserting a claim and injury that the State of Texas had enacted a workmen's compensation law which provided that the disease of asbestosis is an occupational disease for which a person engaged in the occupation of an asbestos worker or working with asbestos products can claim workmen's compensation disability benefits against his last employer at the time the disease is discovered. According to the plaintiff's pleading, he worked with asbestos and asbestos products over a period of some 27 years, and if he has asbestosis, such is due to the nature of his occupation and was acquired over a long period of time and is not the result of working with any particular product or products of your defendant, but was due to the nature of his employment.

PLEA OF CONTRIBUTION

As a further grounds of relief, and pleading in the alternative, this defendant says that if any judgment is entered herein jointly and severally against it and other defendants, that in such event this defendant is entitled to contribution against such other defendents in accordance with the provisions of the laws of the State of Texas or the laws of any state where any alleged cause of action arose.

WHEREFORE, PREMISES CONSIDERED, your defendant prays that on a hearing hereof plaintiff take nothing, and that your defendant go hence and recover its costs; or in the alternative that your defendant have its judgment for contribution against the other defendants in connection with any judgment that might be rendered in favor of the plaintiff herein.

FULBRIGHT, CROOKER, FREEMAN,
BATES & JAWORSKI

By _____
W. N. Arnold, Jr.

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

Attorneys for Defendant
Armstrong Cork Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing answer of defendant, Armstrong Cork Company, to plaintiff's first amended original complaint was delivered to Mr. WArd Stephenson, Stephenson & Thompson, Stephenson Building, Orange, Texas, attorney for plaintiff, and to Mr. George E. Duncan, Mr. Dale Dowell, Mr. Gordon R. Pate, Mr. Ben L. Reynolds, Mr. James W. Mehaffy, Sr., Mr. Charles S. Pipkin, Mr. John G. Tucker, Mr. Gerald P. Coley and Mr. Robert E. Barnes, Jr., by mailing a copy of said answer by certified mail addressed to their respective addresses of record in this case on the 11 day of March, 1970.

W. N. Arnold, Jr.

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

FILED
M Oct. 14 1969
James R. Cooney, Clerk, U. S. Court
By Myra Barton
DEPUTY

S. R. POTTER :

VS. : CIVIL NO. 6329

FIBREBOARD PAPER PRODUCTS :
CORPORATION ET AL :

INTERROGATORIES PROPOUNDED TO DEFENDANTS

TO: FIBREBOARD PAPER PRODUCTS CORPORATION
COMBUSTION ENGINEERING, INC.
JOHNS-MANVILLE PRODUCTS CORPORATION
OWENS-CORNING FIBER GLASS CORPORATION
EAGLE-PICHER INDUSTRIES, INC.
PITTSBURGH CORNING CORPORATION
UNARCO INDUSTRIES, INC.
PHILIP CAREY CORPORATION
ARMSTRONG CONTRACTING AND SUPPLY CORPORATION
STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY
RUBEROID COMPANY,

Defendants:

S. R. POTTER, plaintiff, hereby serves upon the above named defendants the following written interrogatories to be answered fully and fairly in writing under oath, which shall be signed by the person or persons making such answers, a copy of such answers to be served upon plaintiff's attorney within fifteen (15) days after service herein, in accordance with Rule 33 of the Federal Rules of Civil Procedure:

1.

Please give the names and trade names of all types of insulating materials manufactured by you, giving the dates that you began to manufacture such materials, starting in 1940, a description of the materials and what they contain.

2.

Did you ever at any time give warnings to workers of the dangerous nature of your products? If so, describe your warnings and to whom such warnings were given.

3.

What studies have you made to determine the effect of your products on the lungs and physical condition of persons employed as insulators and asbestos workers who use your products?

4.

Who made such studies, when were they made, and attach copies of the reports of such studies.

5.

Did you package and sell any products containing asbestos from the years 1940 to 1967? If so, how were the products sold, how were the products packaged, and were these products universally used throughout the United States?

6.

If these products were used primarily in any specific location or area, please explain where such products were primarily used.

7.

Do you recognize that prolonged use of the insulating materials manufactured by you can cause or contribute to cause various occupational diseases, including asbestosis, silicosis and dermatitis?

8.

Has your company done any studies or has your company conducted any studies concerning the effects of inhalation of asbestos dust or fibers by one using or being exposed to any of the asbestos materials manufactured by your company? In answer to this question, please give the date and nature of your studies, if any, the name or names of the persons conducting the studies and their address, what the purpose of the studies were, and attach a copy of any report based upon such studies, showing to whom such report was given and when.

9.

Have you or any of your employees conducted studies designed to minimize or eliminate the inhalation of asbestos dust and fibers by those exposed to the use of your company's products? If so, give the name or names of such persons conducting such studies, attach copies of such studies, by whom they were made, and to whom they were given, and when, and state what action, if any, was taken based upon such studies in an effort to minimize or eliminate the effects of inhalation of asbestos dust or fibers upon those using or being exposed to the dust and fibers contained in such products as manufactured by your company.

10.

Do you or your company have any regular inspection of areas where workers are using products manufactured by your company containing asbestos as to the dust count? If you do not, then please explain why this is not done, and if you do, please explain what action, if any, is taken by your company following the taking of dust counts at any of the locations referred to above. Also please give the dates, if any, that your company first started making this dust count.

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11.

Does your company recognize that as early as the year 1900 Dr. H. Montague Murray, a physician in London's Charing Cross Hospital, found spicules of asbestos in the lung tissue? If you agree with this, then state what action, if any, your company has taken since 1900 to reduce or eliminate the dangers to those using your asbestos products from inhaling the dust and fibers.

12.

Does your company recognize that in 1924, Dr. W. E. Cook, also of England, found clear evidence of asbestosis and that such discovery was published in the British Medical Journal of July 26, 1924, and re-published in 1927? If you do, then please state what action, if any, was taken by your company based upon these studies to reduce or eliminate asbestosis in those using your products. If your answer is that you do not recognize the truth of such statement, then please state what your company has done in an effort to keep abreast of medical literature concerning the disease produced from the products which you manufacture, if in truth you have.

13.

Does your company recognize that in 1931, an English Parliament passed legislation making asbestosis a compensable disease and requesting improved methods of exhault ventilation and dust suppression in asbestos-textile factories, and also instituted periodical medical examinations for workers engaged in particularly dusty processes in the asbestos-textile industry? If you do recognize the truth of the statement above, please state what action, if any, your company took in response to such knowledge in an effort to reduce or eliminate the effects of asbestos to those using your products. If you do not recognize the truth of such statement, then please state why your company did not keep in touch with legislation and programs adopted endeavoring to reduce or eliminate the disease of asbestosis in those using asbestos products.

14.

Do you agree that once asbestos fibers or dust are inhaled into the lungs, there is no way to eliminate such dust or fibers from the lungs for the balance of such person's life?

15.

What technique, if any, does your company use to make dust samplings, explaining the technique and when it was commenced and what the purpose was and what action has been taken in response to the findings as to the dust samples.

16.

Does your company recognize that asbestos causes asbestos-induced lung cancer? If your answer is "Yes", when did you come to such realization and what action did you take in response thereto? If your answer is "No", then please explain why no studies were made by your company to ascertain that this fact was indeed true and thereafter to take action to advise those exposed to your products of their dangerous nature.

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17.

Does your company recognize there is a direct connection between the inhalation of asbestos dust and fibers and the disease mesothelioma? If your answer is "Yes" to this question, then please advise what notices were given to those exposed to your asbestos products of this fact.

18.

Does your company place any warning signs on its asbestos products? If so, please state exactly what the warning is, where it is used, and when its use was first begun. If your answer to this question is "Yes", then please explain why your company uses such warning notices.

19.

Do you agree that asbestos has been directly associated medically with the disease of cor pulmonale?

20.

Does your company recognize that asbestos fiber exists for an infinity of years? In other words, unlike some dangerous products, it does not eventually dissipate or reduce itself in danger to those who might be exposed to it?

21.

Does your company recognize that year-by-year, more asbestos is used in the United States, and therefore the public is thereby exposed to a greater and greater extent to the inhalation of asbestos dust and fiber? If your answer is "Yes", then please state what action your company has taken to reduce or eliminate this danger and what action, if any, you have taken to notify the public at large of this danger.

22.

Has your company consulted with Dr. Irving J. Selikoff, of New York, New York, concerning asbestosis, and if so, please state when and under what circumstances and what information, if any, was furnished by your company, giving dates, to him.

23.

Does your company contribute any funds to research concerning asbestos and its relation to lung and larynx disease? If so, please state the amount of money contributed, when and to whom, attaching any report or reports from such individual or organization to whom your funds were contributed.

24.

Do you have any labor inspectors or anyone from your company whose job it is to go to areas where your products are being used to make a dust level count, and if so, please state when your company started such procedure, the purpose of it, and what action, if any, was taken in response to your findings.

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25.

Is your company familiar with the hearing conducted in March, 1967, before the House of Representatives of the United States Congress Sub-Committee on Labor?

26.

Do you agree that the problem of asbestos dust extends further than to those merely using your products but that the exposure is shared with other construction workers as well?

27.

If your answer to the preceding Interrogatory No. 26 is "No", then please state whether or not you have familiarized yourself with Dr. William H. Stewart, Surgeon General of the United States, testifying before the Committee mentioned above that probably three and one-half million construction workers are being exposed to asbestos dust in addition to those workers actually using the materials containing asbestos?

28.

Do you recognize or agree that the problems of air laden with asbestos dust is so great that possibly millions of the people in the United States are being exposed to the inhalation of asbestos dust who have nothing to do with its use or application? If your answer is "Yes" then please advise what action your company has taken, if any, to advise the general public of the dangerous nature of asbestos and what steps have been taken to endeavor to protect the general public from the dangerous effects of the inhalation of the asbestos dust and fibers, when such action was taken, and what it consists of.

29.

Is it possible with all of your products containing asbestos to distinguish your products from those manufactured by a competitor? If your answer is "Yes," please describe how you contend your products in all instances can be distinguished from that of a competitor. If there are products which cannot be, in your opinion, distinguished from products of a similar kind manufactured by a competitor, please state the name of such product, who manufactures it, as well as the product manufactured by your competitor.

30.

It is true, is it not, that most of the products manufactured by your company containing asbestos will in most instances have to be cut, sawed, scribed, shaped or mixed by the ultimate user and his employees?

31.

Please give the state of incorporation of your company, the date it was organized, and the domicile of your company at this time.

32.

How many years has your company been engaged in the manufacture

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of products containing asbestos and which are commonly used by insulators and asbestos workers?

33.

If you, your company, or your company's attorneys, contend that any respirators or other breathing device is currently on the market that will prevent the inhalation of asbestos dust and fibers, give the detailed description of such respirator or other breathing device, together with how you know this will prevent the inhalation of such dust and fibers, what tests were conducted, by whom and where, with sufficient detail to enable us to obtain the results of such tests.

34.

It is true, is it not, that your company has for many years manufactured insulating materials containing asbestos and that such products have been placed upon the open market to be purchased and used by the public?

35.

Do you or your company recognize that such asbestos insulating materials are dangerous and harmful to human beings and to the health of man? If your answer to this question is "Yes" then please explain when you came to this conclusion and what, if anything, you have done about it to notify the public. If your answer is that your products are not harmful then explain what tests were made upon which you base such conclusion.

36.

Please state whether or not your company has had knowledge of any deaths or serious lung disease among your employees which has been attributed to the inhalation of asbestos dust or fibers. If so, please give the number, the name where known, and address of such persons, together with the name and address of the doctor who administered treatment to such persons, if known.

37.

Assume for the purpose of this question that it has been known for many years that asbestos dust and fibers have been dangerous to human beings: Assuming the truth of such statement, has your company done anything prior to 1966 to notify any segment of the American population of such danger? If so, please explain what.

38.

If your company manufactures any insulating products which are commonly used by insulators and which contain asbestos, please describe how the following products are cut, shaped, mixed and applied on the jobs:

(1) Asbestos cement;
(2) Asbestos pipe covering;
(3) Asbestos bricks or blocks;
(4) Asbestos sheeting;
(5) Asbestos insulation used to cover extremes of heat as well as cold;

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(6) Asbestos insulation in loose form which may be blown into homes or buildings;
(7) Asbestos in spray form,

giving particular reference as to whether or not the materials have to be sawed or cut on the job, blown into confined areas, or mixed with water into a cement or paste. Then please state if there is any way known to you that the above products can be used and applied without the worker inhaling any of the asbestos dust or fibers.

39.

Do you have any statistical figures available showing the number of employees employed withyour company who are exposed to asbestos dust and fibers and who have worked for your company twenty years or longer who have lung disease? If so, please give such figures.

40.

If you have available, do you have any medical information or information of your own knowledge, concerning the most common cause of death of one having asbestosis, then please describe what the most frequent cause of death from one suffering from such disease is.

41.

Please state the net profit made by your company for each of the years since and including the year 1960.

42.

Please give the net worth of your company as of the end of your annual accounting period for each of the years since 1960.

43.

Please give the total volume of sales of products manufactured by your company and include, if possible, the total amount of sales of products of your company containing asbestos for each of the years since 1960.

44.

Please give the name and address of the president of your company; and also the name and address of the Chairman of the Board of Directors.

45.

If your company has been unable to answer any of the foregoing interrogatories herein propounded, or any of the interrogatories hereinafter propounded, please state the name and address of the person in your company having knowledge of the matters inquired about in these interrogatories.

46.

Does your company recognize that Dr. Irving J. Selikoff, of New York, is an outstanding authority in the field of asbestosis, particularly among insulation workers?

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47.

Do you agree that the State of Iowa had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1913?

48.

Do you agree that the State of Illinois had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1913?

49.

Do you agree that the State of Hawaii had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1915?

50.

Do you agree that the State of California had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1917?

51.

Do you agree that the State of Wisconsin had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1919?

52.

Do you agree that the State of Connecticut had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1919?

53.

Do you agree that the State of New York had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1935?

54.

Do you agree that the State of Pennsylvania had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1937?

55.

Do you agree that the State of Indiana had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1937?

56.

Do you agree that the State of Ohio had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1939?

57.

Do you agree that the State of Washington had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1939?

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58.

Do you agree that the State of Maryland had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1939?

59.

Do you agree that the State of Delaware had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1941?

60.

Do you agree that the State of Oregon had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1943?

61.

Do you agree that the State of Nebraska had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1943?

62.

Do you agree that the State of Minnesota had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1943?

63.

Do you agree that the State of Michigan had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1943?

64.

Do you agree that the State of Arizona had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1943?

65.

Do you agree that the State of Virginia had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1944?

66.

Do you agree that the State of New Mexico had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1945?

67.

Do you agree that the State of Florida had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1945?

68.

Do you agree that the State of New Jersey had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1945?

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69.

Do you agree that the State of Colorado had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1945?

70.

Do you agree that the State of Alaska had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1946?

71.

Do you agree that the State of Georgia had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1946?

72.

Do you agree that the State of Tennessee had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1947?

73.

Do you agree that the State of New Hamshire had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1947?

74.

Do you agree that the State of Nevada had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1947?

75.

Do you agree that the State of Arkansas had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1948?

76.

Do you agree that the State of West Virginiw had a Workmen's Compensation Law coverng the occupational disease of asbestosis beginning in the year 1949?

77.

Do you agree that the State of South Carolina had a Workmen's Compensation Law coverng the occupational disease of asbestosis beginning in the year 1949?

78.

Do you agree that the State of Vermont had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1951?

79.

Do you agree that the State of Guam had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1952?

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80.

Do you agree that the State of Oklahoma had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1953?

81.

Do you agree that the State of Missouri had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1959?

82.

Do you agree that the State of Puerto Rico had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1960?

83.

Do you agree that the State of Montana had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1965?

84.

Do you agree that the State of Maine had a Workmen's Compensation Law covering the occupational disease of asbestosis beginning in the year 1967?

STEPHENSON AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas 77630

Robert E. Barnes, Jr.

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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 13 day of October, 1969, mailed by certified mail, return receipt requested to the following named attorneys for the defendants:

Mr. George E. Duncan
Attorney at Law
P. O. Box 3708
Beaumont, Texas 77704
Attorney for Defendant
PITTSBURGH CORNING CORPORATION

Mr. George A. Weller
Attorney at Law
P. O. Box 350
Beaumont, Texas 77704
Attorney for Defendant
FIBREBOARD PAPER PRODUCTS CORP.

Mr. Dale Dowell
Attorney at Law
707 Beaumont Savings Bldg.
Beaumont, Texas 77701
Attorney for Defendant
OWENS-CORNING FIBERGLAS CORPORATION

Mr. Charles S. Pipkin
Attorney at Law
P. O. Box 1632
Beaumont, Texas 77701
Attorney for Defendant
COMBUSTION ENGINEERING COMPANY, INC.

Mr. Gordon R. Pate
Attorney at Law
1119 Beaumont Savings Bldg.
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Attorney for Defendant
JOHNS-MANVILLE PRODUCTS CORPORATION

Mr. John G. Tucker
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CHARTER OAK FIRE INSURANCE COMPANY

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RUBEROID COMPANY

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

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

SAMUEL R. POTTER, PLAINTIFF
VS.
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL, DEFENDANTS

CIVIL ACTION NO. 6328

SECOND AMENDED ORIGINAL ANSWER OF DEFENDANT OWENS-CORNING FIBERGLAS CORPORATION TO PLAINTIFF'S SECOND AMENDED ORIGINAL COMPLAINT

Comes now Owens-Corning Fiberglas Corporation, one of the defendants in the above styled and numbered action, and answering Plaintiff's Second Amended Original Complaint on file herein respectfully says:

-1-

Answering Paragraph 1, this defendant says that it does not know whether this Court has jurisdiction of this controversy inasmuch as it does not have knowledge as to the citizenship of parties defendant other than this defendant.

-2-

Defendant admits the facts stated in Paragraphs 2 and 3 of said complaint.

-3-

Answering Paragraph 4, this defendant admits that it manufactured and sold insulation materials but denies that any of them caused any injury to the plaintiff.

-4-

This defendant denies the facts stated in Paragraphs 5, 6, 7, 8, 8-A, 9, 10, 11, 12, 13 and 14 of said complaint.

-5-

This defendant denies that plaintiff is entitled to the relief prayed for in the concluding paragraph of said complaint.

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-6-

For further affirmative defense herein, this defendant says that the products of this defendant manufactured and sold were at all times reasonably fit and suitable for the purposes for which manufactured and sold, and this defendant denies that the same were in anywise defective for the use for which they were manufactured.

-7-

For further affirmative defense herein, this defendant denies that the plaintiff sustained any injury as the result of contact with or use of any product manufactured by this defendant and denies that any product or products which it manufactured and sold in anywise caused or brought about any injury or illness to the plaintiff, and this defendant further says that the physical condition of which plaintiff complains herein was in nowise caused or brought about by any product manufactured and sold by this defendant and that such condition was due solely to diseases and other causes.

-8-

For further affirmative defense herein, this defendant avers that if the plaintiff did sustain any injury as the result of the use of any product manufactured by this defendant, which is not admitted but expressly denied, then such injury was sustained as a result of the occupation of the plaintiff as an insulator or worker in the insulation field for a number of years; that at all times he knew he was working in dust laden air which contained asbestos dust and other dust particles created by his own work and the work of other insulators, and by the failure of his employers or the owners of the premises on which he was working to provide facilities and means for the elimination of dust laden air, and therefore any such injury as he may have

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sustained was some occupational disease resulting from his continued occupation over a long period of time as an insulator, and not as a result of any isolated incident or contact with any product manufactured by this defendant, and this defendant is not legally liable therefor; that, further this defendant denies that the plaintiff worked with products manufactured by this defendant.

-9-

For further affirmative defense herein, this defendant specially denies that the plaintiff sustained any injuries as a result of contact with or use of any product manufactured by this defendant, and specially denies any fault or breach of warranty on the part of this defendant, and specially denies that it or any of its agents, servants or employees were guilty of any negligence proximately causing or contributing to cause the plaintiff's alleged injury and damages, if any; but, on the contrary, this defendant avers that the plaintiff himself was guilty of various acts, wrongs and omissions, each and all amounting to negligence, which, acting together or separately, were the sole proximate cause of his alleged injuries and damages, if any, or, in the alternative, were a proximate cause thereof.

-10-

For further affirmative defense, and in the alternative, this defendant alleges that the plaintiff's alleged injuries and damages, if any, were caused solely, or, in the alternative, were proximately caused by acts, wrongs, omissions and negligence of third parties or a third party for whose act or actions this defendant is in nowise liable or responsible; or, in the alternative, the physical condition of which plaintiff complains was due solely to causes other

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than any negligence, fault or breach of warranty, none of which are admitted, but denied, on the part of this defendant.

-11-

For further affirmative defense, and in the alternative, this defendant would show unto the Court that all situations and conditions, and the damger, if any, arising from the continued use of such insulating material or materials, were open and obvious to the plaintiff, and if any dangers existed, as claimed by him, which are not admitted but denied, same, if existing, were apparent and were easily discernible by him, and the plaintiff knew as much about same as did the defendant, and such matters were well known to him or should have been known to him; but, nevertheless, he continued to work as an insulator and continued to subject himself to air which was laden with insulation material,and such conditions, if existing, were not such that this defendant would be legally liable to the plaintiff therefor.

-12-

For further affirmative defense, and in the alternative, this defendant avers that the plaintiff at all times knew of the dangers involved with insulation materials containing asbestos and in working in dust laden air where insulation materials were in use, and he had actual notice and knowledge thereof, or, in the alternative, should have known of same, and he knew and appreciated the nature and extent of such dangers, if any, and he continued to use and to work with such materials and under such conditions with such knowledge, and therefore this defendant owed him no duty to warn him of any potential dangers involved, if any, and defendant pleads the doctrine of volenti non fit injuria herein.

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-13-

For further affirmative defense herein, this defendant says that any cause of action which the plaintiff has or may have ever had against this defendant accrued more than two years prior to the commencement of this suit against this defendant and is barred by the Texas two year statute of limitations, Article 5526, Vernon's Civil Statutes of Texas, and defendant pleads same in bar to this suit.

-14-

For further affirmative defense herein, this defendant says that any cause of action which the plaintiff has or may ever have had against this defendant accrued more than four years prior to the commencement of this suit against this defendant and is barred by the Texas four year statute of limitations, Article 5529, Vernon's Civil Statutes of Texas, and defendant pleads same in bar to this suit.

-15-

For further affirmative defense, and in the alternative, this defendant would show that there is and was no legal liability on the part of this defendant because of the fact that the alleged happenings in question were brought about or caused by transitory conditions arising in the course of the work the plaintiff was doing and ordinarily incident thereto, the plaintiff and his employers using their own manner, method and means of doing the work, and defendant owed no duty with respect thereto.

-16-

For further affirmative defense herein, and in the alternative, this defendant says that the plaintiffs alleged injuries and damages, if any, were the result of an unavoidable accident.

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-17-

For further affirmative defense herein, this defendant says that during the period of time that plaintiff is alleged to have been injuriously exposed to asbestos dust, he was an employee of this defendant in the State of California, at which time this defendant was a subscriber under the Workmen's Compensation Law of California and Occupational Disease Act of California, and plaintiff is therefore precluded thereunder from any recovery herein against this defendant because of the alleged injuries sustained by the plaintiff.

-18-

For further grounds of relief, this defendant says that if any judgment is entered herein, jointly and severally against it and other defendants, then, and in such event, this defendant is entitled to contribution against such other defendants according to the provisions of Article 2212 of Vernon's Civil Statutes of Texas.

WHEREFORE, this defendant prays judgment of the Court that plaintiff take nothing against it by his said complaint and that it go hence and recover its costs in this behalf expended, or, in the alternative, that it have judgment for contribution as set forth above.

Respectfully submitted,

RIENSTRA, RIENSTRA & DOWELL

BY: Dale Dowell

707 Beaumont Savings Building
Beaumont, Texas 77701
Attorneys for Owens-Corning
Fiberglas Corporation

A true copy of the above and foregoing answer was on this the 17th day of November, 1971, served upon counsel for the plaintiff by depositing the same in the United States Mail, postage prepaid, addressed to Honorable Ward Stephenson, Attorney at Law, Stephenson Building, Orange, Texas, and also a true copy served on all other interested counsel of record.

Dale Dowell

Attorney for Defendant, Owens-Corning Fiberglas Corporation

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

SAMUEL R. POTTER	:	
VS.	:	CIVIL NO. 6329
FIBREBOARD PAPER PRODUCTS CORPORATION, ET AL	:	

WRITTEN INTERROGATORIES TO DEFENDANTS

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
NOV 17 1971
JAMES R. COONEY, CLERK
BY DEPUTY

TO: FIBREBOARD PAPER PRODUCTS CORPORATION
COMBUSTION ENGINEERING, INC.
JOHNS-MANVILLE PRODUCTS CORPORATION
OWENS-CORNING FIBER GLASS CORPORATION
EAGLE-PICHER INDUSTRIES, INC.
PITTSBURGH CORNING CORPORATION
UNARCO INDUSTRIES, INC.
PHILIP CAREY CORPORATION
RUBEROID COMPANY
ARMSTRONG CORK COMPANY,

Defendants:

Plaintiff hereby serves upon the above named defendants the following written interrogatories to be answered fully and fairly in writing under oath, which shall be signed by the person or persons making such answers, a copy of such answers to be served upon plaintiff's attorneys within thirty (30) days after service herein, in accordance with Rule 33 of the Federal Rules of Civil Procedure:

P. O. Box 350
Beaumont, Texas

Mr. John H. Benc
Attorney at Law
Petroleum Build
Beaumont, Texas
Attorneys
FIBREBOARD

1.

Fibreboard Paper Products Corporation, one of the defendants in this case, has stated that it has devised a high temperature heat insulation which does not contain asbestos. Has your company devised a high temperature heat insulation which does not contain asbestos?

2.

If your company has not devised a high temperature heat insulation whach does not contain asbestos, please state whether or not you know if any other company has done so, and if so, state the full name of such company.

3.

If you have devised a high temperature heat insulation which does not contain asbestos, please state the name of such product.

CERTIFICATE OF SERVICE BY MAIL

I, Ward Stephenson, hereby certify that a true and correct copy of the foregoing instrument, was on this the 16 day of Nov, 1971, mailed to the following named attorneys:

Mr. George E. Duncan
Attorney at Law
P. O. Box 3708
Beaumont, Texas 77704
Attorney for Defendant
PITTSBURGH CORNING CORP.

Mr. W. N. Arnold, Jr.
Attorney at Law
Fulbright, Crooker, Freeman,
Bates & Jaworski
Bank of the Southwest Bldg.
Houston, Texas 77002
Attorney for Defendants
ARMSTRONG CORK COMPANY
and PHILIP CAREY CORP.

Mr. Robert E. Barnes
Attorney at Law
P. O. Box 5098
Beaumont, Texas 77706
Attorney for Defendant
RUBEROID COMPANY, DIVISION
OF GAF CORPORATION

Mr. Charles S. Pipkin
Attorney at Law
P. O. Box 1632
Beaumont, Texas 77704
Attorney for Defendant
COMBUSTION ENGINEERING, INC.

Mr. Dale Dowell
Attorney at Law
707 Beaumont Savings Bldg.
Beaumont, Texas 77701
Attorney for Defendant
OWENS-CORNING FIBERGLAS
CORPORATION

Mr. George A. Weller
Attorney at Law
P. O. Box 350
Beaumont, Texas 77704

Mr. John H. Benckenstein
Attorney at Law
Petroleum Building
Beaumont, Texas 77701
Attorneys for Defendant
FIBREBOARD PAPER PRODUCTS
CORPORATION

Mr. Gerald P. Coley
Attorney at Law
Vinson, Elkins, Searls & Smith
First City National Bank Bldg.
Houston, Texas 77002
Attorney for Defendant
UNARCO INDUSTRIES, INC.

Mr. James W. Mehaffy
Attorney at Law
San Jacinto Building
Beaumont, Texas 77701
Attorney for Defendant
STANDARD ASBESTOS MANUFACTURING
AND INSULATING COMPANY

Mr. Ben L. Reynolds
Attorney at Law
Royston, Rayzor and Cook
One Shell Plaza
Houston, Texas 77002
Attorney for Defendant
EAGLE-PICHER INDUSTRIES, INC.

Mr. Gordon R. Pate
Attorney at Law
1119 Beaumont Savings Bldg.
Beaumont, Texas 77701

Mr. John Tucker
Attorney at Law
Beaumont Savings Building
Beaumont, Texas 77701
Attorneys for Defendant
JOHNS-MANVILLE PRODUCTS
CORPORATION

Mr. George E. Murphy
Attorney at Law
615 San Jacinto Building
Beaumont, Texas 77701
Attorney for Intervenor

Ward Stephenson
WARD STEPHENSON

4.

If you have devised a high temperature heat insulation which does not contain asbestos, please state how long you have been manufacturing this insulation.

5.

If you have devised a high temperature heat insulation which does not contain asbestos, please state the exact content of such insulation.

STEPHENSON AND THOMPSON

By _____
Attorneys for Plaintiff
Stephenson Building
Orange, Texas 77630

