JGT:DFG - 5/22/68

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

MAY 27 1968

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

By DEPUTY

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

CIVIL ACTION 5402

MOTION FOR SUMMARY JUDGMENT ON THE MAIN ACTION AND ON THE CROSS-ACTIONS OF THE DEFENDANT, GUSTIN-BACON MANUFACTURING COMPANY

Comes now Gustin-Bacon Manufacturing Comp any, one of the defendants in the above cause, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves the Court for a summary judgment dismissing the plaintiff's complaint, as well as all cross-actions filed by the co-defendants for contribution, and shows unto the Court the following:

1.

As shown by pre-trial stipulation and order, and the statement of plaintiff's contentions, plaintiff predicates this suit solely and alone on the contention that he is suffering from the disease or condition of "asbestosis". It is established by the deposition testimony of Dr. Irving J. Selikoff on file herein, and it is a fact, that the disease of asbestosis can only be acquired through exposure to asbestos or materials containing babestos. It is shown by the answers to interrogatories of this defendant, and it is a fact, that this defendant, Gustin-Bacon Manufacturing Company, did not manu facture or sell to any of the concerns for whom plaintiff alleges he was working any insulation material or any product of any kind containing asbestos as one of its constituents, and it is a fact that asbestos is not and has not been used in any of the insulating products manufactured and sold by this defendant.

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2.

Plaintiff's cause of action, if any he has, is predicated solely and alone on the theory that he is suffering from asbestosis. It is undisputed that such disease or condition can only be acquired by exposure to asbestos or products containing asbestos, and it is undisputed that this defendant did not manufacture or sell any insulating materials containing asbestos. There is no disputed issue of fact in this case as pertains to the suit or any cross-action against this defendant, and plaintiff's suit and the cross-actions against defendant, Gustin-Bacon Manufacturing Company, should be dismissed.

WHEREFORE, defendant, Gustin-Bacon Manufacturing Company, moves and prays the Court that upon hearing hereof that summary judgment be entered, dismissing plaintiff's action as well as all cross-actions, and for such other relief in the premises as it may show itself entitled to receive.

Beaumont Savings Building
Beaumont, Texas
Attorney for Defendant, Gustin-Bacon Manufacturing Company

CERTIFICIATE OF SERVICE

A true and correct copy of the foregoing motion for summary judgment of defendant, Gustin-Bacon Manufacturing Company, was on the 22 day of May, 1968, served upon counsel for each of the other parties herein by depositing the same in the United States mail postage prepaid, 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. Gordon Pate, Beaumont Savings Building, Beaumont, Texas 77701; Mr. James W. Mehaffy, San Jacinto Building, Beaumont, Texas 77701; Mr. George Murphy, San Jacinto Building, Beaumont, Texas 77701.

Attorney for Gustin-Bacon Manufacturing Company

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