IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED
JAN 16 1966
James [illegible] Clerk
By Mildred a. Verret DEPUTY

CLAUDE J. TOMPLAIT

vs.

COMBUSTION ENGINEERING, INC., ET AL

CIVIL ACTION

NO. 5402

ORIGINAL ANSWER OF PITTSBURGH CORNING CORPORATION TO PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now PITTSBURGH CORNING CORPORATION, and files this its Original Answer to Plaintiff's First Amended Complaint, and for such Answer this Defendant would show the Court as follows:

I.

Answering Paragraph 1 of said Complaint, for lack of sufficient knowledge or information to constitute a belief, this Defendant can neither admit nor deny the jurisdictional allegations contained therein.

II.

This Defendant admits the allegations contained in Paragraphs 2 and 3 of said Complaint.

III.

For lack of sufficient knowledge or information to constitute a belief, this Defendant can neither admit nor deny the allegations contained in Paragraphs 4 through 7, inclusive.

IV.

This Defendant admits the allegations contained in Paragraph 8 of said Complaint.

V.

For lack of sufficient knowledge or information to constitut e a belief, this Defendant can neither admit nor deny the allegations contained in Paragraph 9 of said Complaint.

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VI.

This Defendant admits the allegations contained in Paragraph 10 of said Complaint.

VII.

For lack of sufficient knowledge or information to constitute a belief, this Defendant can neither admit nor deny the allegations contained in Paragraphs 11 and 12 of said Complaint.

VIII.

Answering Paragraph 13 of said Complaint, this Defendant admits that it is now engaged in the manufacture of materials for insulation, but denies that it was engaged in the manufacture of such materials during all of the times mentioned in Plaintiff's Complaint and for a long time prior thereto, and in the compounds alleged, and demands strict proof thereof, if relevant.

IX.

The allegations contained in Paragraph 14 are denied.

X.

For lack of sufficient knowledge or information to constitute a belief, this Defendant is unable to answer Paragraphs 15 - 36, inclusive, and this Defendant therefore demands strict proof of said allegations, if the same are relevant.

XI.

For lack of sufficient knowledge or information to constitute a belief, this Defendant can neither admit nor deny the allegations contained in Paragraph 37 of said Complaint, and therefore demands strict proof thereof, if relevant.

XII.

This Defendant denies each and every, all and singular, the allegations contained in Paragraph 38 of said Complaint.

XIII.

This Defendant denies each and every, all and singular, the allegations contained in Paragraph 39 of said Complaint, including, without

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limitation, literary sub-paragraphs (a) through (g) thereof. This Defendant denies each and every, all and singular the allegations contained in Paragraph 40 of said Complaint.

XIV.

This Defendant denies each and every, all and singular, the allegations contained in Paragraph 41 of said Complaint.

XV.

This Defendant denies each and every, all and singular, the allegations contained in Paragraph 42 and 43 of said Complaint.

XVI.

This Defendant denies each and every, all and singular, the allegations of said Complaint, not herein admitted, controverted or specifically denied.

XVII.

This Defendant denies that the Plaintiff sustained any injuries as a result of contact, or use of any product manufactured by it.

XVIII.

For further affirmative defense, this Defendant alleges and avers that if Plaintiff did sustain any injuries, or contract any disease as a result of the use of any product manufactured by this Defendant, then this Defendant would show the Court that such injury, or disease was sustained or contracted by the Plaintiff under conditions known by him to be prevalent, i.e., working in dust-laden air and that the Defendant knowingly created such condition by his own work and those of his fellow employees, and this Defendant would further show that the same was due to the failure of his employer to provide facilities for the elimination of the dust-laden air, or to provide certain safety devices, such as masks, inhalators, etc., and therefore, the injury or illness which he sustained or contracted, were the result of his long continued occupation as an insulator, and not as a result of any act of negligence or want of care, or other incident connected with contact with any products manufactured by this Defendant, and therefore this Defendant says that it is not legally liable or responsible for any such disease, or injury which

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was suffered or sustained by Plaintiff in the course of his numerous jobs of employment over a great number of years.

XIX.

For further affirmative defense herein, this Defendant, would show the Court that if Plaintiff sustained any injuries as a result of contact or use of any product manufactured by this Defendant (which this Defendant specifically denies), and if he did sustain an injury, or did sustain an occupational disease as a result of the use of any insulation products manufactured by this Defendant, separately and in conjunction with products manufactured by other Defendants, then, and in such event, this Defendant would show this Court that the Plaintiff was guilty of various acts and omissions constituting negligence in the performance of his duties, in that he failed to use and utilize any safety devices, such as gloves, protective clothing, masks, respirators for breathing, and continued to work with insultation material after he knew, or in the exercise of ordinary care, should have known that it was affecting his health, and one or more such acts and omissions on his part was the proximate cause of his alleged injury or disease.

XX.

For further affirmative defense herein, this Defendant would show this Court that any cause of action which Plaintiff may have had against this Defendant accrued more than two (2) years prior to the filing of this action, and this Defendant therefore pleads the two-year statute of limitations of the State of Texas, being Article 5526, Section 6, Vernon's Annotated Civil Statutes of the State of Texas, which this Defendant would show is a complete bar to Plaintiff's right to recover in the case at bar.

XXI.

For further affirmative defense herein, this Defendant would show this Honorable Court that in 1961, Plaintiff consulted a physician of his own choice, who, upon having examined and disgnosed the Plaintiff's condition, instructed and directed him to cease working with and around insulating

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materials, and this Defendant would further show this Court that Plaintiff, nevertheless, in direct defiance of the advices, instructions, directions and warnings, continued over a period of several years thereafter, and is now continuing to work with and around insulating materials, and voluntarily exposing himself to any condition, danger or hazard incident to such work, and this Defendant therefore says that the action of the Plaintiff in this regard, was such as to constitute an assumption of risk by the Plaintiff, in connection with the use of such products, 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.

XXII.

As further grounds of relief, this Defendant prays this Honorable Court, that if any judgment is entered herein jointly and severally against it and other Defendants then, and in such event, this Defendant is entitled to contribution against such other Defendants in accordance with the provisions of Article 2212 of Vernon's Civil Statutes of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, this Defendant prays that upon trial hereof, Plaintiff take nothing against this Defendant, and that it go hence and recover its costs in this behalf expended, and, in the alternative, that it have judgment for contribution as set forth above.

Respectfully submitted,

WELLS, DUNCAN AND BEARD

By George E. Wells

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Beaumont, Texas 77701

Attorneys for PITTSBURGH CORNING CORPORATION

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CERTIFICATE OF SERVICE

Copies of the foregoing Original Answer of Defendant, PITTSBURGH CORNING CORPORATION, to Plaintiff's First Amended Complaint were mailed to the following attorneys of record:

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