IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
JUN 7 1968
James R. Cooney, Clerk, U. S. Court
By Virginia R. Lowe DEPUTY

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

MOTION FOR SUMMARY JUDGMENT ON THE MAIN ACTION AND ON THE CROSS-ACTIONS OF THE DEFENDANT, JOHNS-MANVILLE FIBER GLASS, INC.

COMES NOW Johns-Manville Fiber Glass, Inc., 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 shown by the answers to interrogatories of this defendant, and it is a fact, that this defendant, Johns-Manville Fiber Glass, Inc., did not manufacture 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.

2.

Plaintiff's cause of action, if any he has, is predicated solely and alone on the theory that he is suffering from asbes-

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tosis. 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, Johns-Manville Fiber Glass, Inc., should be dismissed.

WHEREFORE, defendant, Johns-Manville Fiber Glass, Inc., 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.

Gordon R. Pate

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Attorney for Defendant, Johns-Manville Fiber Glass, Inc.

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Motion for Summary Judgment of defendant, Johns-Manville Fiber Glass, Inc., was on the 7th day of June, 1968, served upon counsel for each of the other parties herein by depositing the same in the United States mail, 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 Riemstra, Beaumont Savings Building, Beaumont, Texas 77701; Mr. George A. Weller, P.O. Box 850, 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; Mr. James W. Mehaffy, San Jacinto Building, Beaumont, Texas 77701.

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