IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

MAY 9 - 1968

James H. Cooney, Clerk, U. S. Court

By Virginia R. Sims DEPUTY

CLAUDE J. TOMPLAIT :

VS. : CIVIL ACTION NO. 5402

COMBUSTION ENGINEERING, INC., ET AL :

MOTION FOR LEAVE TO AMEND COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the plaintiff, and moves the Court to allow him to file his second amended complaint and would show unto the Court:

1.

That there are other grounds of negligence which the plaintiff wishes to assert other than those set out in his first amended complaint, which are primarily:

(1) The defendants should have tested their products to ascertain the safe or dangerous nature of such products prior to offering them for sale, or should have removed such products from the market upon ascertaining that such products would cause asbestosis.

(2) The defendants should have devised a method of application of their products that would have kept those using such products from contracting asbestosis.

(3) The defendants' products were warranted, expressly or impliedly, to be merchantable when in truth they were not, and therefore the defendants breached such warranty.

2.

That in addition to the plaintiff actually working

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with various insulating products, on many jobs while not using himself the specific products, he was neverthèless exposed to the dangerous materials, asbestos dust and fibers which were used by other workers in the same area at which the plaintiff was working.

3.

That a copy of plaintiff's proposed second amended complaint is hereto attached and made a part hereof.

WHEREFORE, plaintiff prays that this motion be granted by this court.

STEPHENSON, THOMPSON AND MORRIS

By _____
Attorneys for Plaintiff
Stephenson Building
Orange, Texas 77630

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on the 8th day of May, 1968, I served the attached notice and motion upon each of the attorneys for the defendants (whose names and addresses appear on Page 17 of the proposed second amended complaint attached), by placing a true and correct copy thereof in an envelope with proper postage affixed thereto, and depositing said envelope in a regular depository for the United States Mail, addressed to said attorneys, which was mailed by certified mail, return receipt requested.

_____
Ward Stephenson

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NO. 5402

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COMBUSTION ENGINEERING, INC., ET AL

ORDER

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