IN THE UNITED STATES DISTRICT COURT

FILED

FOR THE EASTERN DISTRICT OF TEXAS JAN 12 1968

James [illegible]

By Margaret Turner Deputy

BEAUMONT DIVISION

CLAUDE J. TOMPLAIT		
VS.		CIVIL ACTION NO. 5402
COMBUSTION ENGINEERING, INC., ET AL		

ORIGINAL ANSWER OF DEFENDANT, FIBREBOARD PAPER PRODUCTS CORPORATION, TO PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant, Fibreboard Paper Products Corporation, and files this, its original answer to plaintiff's first amended complaint, and for such answer this defendant would show the court:

1.

In reply to Paragraphs 1 through 12 inclusive, this defendant admits that it is a foreign corporation organized under the laws of a foreign state with a permit to do business in the State of Texas; it likewise admits, assuming that each of the corporate defendants are non-residents of Texas, that this court has jurisdiction of the alleged claim.

2.

In answer to Paragraph No. 13, it is admitted that Fibreboard Paper Products Corporation has been and is now engaged in the manufacture of materials for insulation, but defendant denies that it was engaged in the manufacture of such materials during all times mentioned in plaintiff's petition and for a long time prior thereto.

It is denied that the materials manufactured by defendant contained a combination of fiber glass, rock wool, foam

glass, magnesium insulation, mineral wool, calcium silicate and asbestos.

It is admitted that insulation materials manufactured by this defendant beginning in 1925 contained a combination of magnesium and asbestos; a combination of diatomaceous earth and asbestos; a combination of lime, diatomaceous earth, and asbestos; and in addition to the insulating materials as noted, a powdered cement was manufactured in each of the three types for mixing with water as a cementing material.

This defendant does not have knowledge as to products manufactured by other defendants such that the undersigned counsel can answer under oath.

3.

In answer to Paragraph 14, this defendant denies that the insulation manufactured by it contains chemicals, minerals and deleterious substances and matter which are highly poisonous, dangerous and harmful to human beings and to the health of man. It likewise denies that such materials were defective and not suitable for the purposes for which they were intended, but to the contrary, such materials were not defective and were suitable for the purposes of the types of insulation and insulation work for which they were intended.

The remainder of the allegations are denied.

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint Published by AsbestosClaims.Law
ACL Doc 10577 · Page 2 of 19 **asbestosclaims.law/library/10577/2**

4.

In reply to the allegations contained in Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, this defendant can neither admit nor deny the allegations contained in each separate paragraph for the reason that it is without information or knowledge.

5.

In reply to the allegations contained in Paragraph 37, this defendant is without knowledge as to whether the plaintiff handled any insulation or any quantity of the insulation mentioned in plaintiff's petition; however, it denies that the plaintiff was required to handle any insulation manufactured by this defendant. This defendant likewise denies that it compounded and manufactured and prepared the insulation materials referred to in Paragraphs 15 through 36 inclusive.

6.

In answer to the allegations contained in Paragraph 38, this defendant denies that during the time the plaintiff was employed as an insulator he was caused to come in contact with insulation and materials produced by this defendant due to the negligence and carelessness of this defendant, and this defendant denies that it was negligent and careless, and it denies that plaintiff sustained any injury or damage as the result of any negligence and carelessness of this defendant,

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but to the contrary, this defendant says that if plaintiff sustained any injury in the course of his employment as a result of working with insulation materials over a number of years, it was due to the nature of his occupation and was also due to his failure to exercise ordinary care for his own safety in failing to wear the proper, usual, customary safety devices which are used by employees in the trade working with such insulation materials, or was due to the negligence of his various employers in failing to furnish him with a reasonably safe place to work.

7.

In reply to the allegations contained in Paragraph 39, this defendant answers only for itself, but it denies that any injury and damage complained of by the plaintiff was directly and proximately caused by any negligence or carelessness of this defendant. Each subdivision will be answered separately.

(a) This defendant is unable to answer the allegations contained in Paragraph (a) because they are too vague, general and indefinite and do not apprise this defendant of any date or dates on which the plaintiff worked with any materials manufactured by this defendant, and he does not specify what the materials were. Plaintiff should be required to specify specific acts or omissions as against each particular defendant, and particularly this defendant.

Subject to the objections, the allegations of Paragraph (a) are denied.

(b) This defendant cannot answer the allegations contained in Paragraph (b) for want of knowledge, in that the name of the product allegedly used, the date of its use, is not known

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint Published by AsbestosClaims.Law
ACL Doc 10577 · Page 4 of 19 asbestosclaims.law/library/10577/4

and could not be known by this defendant, and it could not be known whether this defendant manufactured any product or products with which the plaintiff was working; therefore, this defendant says that it cannot admit or deny such allegations for want of knowledge.

If it should be charged that this defendant should have knowledge of the nature of insulation products generally, then it is admitted that some products when cut or disturbed to the extent that they create dust in the air from the product, then some of such products are harmful to the lungs and respiratory system, and that an insulator should be furnished with a properly ventilated area by his employer in which to work, or he should wear masks and other safety devices, which facts are well known in the insulation industry and well known among insulation workers.

The remainder of the allegations contained in said paragraph are denied.

(c) In reply to the allegations contained in Subdivision (c), this defendant has no knowledge as to any insulation material manufactured by it which was allegedly used by the plaintiff, nor does he allege the date or dates of such alleged contact, and therefore this defendant is without knowledge or information about the matters inquired about; however, it is admitted that some insulation material is harmful to the lungs and respiratory system of an insulation worker when proper safety devices and masks are not used or utilized while working with such materials, or when an employer fails to furnish his employee with a reasonably safe place to work.

It is denied that this defendant negligently and carelessly packed the insulation material manufactured by it,

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint Published by AsbestosClaims.Law
ACL Doc 10577 · Page 5 of 19 asbestosclaims.law/library/10577/5

but to the contrary, it says that its packaging of its materials in a reasonable manner for the safe delivery of its products is a business necessity.

The remainder of the allegations not specifically answered are denied.

(d) This defendant cannot admit or deny the allegations specifically because the product allegedly manufactured by this defendant is not alleged, nor is it alleged as to the date or dates on which the plaintiff allegedly used such product. It is admitted that some insulation materials are harmful to the lungs and respiratory system of a worker when the worker does not use and utilize the usual and customary safety devices, gloves and clothing, such as masks, etc., which are used by insulation workers in the performance of their work, or where the employer fails to furnish his employee a reasonably safe place within which to work, considering the nature of the work involved.

Except as specifically answered herein, the remainder of the allegations of this paragraph are denied.

(e) The allegations of Paragraph (e) are denied.

(f) This defendant cannot admit or deny specifically the allegations contained in Subdivision (f) because the plaintiff does not specify the material or materials allegedly manufactured by this defendant, nor the date or dates on which the plaintiff is alleged to have come in contact with them. Further, this defendant denies that it had any duty to warn the plaintiff of any potential danger in the handling of insulation materials or potential danger to his lungs and respiratory system, and

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint Published by AsbestosClaims.Law
ACL Doc 10577 · Page 6 of 19 asbestosclaims.law/library/10577/6

denies the existence of any duty to instruct the plaintiff in the proper handling of insulation materials, and denies any duty or obligation to adopt and enforce a reasonably safe plan and method of handling and installing said insulation and insulation materials.

Except where this defendant says that it cannot admit or deny such allegations and has specifically denied the same, this defendant denies the remainder of the allegations in said paragraph (f).

(g) The allegations of Paragraph (g) are denied.

8.

In reply to the allegations of Paragraph 40, this defendant denies that the plaintiff sustained any injury as a result of any act or omission on the part of this defendant; this defendant has no knowledge or information at this time as to the cause or causes of plaintiff's disability, if any, except that it does have knowledge through investigation that plaintiff made a claim in 1961 that he was disabled as a result of an occupational disease known as asbestosis, as a result of which he claimed he was totally disabled, and he recovered a judgment in said cause on September 16, 1964.

This defendant does know from investigation that the plaintiff was advised in July, 1961, to discontinue his work with insulation materials because it was injurious to his health, and that he should seek other employment, but despite this drastic warning the plaintiff continued to subject himself to dust emanating from the use of various insulation materials.

Except as admitted, this defendant is without knowledge or information as to the nature and the extent of the plaintiff's

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint Published by AsbestosClaims.Law
ACL Doc 10577 · Page 7 of 19 asbestosclaims.law/library/10577/7

disability or the cause thereof, but it denies that such disability or condition has resulted from any oct or omission of this defendant.

9.

The allegations of Paragraph 41 are denied.

10.

The allegations of Paragraph 42 are denied.

11.

The allegations contained in Paragraph 43 of said petition are denied.

12.

First Affirmative Defense

This defendant denies that the plaintiff sustained any injury as a result of contact or use of any product manufactured by this defendant.

13.

Second Affirmative Defense

If plaintiff did sustain any injury as a result of the use of any product manufactured by this defendant, then such injury was sustained as a result of the occupation of the plaintiff, in that he had been engaged as an insulator or a worker in the insulation field for a number of years, and at all times he knew that he was working in dust laden air, part of which was created by his own work and the work of other insulators, and by the failure of his employer to provide facilities for the elimination of dust laden air, and therefore such injury as he may have sustained was either asbestosis or some occupational disease resulting 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 products manufactured by this defendant. This defendant is not legally liable or responsible for any occupational disease which was suffered or sustained by plaintiff in the course of his various employment over a number of years.

14.

Third Affirmative Defense

For further answer herein, and while denying that the plaintiff sustained any injury as a result of contact or use of any product manufactured by this defendant, if he did sustain injury or did sustain an occupational disease as a result of use of any insulation product manufactured by this defendant separately or in conjunction with products manufactured by other defendants, then this defendant says that plaintiff was guilty of various acts and omissions constituting negligence in the performance of his work, in that he failed to use and utilize any safety devices, such as gloves, protective clothing, masks and respirators for breathing, and he continued to work with insulation material after he knew, or in the exercise of ordinary care should have known, that it was affecting his health, and one or more of such acts and omissions on his part was a proximate cause of his alleged injury. Further, the plaintiff was fully advised as to his susceptibility to injury from insulation products in the year 1960 or 1961, and his physician diagnosed his condition and advised him to seek other employment where he would not come in contact with insulation materials. Nevertheless, the plaintiff, knowing of his susceptibility to insulation materials and having been fully advised, failed to seek other employment and failed to remove himself from contamination with insulation materials in the air, and to the contrary, continued to work

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint Published by AsbestosClaims.Law
ACL Doc 10577 · Page 9 of 19 asbestosclaims.law/library/10577/9

with insulation materials with full knowledge that such was harmful to his health.

15.

Fourth Affirmative Defense

This defendant says that if plaintiff sustained any injury as a result of the use of any material or materials manufactured by this defendant, which is denied, the danger, if any, arising from the continued use of such material or materials 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 materials, and if he did use products manufactured by this defendant after having been advised that he had asbestosis and should not continue work as an insulator, then he assumed any risk in connection with the use of such product, and such danger, if any, in the use of insulation products was open and obvious and apparent to the plaintiff, and he cannot recover for any period in which he deliberately subjected himself to the dangers, if any, involved in working with insulation materials.

In the alternative, if there was any danger and such was not open and obvious and apparent to plaintiff at all times, nevertheless, he knew at all times of the dangers involved in working with insulation materials and in working in dust laden air where insulation materials were in use, 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 dangers involved, and he is therefore barred from any recovery under the theory of volenti non fit injuria.

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint Published by AsbestosClaims.Law
ACL Doc 10577 · Page 10 of 19 asbestosclaims.law/library/10577/10

In the further alternative, from and after the date on which the plaintiff was advised and had knowledge that he was sustaining injury from working with insulation materials, if this defendant had ever owed him any duty to warn of the possible effects of working with insulation materials, which is denied, then this defendant owed the plaintiff no duty to warn him of any alleged dangers involved after he had full knowledge of his condition and was fully warned to remove himself from insulation work or the area where he could be subjected to air which had insulation dust in it. He is therefore barred from recovery on the basis that this defendant owed him no duty, and this defendant violated no duty of care owing to the plaintiff.

16.

Fifth Affirmative Defense

If plaintiff did sustain any injury as the result of use of any product manufactured by this defendant, which is denied, then such occurred more than two (2) years prior to the filing of this suit on December 23, 1966, and such cause of action for personal injury is barred by the two (2) year statute of limitation of the State of Texas.

17.

Sixth Affirmative Defense

Further answering, the plaintiff was an experienced insulation worker and knew at all times that he was working with asbestos and asbestos products, or in the alternative, if he did not know this, his employers at all times knew they were working with insulation materials which contained asbestos or magnesia, and they had knowledge of the fact that particles

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint Published by AsbestosClaims.Law
ACL Doc 10577 · Page 11 of 19 asbestosclaims.law/library/10577/11

from the product could enter the air when the product was cut or applied, and 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 in his nose and into his body system unless he uses some mask or respirator or protective device.

18.

Seventh Affirmative Defense

If plaintiff did sustain any injury as the result of use of any product manufactured by this defendant, which is denied, then such occurred more than four (4) years prior to the filing of this suit on December 23, 1966, and such cause of action for personal injury is barred by the four (4) year statute of limitation of the State of Texas.

WHEREFORE, premises considered, this defendant prays that upon trial hereof the plaintiff take nothing against this defendant and that this defendant be discharged with its costs.

Respectfully submitted;

WELLER, WHEELUS & GREEN
P. O. BOX 350
BEAUMONT, TEXAS 77704

BY _____
GEO. A. WELLER,
ATTORNEYS FOR DEFENDANT,
FIBREBOARD PAPER PRODUCTS
CORPORATION.

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Copies of the foregoing original answer of defendant, Fibreboard Paper Products Corporation, to plaintiff's first amended complaint were mailed to the following attorneys of record:

Mr. Ben L. Reynolds
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Houston, Texas 77002

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Orgain, Bell & Tucker
Beaumont Savings Building
Beaumont, Texas 77701

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Strong, Pipkin, Strong & Nelson
P. O. Box 1632
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1119 Beaumont Savings Building
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The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint Published by AsbestosClaims.Law
ACL Doc 10577 · Page 13 of 19 asbestosclaims.law/library/10577/13

IN THE UNITED STATES DISTRICT COURT

FILED

FOR THE EASTERN DISTRICT OF TEXAS

JAN 10 1968

James D. [illegible], Clerk

By Margaret Stiner, Deputy

BEAUMONT DIVISION

CLAUDE J. TOMPLAIT	I	
VS.	I	CIVIL ACTION NO. 5402
COMBUSTION ENGINEERING, INC., ET AL	I	

ANSWERS OF THE DEFENDANT, FIBREBOARD PAPER PRODUCTS CORPORATION, TO INTERROGATORIES PROPOUNDED BY PLAINTIFF

TO THE PLAINTIFF, CLAUDE J. TOMPLAIT, AND MR. WARD STEPHENSON, STEPHENSON, THOMPSON & MORRIS, STEPHENSON BUILDING, ORANGE, TEXAS, HIS ATTORNEY OF RECORD:

Defendant, Fibreboard Paper Products Corporation, in response to interrogatories propounded under Rule 33, Federal Rules of Civil Procedure, served upon defendant's counsel on or about November 3, 1967, files this, its answers to such interrogatories, within the time required by the rule, which is ten (10) days after the court overruled objections to said interrogatories. Such answers to each interrogatory bears the same number and letter as the request:

1.

Trade Name - "85% Magnesia" - manufactured from 1925 - materials - 85% Magnesia, 15% Asbestos.

Trade Name - "Caltemp" - manufactured from 1956 - materials - lime, diaromaceous earth and asbestos.

In addition to the insulation materials as noted, a powdered cement material was manufactured in each of the three types for mixing with water as a cementing material.

This defendant understands that the Court ruled that answers to Interrogatory No. 1 would be limited to the year beginning in 1959.

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2.

In answer to Interrogatory No. 2, this defendant never had any contact with workers who were employed by independent contractors in the performance of insulation work. Further, this defendant denies that the materials manufactured by it were of a dangerous nature, and says that each of the products manufactured by it were suitable and reasonably fit for the purpose for which the products were manufactured and used.

3.

No studies have been made by this defendant.

4.

No answer required because of the answer to No. 3.

5.

In answer to Interrogatory No. 5, none of the products identified by trade names listed in plaintiff's first amended complaint were manufactured by Fibreboard Paper Products Corporation. The materials named are commonly used terms for the cementing material to be used with the insulating materials, as noted in Interrogatory No. 1. Insulating materials manufactured by this defendant are sold through distributors in the mid-west and west, and packaged as follows: Insulating materials or compounds are packaged in cartons; cement is bagged.

6.

Use of the products of this defendant was general through the mid-west and west, as noted in the answer to Interrogatory No. 5.

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7.

This defendant does not so recognize.

8.

This defendant understands that the court ruled that answers to Interrogatory No. 8 would be limited to the years 1959 to the date of filing of plaintiff's petition.

In answer to Interrogatory No. 8, this defendant says that so far as it is advised and able to determine, it did not manufacture or sell any insulation products which were used by any of the named contractors or employers which are listed in the plaintiff's first amended petition, beginning with Paragraph 15 through Paragraph 36.

DATED this 8th day of January, 1968.

WELLER, WHEELUS & GREEN
P. O. BOX 350
BEAUMONT, TEXAS 77704

BY _____
GEO. A. WELLER,
ATTORNRYS FOR DEFENDANT,
FIBREBOARD PAPER PRODUCTS
CORPORATION.

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint Published by AsbestosClaims.Law
ACL Doc 10577 · Page 16 of 19 asbestosclaims.law/library/10577/16

THE STATE OF TEXAS I

COUNTY OF JEFFERSON I

BEFORE ME, the undersigned authority, on this day personally appeared Geo. A. Weller, known to me to be the person whose name is subscribed to the foregoing answers to interrogatories, and who being by me first duly sworn, did depose and say:

That the foregoing answers to interrogatories are true to the best of his knowledge, information and belief; that this verification is made by him because there is no officer of Fibreboard Paper Products Corporation within the jurisdiction of this Court or within the State of Texas; that the sources of his information used in answering such interrogatories are the files and records of Fibreboard Paper Products Corporation furnished to him for such purposes, and investigation heretofore made in this case.

GEO. A. WELLER

SUBSCRIBED AND SWORN TO before me, the undersigned authority, by the said Geo. A. Weller, to certify which witness my hand and seal of office this 8th day of January, A. D. 1968.

NOTARY PUBLIC, JEFFERSON COUNTY, TEXAS

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

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I certify that a true and correct copy of the foregoing answers to the interrogatories was served on Mr. Ward Stephenson, Stephenson, Thompson & Morris, Stephenson Building, Orange, Texas, by mailing a copy by certified mail on the 9th day of January, 1968.

A true and correct copy of the answers to these interrogatories was served on all other counsel of record by mailing by first class mail on the same date.

GEO. A. WELLER

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint
ACL Doc 10577 · Page 18 of 19
Published by AsbestosClaims.Law
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CIVIL ACTION NO. 5402

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

ANSWERS OF THE DEFENDANT, FIBREBOARD PAPER PRODUCTS CORPORATION, TO INTERROGATORIES PROPOUNDED BY PLAINTIFF.

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