JGT:DFG - 6/10/68

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

JUN 11 1968 19

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

By DEPUTY

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

CIVIL ACTION 5402

Affidavit and Argument in Support of Motion for Summary Judgment of Gustin-Bacon Manufacturing Company

Statement

1.

Paragraph 3 of the pre-trial stipulation and order entered in this case shows that plaintiff claims that he came in contact with materials used containing asbestos and that as a result thereof he is suffering from the condition of "asbestosis". Other provisions in the pre-trial order clearly establish that plaintiff's claim stands or falls on the contention that he is disabled and suffered the damages sued for because he has asbestosis caused by contact with materials containing asbestos.

It is established by the deposition of Dr. Irving J. Selikoff and it is a medically accepted fact that the disease or condition of asbestosis can only be acquired through contact with asbestos or materials containing asbestos.

2.

As shown by the answers of Gustin-Bacon Manufacturing Company to plaintiff's interrogatories, particularly Interrogatory No. 1, as well as the affidavit of Walter Gubar attached hereto, the insulating products manufactured by this defendant do not contain asbestos.

Summary

Since plaintiff predicates his claim solely on the theory that he is suffering from asbestosis, which can only be caused by asbestos, and since this defendant's product contains none, it is obvious that there is no reason for this defendant to be kept in this suit, either on the main action or on the cross-actions. Under the undisputed facts and based upon the contentions of the plaintiff as set forth in the pre-trial order, it is respectfully submitted that the motion for summary judgment of Gustin-Bacon Manufacturing Company, both as to the main action and the cross-actions for contribution should be sustained.

Respectfully submitted,

Beaumont Savings Building
Beaumont, Texas
Attorney for Defendant

CERTIFICATE OF SERVICE

The foregoing argument in support of motion for summary judgment and affidavit was served by mailing copies thereof in the United States mail on June 11, 1968, to Mr. Ben L. Reynolds, Royston, Rayzor & Cook, 877 San Jacinto Building, Houdton, 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

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

CLAUDE J. TOMPLAIT

VS. X

X CIVIL ACTION 5402

COMBUSTION ENGINEERING,

INC., ET AL

THE STATE OF KANSAS X

COUNTY OF X

Walter Gubar, being duly sworn, upon oath states that he is Laboratory Manager for Gustin-Bacon Division of Certain-Teed Products Corporation, which was formerly Gustin-Bacon Manufacturing Company. He is and has been familiar with the composition of the insulation products manufactured by Gustin-Bacon Manufacturing Company and the Gustin-Bacon Division of Certain-teed Products Corporation. This insulation product is composed of glass fibers bonded with phenolic resin and contains no asbestos.

FURTHER, AFFIANT SAITH NOT.

Walter Gubar

THE STATE OF KANSAS X
COUNTY OF X

Walter Gubar, being duly sworn, upon oath states that he has read the foregoing affidavit and is familiar with the facts stated therein, and that the same are true and correct.

Walter Gubar

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this 3rd day of June, 1968.

NOTARY PUBLIC in and for
WYANDOTTE County, Kansas

CIVIL ACTION 5402

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

Affidavit and Argument in Support of Motion for Summary Judgment of Gustin-Bacon Manufacturing Company

ORGAIN, BELL & TUCKER
ATTORNEYS AT LAW
BEAUMONT, TEXAS

The Tomplait v. Combustion Engineering Case File (1962-1969), Affidavit in support of motion for summary judgme...
ACL Doc 10675 · Page 4 of 4
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