IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

NOV 21 1967

James R. [illegible], Clerk

By Celestine Stamps DEPUTY

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

CIVIL ACTION NO. 5402

OBJECTIONS OF DEFENDANT, PITTSBURGH PLATE AND GLASS COMPANY TO INTERROGATORIES OF PLAINTIFF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Pittsburgh Plate and Glass Company, one of the defendants in the above styled and numbered cause, and in response to interrogatories served by the plaintiff upon its undersigned counsel, files this, its objections to such interrogatories:

1.

This defendant should not be required to answer any interrogatories because there is pending a second motion for more definite statement pertaining to the allegations of plaintiff's first amended original complaint, so as to apprise this defendant of the specific dates on which he claims he was injuriously exposed to insulation materials manufactured and distributed by this defendant. In this connection, this defendant says that in the event the insulation materials to which plaintiff was exposed was not manufactured or distributed by this defendant, then to require it to answer the interrogatories would subject this defendant to annoyance, needless expense, and oppression.

2.

Each and all of the proposed interrogatories, separately and collectively, are not interrogatories within the intent and meaning of Rule 33, but on the contrary, the same call for the production of documents, reports, studies and materials which can be obtained only under Rule 34 upon motion, notice and a showing of good cause therefor.

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3.

This defendant further objects to each and all of said interrogatories because they are too broad in scope as to time, the interrogatories going back to the date of 1950, whereas plaintiff alleges in his first amended complaint that his first exposure was in 1959. Under this state of facts, the interrogatories would impose on this defendant needless expense, annoyance and oppression in searching for documents, reports, materials and other information which would have no relevancy.

4.

This defendant further objects to any information in regard to any insulation materials, if any, manufactured by this defendant because any information prior to two years before plaintiff's original complaint was filed in this case would be irrelevant and immaterial, in that any cause of action accruing more than two years prior to the filing of this suit would be barred by the two (2) year statute of limitation of the State of Texas. To require this defendant to search and furnish information on a cause of action barred by the two (2) year statute of limitation would impose on this defendant needless expense, annoyance and oppression in searching for such materials, documents, reports and other evidence which would have no relevancy. Further, the plaintiff in this case in failing and refusing to be specific in his claim or claims against the respective defendants, and in failing to answer interrogatories which have heretofore been filed, has wholly failed to specify and state the claim or claims made by him against each of the respective defendants or the date or dates on which he alleges a cause of action accrued.

5.

In the event this defendant is required to answer any one or more of said interrogatories, then the same should be limited in scope to the particular employer or employers of plaintiff to whom this defendant allegedly sold or furnished insulation material, and to the particular product or products

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so sold or furnished during the period of time during which the plaintiff is asserting a claim against this defendant.

6.

This defendant objects to the proposed interrogatories because they are too broad in scope as to the places of use or distribution of the insulation material. Answers to said interrogatories, if required, should be restricted in scope to the specific claim or claims asserted by the plaintiff against this specific defendant and to the specific area or place where plaintiff, in his amended complaint, claims he was exposed to such materials.

7.

Defendant further objects to said interrogatories because they go beyond the permissible limits of interrogatories, in that such is an attempt by the plaintiff to have defendants make his investigation for him and prepare his case for him, which is improper under the Federal Rules of Civil Procedure, and not within the contemplation of Rule 33.

8.

Defendant objects to all of the interrogatories because this court has not yet ruled upon this defendant's motion for more definite statement, and such interrogatories under Rule 33 before the plaintiff has cast his pleadings or stated his claim, is premature. Interrogatories under Rule 33 are not permitted until a defendant has filed an answer.

9.

This defendant objects to the interrogatories because they are too broad, general and ambiguous; they are burdensome and oppressive, and will require this defendant to conduct investigations, search for records, many of which have been destroyed over a period of seventeen (17) years, and will require this defendant to compile, correlate data, and obtain analyses which would involve an undue burden and hardship. Further, if the

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plaintiff is required to designate in his pleadings the date on which his alleged claim originated against this defendant, then this defendant will be in a position to say that nothing which accrued more than two years prior to the filing of plaintiff's suit is material in any respect in this case because the alleged claim would be barred by the two (2) year statute of limitation of the State of Texas.

10.

Defendant further objects to said interrogatories because they amount solely to a fishing expedition beyond the permissible scope and utilization of interrogatories under Rule 33, which cannot be indulged in, in that such interrogatories are an attempt by plaintiff to require each of the defendants by burdensome research, labor and expense, to obtain information to support the allegations of a complaint which the plaintiff has already allegedly asserted in good faith in this court.

11.

Defendant further objects to Interrogatories Nos. 3 and 4, for the following reasons:

(a) Said interrogatories are improper because they request the defendant to state and disclose evidence on which it intends to reply to prove particular facts upon the trial of this cause, and in advance of trial, which is not contemplated, intended or permitted by Rule 33.

(b) Interrogatory No. 4 calls for the names of witnesses and persons "who made such studies," whom the defendants might propose to introduce at the trial, and requires the defendant to furnish details of its evidence in preparation of trial, which it is not required to do under the law nor by said Rule 33.

(c) Interrogatory No. 4 is, in fact, a request for production of documents, which is not within the permissive scope of Rule 33.

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12.

This defendant adopts each and all of the objections to said interrogatories filed by Combustion Engineering, Inc., and by each of the remaining defendants in this case.

13.

In the alternative, and prior to ruling on these objections to interrogatories, this defendant says that a ruling on each of said motions and objections should be postponed and delayed to a date which will permit this defendant to obtain the oral deposition of the plaintiff, thus requiring the plaintiff to testify to his exact claim or claims against the respective defendants and to be specific as to the dates of injury, and such would thereby eliminate the necessity of this defendant in answering interrogatories or supplying information, reports or studies with respect to claims to which this defendant is not involved. Further, it would establish the date or dates on which the plaintiff's alleged claim originated against this defendant, and therefore would enable this defendant to file a motion for summary judgment based upon the statute of limitation, and thereby remove this defendant from the lawsuit.

WHEREFORE, this defendant prays that the foregoing objections be sustained and that said entire set of interrogatories be stricken, and that this defendant be not required to answer same. This defendant prays for such other and further relief to which it may be justly entitled.

WELLS, DUNCAN AND BEARD

BY: George E. Duncan

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing objections have been served upon 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 21st day of November, 1967; and a true and correct copy of same has likewise been furnished to each of the attorneys for the respective defendants as follows:

Mr. Charles S. Pipkin, P. O. Box 1632, Beaumont, Texas, attorney for defendants, Combustion Engineering, Inc. and Refractory & Insulation Corporation;

Mr. John D. Rienstra, 707 Beaumont Savings Building, Beaumont, Texas, attorney for defendant, Owens-Corning Fiber Glass Corporation;

Mr. John G. Tucker, Orgain, Bell & Tucker, Beaumont Savings Building, Beaumont, Texas, attorney for defendant, Gustin-Bacon Manufacturing Company;

Mr. Ben L. Reynolds, Royston, Rayzor & Cook, 877 San Jacinto Building, Houston, Texas, 77002, attorney for defendant, Eagle-Picher Industries, Inc.;

Mr. George A. Weller, P. O. Box 350, Beaumont, Texas, attorney for defendants, Fiberboard Paper Products Corporation;

Mr. Gordon R. Pate, Beaumont Savings Building, Beaumont, Texas, attorney for defendants, Johns-Manville Sales Corporation, Johns-Manville Fiber Glass, Inc.

George E. Hunter
Attorney for Defendant
Pittsburgh Plate and Glass Company

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LAW OFFICES OF
WELLS, DUNCAN AND BEARD
BEAUMONT SAVINGS BUILDING
BEAUMONT, TEXAS

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