FILED
JUN 13 1968
James R. Cooney, Clerk, U. S. Court
By Virginia R. Lewis
DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLAUDE J. TOMPLAIT :

VS. : CIVIL NO. 5402

COMBUSTION ENGINEERING, INC., ET AL :

PLAINTIFF'S ANSWER TO MOTIONS FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the plaintiff and in answer to the motions for summary judgment filed by the defendants Gustin-Bacon Manufacturing Company, Pittsburgh Plate Glass Company, and Johns-Manville Fiber Glass, Inc., and would show unto the Court:

1.

It was previously agreed by the attorney for the plaintiff and representatives of the defendant counsel group that the plaintiff would be sent to Dr. Fischer of the Kelsey-Seybold Clinic in Houston, Texas, for an examination on behalf of the defendants. In making this agreement, it was fully understood that Dr. Leary, formerly associated with Kelsey-Seybold Clinic and who had examined the plaintiff in the past was now engaged in teaching profession and would not talk to the defendants' attorneys, would not agree to testify and would not agree to examine the plaintiff under any circumstances. The plaintiff's attorney, having been advised of this latter fact by the defense counsel then agreed that if Dr. Leary would not be

called to give his medical opinions or conclusions and if none of the conclusions or opinions of Dr. Leary were to be used in the case, whether through deposition, reports, oral testimony obtained through subpoena, or any other means, that the plaintiff's attorney would then agree to allow the defendants to have Dr. Fischer examine the plaintiff. This was completely understood by plaintiff's attorney and the representative of the defendant counsel group.

2.

That when the examination by Dr. Fischer was completed he found that the plaintiff was suffering from the disease asbestos, which was the same findings that all of the plaintiff's doctors had made.

3.

That in view of this fact, the plaintiff's attorney called various counsel for the three defendants and advised that in light of the undisputed medical testimony as it stood, plaintiff's attorney did not feel that it was proper to keep the three defendant companies in the case, when such companies did not manufacture asbestos products, but fiberglass or perhaps other products. Plaintiff's counsel requested of the attorneys representing the three said defendants to see if the other defense counsel would object to the dismissal of these defendants without prejudice to the plaintiff's rights. One of the remaining defense attorneys would not agree to this dismissal but instead is now proceeding to get the testimony of Dr. Leary by some means or the other and to interject into the case some medical question of whether or not the plaintiff has a disease that could have been contributed to by the inhalation of silica dust or other foreign particles, and therefore not

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only violate the agreement between the attorneys as to the medical examination by Dr. Fischer, but also attempting to assert that the plaintiff does not have asbestosis but some other disease which could have been contributed to by the three defendants who have moved for summary judgment.

4.

In light of these events, plaintiff therefore says that he must oppose the motions for summary judgment until such time as the court should have a hearing on the question as to whether or not medical testimony of Dr. Leary can be gone into in violation of this attorneys' agreement. If this testimony can not be gone into, then there is no medical evidence of any kind that would indicate that the plaintiff has any disease other than asbestosis. Therefore, it would seem in order for the motions for summary judgment at that time be granted by the court.

5.

Plaintiff encloses with this answer a motion for the defendants to produce the names, addresses and a general statement of the nature of testimony that each defendant might produce from any medical doctor. If this motion is granted, then it would become apparent whether or not any of the defendants will attempt to introduce medical testimony contrary to that produced up to this time by all of the doctors whose testimony can be given under the attorneys' agreement.

WHEREFORE, plaintiff prays that the motions for summary judgment be at this time overruled or abated until such other developments in accord with this motion can be made.

Respectfully submitted,

STEPHENSON, THOMPSON AND HORRIS

By _____
Attorneys for Plaintiff
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Orange, Texas 77630

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COMBUSTION ENGINEERING, INC., ET AL :

MOTION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the plaintiff, by and through his attorneys, and requests the Court to order the defendants to produce for inspection and to be made a part of the record in this case, a list of doctors who might testify in this case on behalf of the defendants, giving the name and address of such doctor and the general nature of the testimony expected to be produced by such doctor.

Respectfully submitted,

STEPHENSON, THOMPSON AND MORRIS

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
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CERTIFICATE OF SERVICE BY MAIL

A copy of the foregoing plaintiff's answer to motions for summary judgment with attached motion has been forwarded to the following attorneys on this the 11th day of June, 1968:

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Attorney for Defendant OWENS-CORNING FIBER GLASS CORPORATION

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Attorney for Defendant FIBERBOARD PAPER PRODUCTS CORPORATION

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Ward McFarlane
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