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

FILED
JUL 19 1968
James R. Cooney, Clerk, U. S. Court
By Margaret Turner DEPUTY

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

ANSWER OF DEFENDANT PITTSBURGH CORNING CORPORATION TO PLAINTIFF'S THIRD AMENDED COMPLAINT

Defendant, PITTSBURGH CORNING CORPORATION, in response to Plaintiff's Third Amended Complaint, would allege and aver as follows:

I.

Answering Paragraphs 1, 2, 3, 8 and 10 Defendant admits the same.

II.

Answering Paragraphs 4, 5, 6, 7, 9, 11 and 12, this Defendant says that each of said Paragraphs refer to parties other than this Defendant, and this Defendant is therefore not required to, and does not have sufficient information to answer the same.

III.

Answering Paragraph 13, this Defendant says that it is without sufficient knowledge or information to admit or deny the allegations which refer to the products manufactured by all the Defendants, but this Defendant admits that some of its products contain some of the materials alleged, but it is denied that any of such products caused any injury to Plaintiff.

IV.

Answering the allegations contained in Paragraphs 14, 37, 38, 39, 40, 41, 42, 43, 44, 45 and 46, this Defendant denies each and every, all and singular the allegations contained in each of said paragraphs, and demands strict proof thereof, if relevant.

V.

Answering the allegations in Paragraphs 15 through 36, this Defendant is without sufficient knowledge or information to constitute a belief as to the truth or verity of said allegations, and therefore can neither admit nor deny the same.

VI.

Answering the prayer to Plaintiff's Complaint, Defendant denies that Plaintiff is entitled to any of the relief sought.

VII.

This Defendant denies each and every allegation contained in said Third Amended Complaint not heretofore admitted, controverted or denied.

AFFIRMATIVE DEFENSES

VIII.

Further answering herein, and by way of affirmative defense, this Defendant says that the products which this Defendant manufactured and sold were at all times reasonably safe and fit for the purposes for which they were made, manufactured and sold. It is denied that the same were in anywise defective.

IX.

This Defendant denies that any product which it manufactured and sold in anywise caused, or brought about any injury or illness to Plaintiff and this Defendant further says that the physical condition of which Plaintiff complains, is the result, in whole or in part, of prior or subsequent injuries, diseases, bodily conditions and infirmities, for which this Defendant is in nowise liable or responsible.

X.

Further answering herein, this Defendant says that Plaintiff's cause of action, if any, accrued more than four years prior to the institution of this

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action, and Defendant therefore pleads the two-year and four-statutes of limitation of the State of Texas, in bar of Plaintiff's claim.

XI.

Further answering herein, this Defendant says that the injuries, conditions and damages of which Plaintiff complains were due solely and alone, or in the alternative, were proximately caused by the negligent acts, wrongs and omissions of the Plaintiff, and that at all times material hereto, Plaintiff failed to exercise ordinary care for his own safety, all of which proximately caused the injuries and conditions of which he now complains, all of which is plead in bar hereof.

XII.

For further answer herein, if such be necessary, and as an affirmative defense, this Defendant says that Plaintiff was fully advised of the condition of which he now complains, in July 1961; that the said Plaintiff at that time was suffering from weakness and shortness of breath and that he was then and there instructed and directed by a physician of his own choice to stop working in or around areas whereby he was exposed to inhalation of dust, or other foreign substances. This Defendant further says that Plaintiff failed to heed such warnings, instructions and directions of the said physician of his own choice, but that he continued to voluntarily expose himself to the matters of which he now complains, and Plaintiff failed to take reasonable precautions, such as the use of a safety mask or respirator, and he voluntarily exposed himself to the conditions and hazards of which he complains, and voluntarily assumed the risk of injury thereby, all of which is plead in bar hereof.

XIII.

For further answer and affirmative defense, this Defendant says that if the Plaintiff did sustain any injury, as the result of the use of any product manufactured by this Defendant, that Plaintiff used the product with full knowledge of the fact that he was creating dust from the insulation products, and that he continued to work in dust, despite the warnings of a physician of his own

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choice that he should stop working with, in and around materials or in areas whereby he was exposed to inhalation of dust, or other foreign substances, but that he continued to work under such conditions, knowing that he would breathe the dust, and that it was, or would be harmful to him, which bars him from any recovery under the theory that any risk was open and obvious to him, and he is likewise barred under the doctrine of volenti non fit injuria.

XIV.

For further answer herein, and by way of affirmative defense, this Defendant says that if Plaintiff sustained any injury, as a result of the use of any product manufactured by this Defendant, there existed no duty on the part of this Defendant to warn Plaintiff of any potential danger in the handling of the insulation materials and products, and this Defendant denies that it owed any duty to Plaintiff to give any warning with respect to any such product.

XV.

For further answer herein, and by way of affirmative defense, this Defendant would show that its products were reasonably fit and safe for the purposes for which they were made, manufactured and sold, and that if the Plaintiff were injured as a result of the use of any of its products, that such injury was the result of the negligence of Plaintiff's employers and contractors, and not this Defendant, in failing to adopt and enforce safe working practices and methods.

XVI.

For further answer herein, and by way affirmative defense, this Defendant says that the Plaintiff's injuries and damages, if any, were the result of an unavoidable accident.

XVII.

For further answer herein, Defendant says that if the Plaintiff should recover any judgment herein (and Defendant specifically denies that Plaintiff is entitled to recover judgment as against this Defendant), then, and in such event, and under the provisions of Article 2212 of Vernon's Annotated Civil Statutes of

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the State of Texas, as well as at common law, Defendant is entitled to judgment for indemnity and/or contribution over and against the co-defendants herein, and each of them, jointly and severally.

WHEREFORE, DEFENDANT moves and prays the Court that upon trial hereof Plaintiff recover nothing, as against this Defendant, and in the alternative, for judgment against the co-defendants for indemnity and/or contribution over, and for such other and further relief in the premises as this Defendant may show itself justly entitled to receive.

WELLS, DUNCAN AND BEARD

By _____
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Beaumont, Texas

Attorneys for Defendant,
PITTSBURGH CORNING
CORPORATION

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Answer of Defendant, Pittsburgh Corning Corporation to Plaintiff's Third Amended Complaint was on the 19th day of July, 1968, served upon counsel for each of the other parties herein by depositing the same in the United States Mail, in correctly addressed, stamped and sealed envelopes to:

Mr. Ben L. Reynolds
Royston, Rayzor & Cook
877 San Jacinto Building
Houston, Texas 77002

Mr. Ward Stephenson
Stephenson Building
Orange, Texas 77630

Mr. John G. Tucker
Orgain, Bell & Tucker
Beaumont Savings Building
Beaumont, Texas 77701

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