IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

MAY 16 1968 19 M

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

By [signature] DEPUTY

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

OBJECTIONS OF DEFENDANTS, JOHNS-MANVILLE PRODUCTS CORPORATION AND JOHNS-MANVILLE FIBER GLASS, INC., TO MOTION OF PLAINTIFF FOR LEAVE TO AMEND COMPLAINT

NOW COMES, Johns-Manville Products Corporation and Johns-Manville Fiber Glass, Inc., and in reply to the Motion of the Plaintiff to file his Second Amended Complaint, makes and files these their objections.

1.

Defendants, Johns-Manville Products Corporation and Johns-Manville Fiber Glass, Inc., would show the Court that said Motion is not timely in view of the fact that this case is scheduled to go to trial during the week of May 27, 1968.

2.

Defendants would further show the Court that Plaintiff, by Paragraph 37 of said proposed Amended Complaint, alleges for the first time a new and different theory, to-wit: that although he may not have used the various products containing asbestos himself that nevertheless he was exposed to asbestos dust and fibers in the area where he was working, and these defendants would show the Court that they had no control over where their products were used, who the Plaintiff worked for, whether the Plaintiff used respirators to protect himself from the dust and fibers which he alleges were present in the area where he worked, or whether his

employers provided proper ventilation; however, there is not sufficient time left for these defendants to prepare their defenses to said allegations and proceed to trial on this case during the week of May 27, 1968.

3.

Defendants would further show the Court that Plaintiff in Paragraph 39 (h) and Paragraph 39 (i) of said proposed Second Amended Complaint, is raising new grounds of negligence and that same constitute a surprise as to these defendants and they cannot properly prepare their defenses to said allegations and be prepared to go to trial on said Amended Complaint during the week of May 27, 1968.

4.

That the allegations contained in Paragraph 39 (h) and Paragraph 39 (i) involve technical aspects with reference to testing products and application of products, and this information has not been developed for the reason that these allegations with reference to technical aspects of testing and application had not been included in the previous complaints and it would take time beyond the present setting to explore these technical aspects in order for these defendants to defend against said allegations.

5.

That Plaintiff has, by Paragraph 39 (j) of said Amended Complaint, for the first time injected into said case the theory of breach of warranty, and these defendants are not prepared at this time to meet said allegations and cannot be prepared by May 27, 1968.

6.

That by Paragraph 39 (j), Plaintiff injects a new theory of recovery separate and apart from negligence; that said

allegations raise additional questions of limitations, whether said warranties, if any, ran to the Plaintiff, Claude J. Tomplait, or only to his employers, over whom these defendants had no control as to the manner or method in which their products, if any, were used.

7.

That this suit was filed on December 23, 1966 and to permit plaintiff to file his Second Amended Complaint at this late date would place an undue burden on these defendants in preparing their defenses to the allegations contained in Paragraph 39 (h), (i), and (j), which grounds or theories of recovery had not been previously pled by the plaintiff.

Gordon R. Pate

GORDON R. PATE
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Attorney for Defendants, Johns-Manville Products Corporation and Johns-Manville Fiber Glass, Inc.

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Objections of Defendants to Motion of Plaintiff for Leave to Amend Complaint was mailed to counsel for each of the other parties herein, addressed to Mr. Ben L. Reynolds, Royston, Rayzor & Cook, 877 San Jacinto Building, Houston, Texas 77002; Mr. Ward Stephenson, Stephenson Building, Orange, Texas; Mr. John Rienstra, Beaumont Savings Building, Beaumont, Texas 77701; Mr. George A. Weller, P. O. Box 350, Beaumont, Texas 77704; Mr. Charles S. Pipkin, P. O. Box 1632, Beaumont, Texas 77704; Mr. George Duncan, Beaumont Savings Building, Beaumont, Texas 77701; Mr. John Tucker, Beaumont Savings Building, Beaumont, Texas 77701.

Gordon R Pate

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ACL Doc 10655 · Page 4 of 4
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