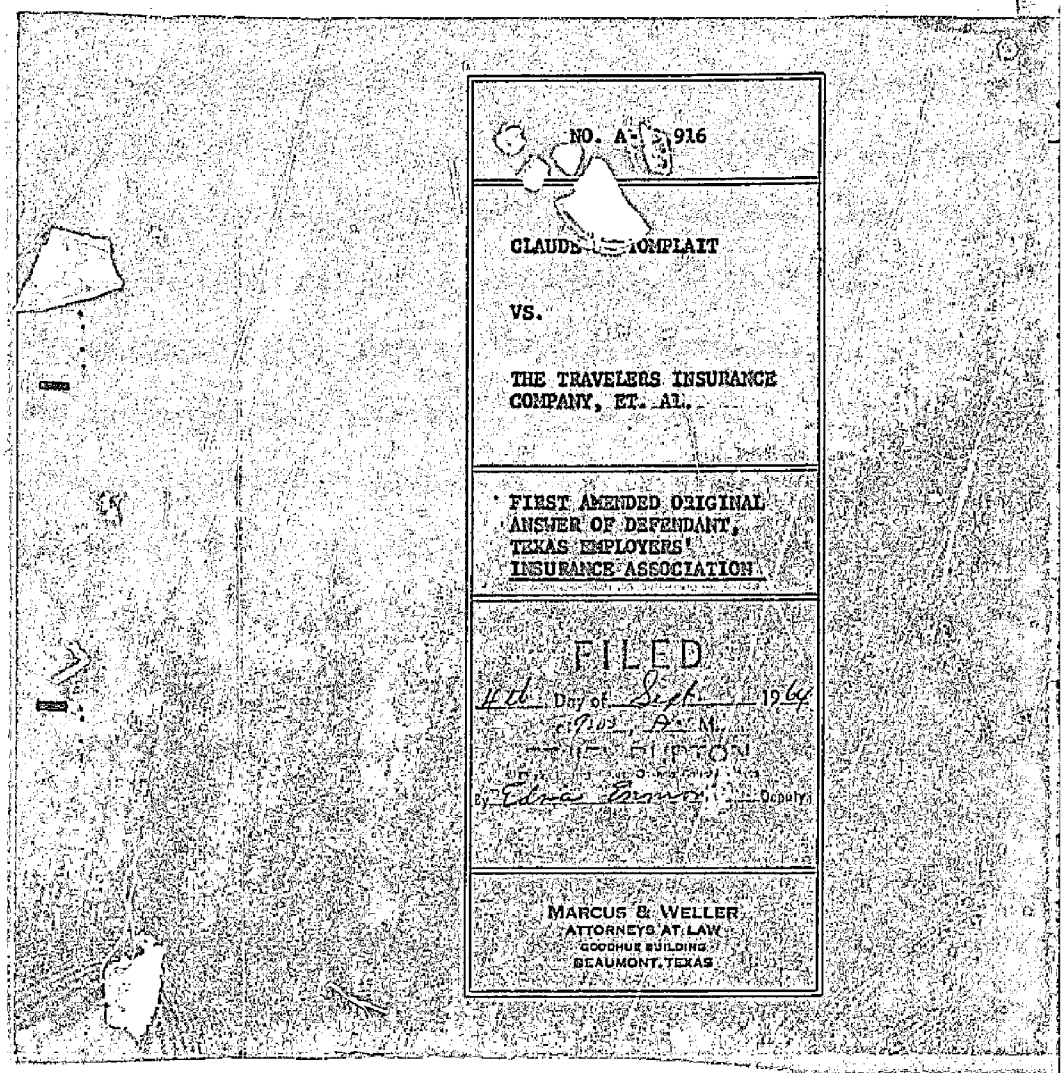


NO. A-[illegible]916

CLAUDE [illegible]OMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET. AL.

FIRST AMENDED ORIGINAL ANSWER OF DEFENDANT, TEXAS EMPLOYERS' INSURANCE ASSOCIATION

FILED

14th Day of Sept. 1964

[illegible] P. M.

[illegible] CLERK

By Edna Farmer Deputy

MARCUS & WELLER
ATTORNEYS AT LAW
GOODHUE BUILDING
BEAUMONT, TEXAS

Published by AsbestosClaims.Law
asbestosclaims.law/library/10889/1

NO. A-13,916

CLAUDE J. TOMPLAIT	‡	IN THE DISTRICT COURT OF
VS.	‡	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET. AL.	‡	128TH JUDICIAL DISTRICT

FIRST AMENDED ORIGINAL ANSWER OF DEFENDANT,
TEXAS EMPLOYERS' INSURANCE ASSOCIATION

COMES NOW Texas Employers' Insurance Association, a defendant in the above entitled and numbered cause, and files this, its First Amended Original Answer herein, and for answer to plaintiff's First Amended Original Petition herein, says:

I.

This defendant denies all and singular the allegations contained in said petition and demands strict proof thereof.

II.

This defendant specially denies that at the time of plaintiff's alleged injury made the basis of this suit, or prior to or thereafter, it was the Workmen's Compensation insurance carrier for Armstrong Contracting and Supply Corporation, alleged to be plaintiff's employer at the time of the injury from occupational disease made the basis of this suit; further, this defendant specially denies that at such time or at any time material hereto it had issued to said Armstrong Contracting and Supply Corporation any policy of workmen's compensation insurance covering the plaintiff, Claude J. Tomplait; and in accordance with the provision of Rule 93 (n) (6), Texas Rules of Civil Procedure, this defendant denies that it was in fact the carrier for said Armstrong Contracting and Supply Corporation at such time.

Published by AsbestosClaims.Law
asbestosclaims.law/library/10889/2

III.

This defendant specially denies that plaintiff gave notice as required by law either to it or to any employer insured by it within thirty (30) days after the first distinct manifestation of the alleged occupational disease made the basis of this suit.

IV.

This defendant specially denies that plaintiff filed with the Industrial Accident Board of the State of Texas any claim for compensation against it, within six (6) months after the first distinct manifestation of the alleged occupational disease made the basis of this suit.

V.

This defendant specially denies that plaintiff had good cause for not giving such notice within such period of thirty (30) days and for not giving it sooner than it was given; likewise this defendant denies that he had good cause for not filing such claim for compensation as against it within such period of six (6) months, and for not filing such sooner than it was actually filed.

VI.

Further answering, this defendant says that in the event the plaintiff sustained any injury from occupational disease, as alleged, the same caused only an acute condition which could be arrested by a change of employment or medical treatment, and which would leave plaintiff suffering from no objective symptoms or disability.

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer
ACL Doc 10889 · Page 3 of 6
Published by AsbestosClaims.Law
asbestosclaims.law/library/10889/3

VII.

Defendant would further show that subsequent to the plaintiff's employment with any employer insured by this defendant, plaintiff has worked for one or more employers not insured by this defendant in whose employment he has been injuriously exposed to the hazards of the disease made the basis of this suit, and under the provisions of the Workmen's Compensation Law, the last employer for whom plaintiff works and is injuriously exposed to the hazards of such disease is deemed to be the employer within the meaning of such law.

VIII.

This defendant says that in any event, plaintiff's alleged occupational disease, if any, as a causative factor as related to all other causes of such incapacity, if any, only caused a small amount of such incapacity.

IX.

Further answering and in the alternative, this defendant says that in the event plaintiff has sustained any occupational disease, as alleged (which is not admitted), the same was and is aggravated by non-compensable disease or infirmity; and any incapacity plaintiff is claiming or alleging in this suit, if in any way connected with any occupational disease, has been and is aggravated, prolonged, accelerated or contributed to by such occupational disease; further, this defendant says that such non-compensable disease or infirmity has aggravated, prolonged and contributed to the disability, if any, resulting from such occupational disease, if any.

Published by AsbestosClaims.Law
asbestosclaims.law/library/10889/4

X.

Further answering, this defendant says that any incapacity of plaintiff from and after July, 1961 is solely due to and solely caused by disease and pre-existing conditions, and that such incapacity, if any, is and has been only partial.

XI.

Further answering and in the alternative, this defendant says that plaintiff's incapacity, if any, is not the result of occupational disease but on the contrary, is solely due to disease unconnected with his employment.

XII.

Further answering and in the alternative, this defendant says that any incapacity of plaintiff from and after July, 1961 is contributed to by the effects of one or more prior compensable injuries, or by the effects of a subsequent compensable injury, or by a combination thereof.

WHEREFORE, this defendant prays that upon final hearing hereof, plaintiff recover nothing from it herein and that it be permitted to go hence without day.

MARCUS & WELLER
P. O. BOX 350
BEAUMONT, TEXAS

BY _____
ATTORNEYS FOR DEFENDANT, TEXAS EMPLOYERS' INSURANCE ASSOCIATION

Published by AsbestosClaims.Law
asbestosclaims.law/library/10889/5

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

DAVID C. MARCUS, being duly sworn, on oath states that he is a duly authorized attorney for Texas Employers' Insurance Association, a defendant in the above entitled and numbered cause; that he is cognizant of the matters set out in the foregoing answer; and that the statements and allegations in Paragraphs II and IV of the foregoing answer are true and correct; and upon information and belief affiant states that the statements and allegations made in Paragraphs III and V of the foregoing answer are true and correct.

DAVID C. MARCUS

SUBSCRIBED AND SWORN TO by the said David C. Marcus, before me, the undersigned authority, on this, the 2nd day of September, 1964.

NOTARY PUBLIC IN AND FOR
JEFFERSON COUNTY, TEXAS.

OUIDA L. SWOPE, Notary Public
In and for Jefferson County, Texas

Published by AsbestosClaims.Law
asbestosclaims.law/library/10889/6