IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

JAN 2 - 1968 19

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

By Margaret Lowe DEPUTY

CLAUDE J. TOMPLAIT :

VS. : CIVIL NO. 5402

COMBUSTION ENGINEERING: INC., ET AL :

PLAINTIFF'S REPLY TO DEFENDANTS' BRIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW CLAUDE J. TOMPLAIT, plaintiff, replying to the brief filed on behalf of all the defendants, and would show unto the Court:

That as shown by the copy of the judgment in the workmen's compensation case, attached hereto, entry of such judgment was not signed by Judge Neff, presiding in the State Court, until the 26th day of May, 1966. It was not until such date that the workmen's compensation suit was finally concluded, and this was only a few months before this suit was brought in the Beaumont Division of the Eastern District of Texas. This, we think, would readily dispose of the argument presented by the defendants that more than two years had lapsed after the conclusion of the Workmen's Compensation case.

No other points nor cases having been cited other than the reference to the Uniform Commercial Code, it appears that the defendants have no arguments nor cases to present in opposition to the plaintiff's

brief on all other points made.

Respectfully submitted,

STEPHENSON, THOMPSON AND MORRIS

By Ward Stephenson

Attorneys for Plaintiff
Stephenson Building
Orange, Texas 77630

A copy of the foregoing plaintiff's reply to defendants' brief was served by mailing a copy thereof by certified mail, return receipt requested, on this the 29th day of December, 1967, to Mr. George E. Duncan, Beaumont Savings Building, Beaumont, Texas, the attorney filing the defendants' brief.

Ward Stephenson
Ward Stephenson

NO. A-13,916

CLAUDE J. TOMPLAIT	I	IN THE DISTRICT COURT OF
	I	
VS.		ORANGE COUNTY, TEXAS
	I	
QUEEN INSURANCE COMPANY OF AMERICA	I	128TH JUDICIAL DISTRICT

JUDGMENT

BE IT REMEMBERED that in the above styled and numbered cause, at an agreed setting thereof, came the parties in person, and by and through their attorneys, and announced ready for trial; and a jury having been by all parties expressly waived, the matters of fact, as well as those of law, were thereupon submitted to the court; and the court having heard the pleadings, the evidence offered and the argument of counsel; and it appearing to the court, and the court having found, that the accident and incapacity involved in this suit and controversy was sustained in the course of employment by Claude J. Tomplait, Employee, with The Aber Company, Employer, which injury and incapacity the court finds was sustained at some time while employed by The Aber Company; and it further appearing to the court, and the court having found that all jurisdictional matters had been complied with in accordance with requirements of the law, and the Industrial Accident Board of the State of Texas having jurisdiction of said claim, made and entered its final ruling, order and award in said claim and that thereafter, within the time allowed by law, notice of appeal was given and this suit was instituted; and it appearing to the court, and the court having found, that said injuries and incapacity occurred in the county in which this suit is pending; and this court having determined that it has jurisdiction herein to render a final and binding judgment fully and finally determining all claims and all controversies between the parties;

It is, therefore, ORDERED, ADJUDGED and DECREED by the court that the final order, ruling and award of the Industrial Accident Board of the State of

Texas, entered in such claim on December 18, 1962, being numbered W 67299, and there styled Claude J. Tomplait, Employee, vs. The Aber Company, Employer, and Queen Insurance Company of America, Insurer, be in all things vacated, set aside and held for naught, except insofar as the making and rendition of said final ruling, order and award was and is necessary to prevent said Industrial Accident Board of the State of Texas from again passing upon, vacating, modifying and determining said claim or any rights thereunder.

And thereafter it was announced to the court that the parties had agreed to a settlement of all controversies and suits, subject to the approval of the court, said settlement to be incorporated in a judgment whereby the plaintiff and plaintiff's attorney should recover of and from the said defendant the total sum of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00), in full, final and complete payment of any and all claims for compensation which are asserted or that could be asserted by plaintiff as a result of or in any way in connection with the injury, disease, or conditions arising or existing while employed by The Aber Company, and involved in this suit, and likewise in full and final compromise, settlement and satisfaction of any and all claims that said plaintiff has or may have in the future under the Workmen's Compensation Law of Texas, for medical aid, hospital services, nursing, chiropractic services, rehabilitation, medicines, prosthetic appliances or other benefits of any kind or character, arising or accruing by reason of the injury, disease or condition arising while employed by The Aber Company, made the basis of this suit; and the court finds that such sum fairly and fully compensates plaintiff and all claiming by, through, and under plaintiff, for any and all compensation and for any and all medical, surgical, hospital and other aforesaid benefits both past, present, and future as a result of the injury in question.

And it further appearing that plaintiff and plaintiff's attorney had agreed upon an attorney's fee to be paid out of the amount of said settlement for his services in the matter; and it appearing that the said thirty per cent is a just and reasonable attorney's fee and in keeping with the services performed by said attorney and that the plaintiff had received advantages and benefits by and through such representation and that said fee is fair and reasonable, and that such services rendered by said attorney were necessary; and,

The court after hearing the evidence having found the entire settlement fair and reasonable and having approved such settlement and the division of the proceeds between the plaintiff and his attorneys;

It is, therefore, ORDERED, ADJUDGED and DECREED by the court that the said plaintiff do have and recover of and from the defendant in a lump sum the sum of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00), in full satisfaction of all claims for compensation, which are asserted or that could be asserted now or in the future by plaintiff as a result of or in any way in connection with the injury, disease and conditions arising or existing while employed by The Aber Company, and alleged in this suit, and it is further ORDERED, ADJUDGED and DECREED by the court that the said employer and the defendant, their assigns, agents and representatives, be and they are hereby declared to be fully, finally and forever acquitted and discharged of and from all liability for workmen's compensation (including but not limited to medical aid, hospital services, nursing, chiropractic services, rehabilitation, medicines, prosthetic appliances) and from any other claims or causes of action arising or that might arise in the future by reason of said injury, disease and conditions arising or existing while employed by The Aber Company, and all

effects thereof; and it is further decreed that all benefits of every kind and character accruing or to accrue to said plaintiff under the Workmen's Compensation Law of Texas by reason of such injury, disease and conditions arising or existing while employed by The Aber Company, are in all things fully and finally compromised, settled, paid and satisfied.

It is further ORDERED that said sum of $1,500.00 is to be divided, and of said sum seventy per cent (70%) is to be paid to Claude J. Tomplait, and thirty per cent (30%) to plaintiff's attorney.

It further appearing to the court that prior to the signing and entry of this judgment, the full amount of this judgment has been fully and finally paid as provided in this judgment;

It is further ORDERED, ADJUDGED and DECREED that no execution shall issue herein for the amount of this judgment or any part thereof, except as to costs of court, and that except as to costs of court this judgment shall stand in all things fully and finally paid, satisfied, extinguished and released.

It is further ORDERED, ADJUDGED and DECREED by the court that the defendant pay the costs of court herein, for which let execution issue, if required, as often as may be necessary.

It is further ORDERED that as the plaintiff paid a jury fee deposit of $5.00 in this cause and as this cause was settled without the use of a jury such fee shall be refunded the plaintiff, the clerk is hereby ORDERED to refund such deposit to the plaintiff from the jury fund.

SIGNED this the 26th day of May, A. D., 1966.

James N. Nelly
JUDGE PRESIDING

APPROVED:

W. A. [illegible]
Attorney for Plaintiff

Plaintiff
ORGAIN, BELL & TUCKER
By Alex Bickman
Attorney for Defendant

NO. 5402

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

PLAINTIFF'S REPLY TO DEFENDANTS' BRIEF

LAW OFFICES
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ORANGE, TEXAS

The Tomplait v. Combustion Engineering Case File (1962-1969), Reply to defendants' brief, enclosing the judgment...
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