IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

M. DEC 23 1966 19

James R. Cooney, Clerk, U. S. Court

By Hazel E Studdard DEPUTY

CLAUDE J. TOMPLAIT :

VS. : CIVIL ACTION NO. 5402

COMBUSTION ENGINEERING, INC., ET AL :

C O M P L A I N T

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW CLAUDE J. TOMPLAIT, hereinafter called plaintiff, complaining of COMBUSTION ENGINEERING, INC., R. & I. REFRACTOR AND INSULATION CORPORATION, JOHNS-MANVILLE SALES CORPORATION, JOHNS-MANVILLE PRODUCTS CORPORATION, JOHNS-MANVILLE FIBER GLASS, INC., OWENS-CORING FIBER GLASS CORPORATION, PITTSBURGH CORNING CORPORATION, GUSTIN-BACON MANUFACTURING COMPANY, PITTSBURGH PLATE AND GLASS COMPANY, FIBREBOARD PAPER PRODUCTS CORPORATION and EAGLE-PICHER INDUSTRIES, INC., hereinafter called defendants, and for cause of action, plaintiff alleges:

1.

That the ground upon which the 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, State of Texas.

Published by AsbestosClaims.Law
asbestosclaims.law/library/10569/1

4.

That defendant COMBUSTION ENGINEERING, INC. is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware; that such defendant has an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

5.

That defendant, R. & I. REFRACTOR AND INSULATION CORPORATION is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of some State, with an agent for service; however at this time, plaintiff does not know the name and address of such agent for service.

6.

That defendants JOHNS-MANVILLE SALES CORPORATION, JOHNS-MANVILLE PRODUCTS CORPORATION and JOHNS-MANVILLE FIBER GLASS, INC. were and during all of the times herein mentioned were corporations duly organized, created and existing under and by virtue of the laws of the State of Delaware; that all of such defendants have an agent for service, to-wit: Prentice-Hall Corporation System, Littlefield Building, Austin, Travis County, Texas. That plaintiff is suing all of these corporations and alleges that he is suing whichever one is responsible for the manufacture, production and distribution of the insulation materials hereinafter mentioned, but it is not known by plaintiff at this time which of said corporations is responsible.

The Tomplait v. Combustion Engineering Case File (1962-1969), Original complaint
ACL Doc 10569 · Page 2 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10569/2

7.

That defendant OWENS-CORING FIBER GLASS CORPORATION is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware; that such defendant has an agent for service, to-wit: C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

8.

That defendant PITTSBURGH CORNING CORPORATION is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Pennsylvania; that such defendant has an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

9.

That defendant GUSTIN-BACON MANUFACTURING COMPANY is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Missouri; that such defendant has an agent for service, to-wit: Paul O. Craig, 5531 Armour Drive, Houston, Harris County, Texas.

10.

That defendant PITTSBURGH PLATE AND GLASS COMPANY is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Pennsylvania; that such defendant has an agent for service, to-wit: C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

The Tomplait v. Combustion Engineering Case File (1962-1969), Original complaint
ACL Doc 10569 · Page 3 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10569/3

11.

That defendant FIBREBOARD PAPER PRODUCTS CORPORATION is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware; that such defendant has an agent for service, to-wit: C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

12.

That defendant EAGLE-PICHER INDUSTRIES, INC. is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Ohio; that such defendant has an agent for service, to-wit: C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

13.

That defendants during all times herein mentioned and for a long time prior thereto, have been and now are engaged in the manufacture of materials used for insulation, such materials containing fiber glass, rock wool, foam glass, magnesium insulation, mineral wool, calcium silicate and 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.

14.

That the various types of insulation compounded, manufactured and placed in containers and sold by the

The Tomplait v. Combustion Engineering Case File (1962-1969), Original complaint
ACL Doc 10569 · Page 4 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10569/4

defendants contained chemicals and minerals and deleterious substances and matter which were highly poisonous, dangerous and harmful to human beings and to the health of man; that such materials were defective and were not suitable for the purposes for which they were intended. That each of the defendants knew, or should have known, that the chemical compounds and deleterious substances and matter in said insulation as compounded, prepared and manufactured by defendants were highly poisonous, dangerous and harmful to human beings and to the health of man and that such materials were defective and were not suitable for the purposes for which they were intended.

15.

That at all times herein mentioned, the plaintiff was employed as an insulator, and in the performance of his employment as an insulator he was required to handle large quantities of the said insulation, compounded, manufactured and prepared by the defendants.

16.

That during the period of time in which the plaintiff was employed as an insulator, 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 by 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.

The Tomplait v. Combustion Engineering Case File (1962-1969), Original complaint
ACL Doc 10569 · Page 5 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10569/5

17.

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 and manufactured 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, skinand health, and that the 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 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 defendant knew or, in the exercise of ordinary or reasonable care, ought to have known that

Published by AsbestosClaims.Law
asbestosclaims.law/library/10569/6

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 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 ordinary or reasonable care, ought to have known that its insulation contained deleterious, poisonous and highly harmful substances to the human body, lungs, respiratory system, skin and health, notwithstanding which defendants negligently supplied to plaintiff containers of said insulation which were broken open and could not be transported without coming in contact with plaintiff's skin and body.

(f) 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

The Tomplait v. Combustion Engineering Case File (1962-1969), Original complaint
ACL Doc 10569 · Page 7 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10569/7

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 the 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 reasonably safe plan and method of handling and installing said insulation.

(g) 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.

18.

That as a direct and proximate cause of the aforesaid occurrences and circumstances and the negligence and carelessness of the defendants, 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 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 containing oxygen in order that he may be able to breathe; that plaintiff has extreme difficulty with sleeping; that he tires easily; that he

Published by AsbestosClaims.Law
asbestosclaims.law/library/10569/8

constantly coughs; that he has suffered from an extreme loss of weight; that his future outlook is very dim; that he has sought the services of many physicians in an effort to cure or arrest the conditions 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.

19.

That by reason of the negligence and carelessness of the defendants, and each of them, as hereinbefore alleged, and because of the harm and injury to his health and the resulting disability therefrom, 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.

20.

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 exact amount of which plaintiff is unable to accurately estimate at this time.

21.

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

The Tomplait v. Combustion Engineering Case File (1962-1969), Original complaint
ACL Doc 10569 · Page 9 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10569/9

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, together with his costs and disbursements herein.

STEPHENSON, THOMPSON AND MORRIS

By _____
Attorneys for Plaintiffs
Stephenson Building
Orange, Texas

The Tomplait v. Combustion Engineering Case File (1962-1969), Original complaint
ACL Doc 10569 · Page 10 of 10
Published by AsbestosClaims.Law
asbestosclaims.law/library/10569/10