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James R. Cooney, Clerk, U
By Mildred C. Varret

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

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

ORIGINAL ANSWER OF DEFENDANTS
JOHNS-MANVILLE PRODUCTS CORPORATION AND
JOHNS-MANVILLE FIBER GLASS, INC.

NOW COMES Johns-Manville Products Corporation and Johns-Manville Fiber Glass, Inc., defendants in the above styled and numbered action and files this their original answer to plaintiff's first amended complaint and for such answer these defendants would show the Court:

1.

Answering Paragraph 1, these defendants say that they do not know whether this Court has jurisdiction of this controversy inasmuch as they do not have knowledge as to the citizenship of all the parties defendant.

2.

These defendants admit the facts stated in Paragraph 2 and 3 of said complaint.

3.

These defendants are required to make no answer to Paragraphs 4, 5, 7, 8, 9, 10, 11 and 12 of said complaint inasmuch as the facts therein alleged pertain to parties defendant other than these defendants.

4.

These defendants admit that they are foreign corporations organized, created and existing under and by virtue of the laws of the State of Delaware.

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5.

In answer to Paragraph 13, these defendants cannot at this time admit what is contained in all the materials named in said Paragraph. However, these defendants do admit that they manufactured and sold insulation materials, but deny that any of them caused any injury to the plaintiff.

6.

These defendants deny the allegations contained in Paragraph 14 of said complaint.

7.

In reply to the allegations contained in Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, these defendants can neither admit nor deny the allegations contained in each separate Paragraph for the reason that they are without information or knowledge thereto and such facts are within the knowledge of the plaintiff and his attorney.

8.

In reply to the allegations contained in Paragraphs 25 and 36, these defendants admit that in 1962 and 1964 the plaintiff worked for Johns-Manville Sales Corporation. In reply to the remaining allegations contained in Paragraphs 25 and 36 these defendants do not at this time have sufficient knowledge or information to admit or deny that plaintiff was required to come in contact with the materials listed in said Paragraphs.

9.

In reply to the allegations contained in Paragraph 37 of said complaint, these defendants are without knowledge as to whether the plaintiff handled any insulation or any quantity of the insulation mentioned in plaintiff's petition. However, it is possible these defendants manufactured some of the products that may have been supplied to the various employers, but they deny that plaintiff received any injurious contact from these defendant's products.

10.

Defendants deny the allegations contained in Paragraph 38 of said complaint.

11.

These defendants deny the allegations stated in Paragraphs 39, 40 and 41 of said complaint.

12.

Answering Paragraph 42 of said complaint, these defendants cannot either truthfully either admit or deny the same, as they have no knowledge thereof and such facts are within the knowledge of the plaintiff himself.

13.

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

14.

These defendants deny that plaintiff is entitled to the relief prayed for in the concluding Paragraph of said complaint.

15.

First Affirmative Defense

These defendants say that any cause of action which plaintiff may have had against either of these defendants accrued more than two years prior to the filing of this action and these defendants plead the two year Statute of Limitations of the State of Texas, in bar of plaintiff's right to recover.

16.

Second Affirmative Defense

If plaintiff did sustain any injury as the result of use of any product manufactured by either of these defendants, which is denied, then such occurred more than four years prior to the filing of this suit and such cause of action for personal injury is barred by the four year Statute of Limitations of the State of Texas.

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17.

Third Affirmative Defense

These defendants say that plaintiff's physical condition of which he complains was and is due solely to causes other than any negligence, fault or breach of warranty on the part of either of these defendants.

18.

Fourth Affirmative Defense

These defendants say that the injuries, conditions and damages of which plaintiff complains, were solely and alone caused, or in the alternative, were proximately caused by negligent acts or omissions committed by the plaintiff himself while working with and around insulation materials and other materials incident to his trade.

19.

Fifth Affirmative Defense

These defendants say that in 1961, plaintiff was instructed and directed by a physician of his own choice to cease working with and around insulating materials, but plaintiff nevertheless, in face of such instructions, directions and warnings and with full knowledge continued over a period of several years thereafter, to work with and around insulating materials and voluntarily exposed himself to any conditions, dangers or hazards incident to such work, and these defendants plead such facts in bar of plaintiff's right, if any he has to recover.

20.

Sixth Affirmative Defense

These defendants say that if plaintiff sustained any injury as a result of the use of any material or materials manufactured by either of them, which is denied, the danger, if any, arrising from the continued use of such material or materials manufactured by

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ACL Doc 10581 · Page 4 of 7 asbestosclaims.law/library/10581/4

either of them, which is denied, the danger, if any arrising 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 such conditions and if he did use products manufactured by these defendants, after having been advised that he had asbestosis and should not continue to 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, if any, involved in working with insulation materials and in working around same and continued to use and work with such materials under such conditions and 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. Still further in the 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 these defendants ever owed him any duty to warn of the possible effects of working with insulation materials, which is denied, then these defendants 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 said 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 these defendants owed him no duty and these defendants violated no duty of care, owed to said plaintiff.

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21.

For further grounds of relief, these defendants say that if any judgment is entered herein jointly and severally against them and other defendants, then in such event these defendants are entitled to contribution against such other defendants in accordance with the provisions of Art. 2212 of Vernon's Civil Statutes of Texas.

WHEREFORE, PREMISES CONSIDERED, these defendants and each of them pray that upon trial hereof, the plaintiff take nothing against either of them and that they be discharged with their costs, and in the alternative that they have judgment for contribution as set forth above.

RESPECTFULLY SUBMITTED:



GORDON R. PATE
1119 Beaumont Savings Building
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Attorney for: Johns-Manville Products Corporation

and

Johns-Manville Fiber Glass, Inc.

Copies of the foregoing original answer of defendants, Johns-Manville Products Corporation and Johns-Manville Fiber Glass, Inc., to plaintiff's first amended complaint were mailed to the following attorneys of record:

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The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to first amended complaint
ACL Doc 10581 · Page 7 of 7
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