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

CLAUDE J. TOMPLAIT

vs.

COMBUSTION ENGINEERING, INC., ET AL

CIVIL ACTION NO. 5402

FILED
JUL 19 1968
James R. Cooney, Clerk, U. S. Court
By Mildred C. Verret
DEPUTY

THIRD PARTY COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT IN AND FOR THE EASTERN DISTRICT OF TEXAS, BEAUMONT DIVISION AND THE HONORABLE THE JUDGES THEREOF:

Comes now PITTSBURGH CORNING CORPORATION, one of the Defendants in the above-styled and numbered cause, with leave of Court first had and obtained, and for a Complaint against UNARCO INDUSTRIES, INC., successor in interest to UNION ASBESTOS AND RUBBER COMPANY, named herein as Third Party Defendant, alleges as follows:

I.

At all of the times herein mentioned, PITTSBURGH CORNING CORPORATION was and still is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal offices and place of business located in the City of Pittsburgh, Pennsylvania.

II.

UNARCO INDUSTRIES, INC. is the successor in interest to UNION ASBESTOS AND RUBBER COMPANY, an Illinois corporation, with principal offices and place of business located at 111 West Perry Street, Bloomington, Illinois, 61701, where service of process may be had. Third Party Plaintiff requests that Defendant UNARCO INDUSTRIES, INC. be served with Citation, by serving the Secretary of State of the State of Texas, under the provisions of Rule 4 of the Federal Rules of Civil Procedure, and of Section 2031(b) of Vernon's Annotated Civil Statutes of the State of Texas, and other applicable Statutes.

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III.

CLAUDE J. TOMPLAIT, on December 23, 1966, filed his Original Complaint against this Defendant and Third Party Plaintiff, Pittsburgh Corning Corporation, and other Defendants, which are named in the Original Complaint, to all of which reference is hereby made, said Complaint having been filed in the United States District Court in and for the Eastern District of Texas, Beaumont Division, claiming damages for personal injuries and for an occupational disease, in the sum of $500,000. Subsequently, the Plaintiff has filed his Third Amended Complaint, alleging that the said Plaintiff contracted asbestosis as a result of handling and working with insulation materials containing asbestos fibers, praying for general and special damages in the sum of $500,000, and for exemplary damages in the sum of $500,000, copy of said Third Amended Original Complaint being attached hereto and made a part hereof as "EXHIBIT A."

IV.

In the Third Amended Original Complaint filed herein on behalf of the said Plaintiff, it is alleged that the personal injuries and occupational disease and other damages suffered and incurred by him, were the result of the negligence of your Third Party Defendant, Pittsburgh Corning Corporation, its agents, servants and employees, and other manufacturers of asbestos insulation materials, all of which allegations are false, and which this Third Party Plaintiff has denied in its Answer heretofore filed herein.

V.

Said Third Party Plaintiff would show that at all of the times and places mentioned and set forth in the Complaint herein, Union Asbestos and Rubber Company, predecessor in interest to Unarco Industries, Inc., manufactured an insulating material having a trade name of UNIBESTOS, and that the said Third Amended Original Complaint, particularly in Paragraphs numbered 21, 22, 25 and 27, specifically alleges that the said Plaintiff, while working as an insulator on certain jobs mentioned therein, came in contact with UNIBESTOS. In addition, the Plaintiff alleges in Paragraph numbered 27 that he likewise came in contact with UNIBESTOS "from about November 30, 1962 to

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 2 of 25 asbestosclaims.law/library/10604/2

January 18, 1963 * * *," while working on the job mentioned therein.

VI.

Third Party Plaintiff would show this Court that on or about June 30, 1962, an agreement of purchase was entered into by and between Pittsburgh Corning Corporation, Third Party Plaintiff herein, and Union Asbestos and Rubber Company, predecessor in interest to Unarco Industries, Inc., wherein Third Party Plaintiff agreed to purchase a plant located near Tyler, Smith County, Texas, from Third Party Defendant, Union Asbestos and Rubber Company, which plant produced an asbestos type high temperature insulation product with filler, the same having been marketed by Third Party Defendant as UNIBESTOS pipe and block insulation; that the Third Party Defendant likewise, by said contract of sale, sold to Third Party Plaintiff all of its patents and patents applications and its trademarks "UNIBESTOS," "SUPER UNIBESTOS," and "SUPERBESTOS;" that by the terms and provisions of said contract of sale, Third Party Plaintiff, Pittsburgh Corning Corporation, did not take possession of said plant in Tyler, Texas, or of the above-mentioned trademarks or inventory of the said Union Asbestos and Rubber Company, until July 2, 1962; that there was a considerable backlog of orders which had been received and processed by Union Asbestos and Rubber Company, prior to the date that Third Party Plaintiff took possession of the said plant in Tyler, Texas, and of the other facilities of Union Asbestos and Rubber Company; that Third Party Plaintiff was required by the terms and provisions of said contract to complete and ship said orders by virtue of that certain formula which was set out in Paragraphs 8(a), (b), (c) and (d) of said agreement of purchase.

VII.

Third Party Plaintiff would show that if the Plaintiff, Claude J. Tomplait, contracted the disease of asbestosis as he alleged in his Third Amended Original Complaint, by reason of his having worked as an insulator on the jobs mentioned and set forth in his said Complaint, that such work was performed and his exposure to UNIBESTOS or any of the other products of Union Asbestos and Rubber Company was at a time when the said Third Party

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 3 of 25 asbestosclaims.law/library/10604/3

Defendant was manufacturing and marketing said products, and that if this Court should find that the said Plaintiff did, in fact, contract said disease by virtue of his having come in contact with, or worked with UNIBESTOS, that Union Asbestos and Rubber Company, predecessor in interest to Unarco Industries, Inc., should be liable and responsible for the damages allegedly sustained by the said Plaintiff, Claude J. Tomplait. Third Party Plaintiff would further allege and aver that, in connection with the allegations set forth in Paragraph 27 of the Third Amended Complaint, wherein he alleges and avers that from November 30, 1962 to January 18, 1963, he was employed by Aber Company, at the Gulf States Power House in Bridge City, Texas, at which time he came in contact with UNIBESTOS, that the UNIBESTOS mentioned therein was a product which had been manufactured by Union Asbestos and Rubber Company prior to the Third Party Plaintiff's having purchased the plant's facilities and inventory of the Union Asbestos and Rubber Company, and that such materials had been sold to the Aber Company prior to the time when this Defendant Pittsburgh Corning Corporation, actually manufactured the product UNIBESTOS.

VIII.

Third Party Defendant would further show this Court that the injuries and damages, if any, alleged to have been received or sustained by Plaintiff, were not caused by or contributed to by Pittsburgh Corning Corporation, its agents, servants or employees, but that the same were due solely to the negligence of the said Union Asbestos and Rubber Company, predecessor in interest to Unarco Industries, Inc., for all of the reasons set forth and alleged in Plaintiff's Third Amended Complaint. In addition, Third Party Plaintiff, Pittsburgh Corning Corporation, would show this Court that if the Plaintiff was injured and damaged as he alleges in said Third Amended Complaint, by virtue of his having come in contact in said Third Amended Complaint, by virtue of his having come in contact with UNIBESTOS that the Third Party Defendant, Unarco Industries, Inc. is obligated, under the above-mentioned agreement of purchase, to indemnify and hold harmless Pittsburgh Corning Corporation, from any and all damages, which may have been sustained by the

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 4 of 25 asbestosclaims.law/library/10604/4

said Plaintiff by a specific provision contained in said Agreement of purchase, dated as of June 30, 1962, which said contract provided, in part, as follows:

> "7. UNION (meaning Union Asbestos and Rubber Company, predecessor in interest to UNARCO INDUSTRIES, INC.) will indemnify PC (Pittsburgh Corning Corporation) against liability and hold it harmless from loss in respect of any claim which may be asserted against PC arising from, or as a result of, or related to UNION's conduct or operation of the H-T product business to and including the closing date thereof, whether such claim is asserted in respect to UNION's obligation under any contract or agreement, which at PC's request, it has assigned to PC pursuant to Paragraph 2 of this Article VI, or otherwise. UNION recognizes its responsibility to its customers for claims, if any, for damages caused by or arising out of the manufacture and sale of its H-T products which heretofore have been sold or distributed by UNION prior to closing date, and in the event of any such claim, UNION will promptly notify PC of any such claim which may be asserted against UNION in respect to the H-T products which it had made, used or sold prior to closing date."

IX.

Third Party Plaintiff, Pittsburgh Corning Corporation, therefore alleges and avers that if Plaintiff, CLAUDE J. TOMPLAIT shall obtain any award against it, it is entitled to full indemnity from the Third Party Defendant, the said UNARCO INDUSTRIES, INC., successor in interest to UNION ASBESTOS AND RUBBER COMPANY, including, without limitation, the recovery from said Third Party Defendant, of a reasonable sum as attorneys' fees and disbursements incurred, or to be incurred by the said Pittsburgh Corning Corporation, in defending said cause against the claim of the said Claude J. Tomplait.

WHEREFORE, PITTSBURGH CORNING CORPORATION, Third Party Plaintiff, prays that process in due form of law issue against UNARCO INDUSTRIES, INC., successor in interest to UNION ASBESTOS AND RUBBER COMPANY, by serving said Third Party Defendant, through the Secretary of State of Texas, under and by virtue of Article 2031(b) of Vernon's Annotated Statutes of the State of Texas, and that said Third Party Defendant be cited to appear and answer all and singular the matters aforesaid in the Plaintiff's Third Amended Complaint set forth; that if any recovery be decreed against PITTSBURGH CORNING CORPORATION, Defendant and Third Party Plaintiff herein, that there be a decree over against the said

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 5 of 25 asbestosclaims.law/library/10604/5

UNARCO INDUSTRIES, INC., requiring it to pay the amount of such recovery to PITTSBURGH CORNING CORPORATION, and to indemnify and exonerate PITTSBURGH CORNING CORPORATION, against any and all liability herein, including, without limitation, the recovery from said Third Party Defendant, of a reasonable sum as attorneys' fees, and disbursements incurred or to be incurred by the said PITTSBURGH CORNING CORPORATION, in defending said cause against the claim of CLAUDE J. TOMPLAIT; and that your Third Party Plaintiff, PITTSBURGH CORNING CORPORATION, have such other and further relief to which it may be entitled, and this Court competent to grant.

WELLS, DUNCAN AND BEARD

By George E. Duncan

515 Beaumont Savings Building
Beaumont, Texas 77701

Attorneys for PITTSBURGH CORNING CORPORATION, Defendant and Third Party Plaintiff

CERTIFICATE OF SERVICE

A true copy of the above and foregoing THIRD PARTY COMPLAINT against UNARCO INDUSTRIES, INC. was, on this the 19th day of July, 1968, served upon all other counsel of record in this action, by depositing the same in the United States Mail, addressed to each of said counsel, at his office.

George E. Duncan

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 6 of 25 asbestosclaims.law/library/10604/6

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 THIRD AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW CLAUDE J. TOMPLAIT, hereinafter called plaintiff, complaining of COMBUSTION ENGINEERING, INC., R & I REFRACTORY AND INSULATION CORPORATION, JOHNS-MANVILLE PRODUCTS CORPORATION, JOHNS-MANVILLE FIBER GLASS, INC., OWENS-CORNING FIBER GLASS CORPORATION, PITTSBURGH CORNING CORPORATION, GUSTIN-BACON MANUFACTURING COMPANY, PITTSBURGH PLATE AND GLASS COMPANY, FIBREBOARD PAPER PRODUCTS CORPORATION and EAGLE-PICHER INDUSTRIES, INC., hereinafter called defendants, and for cause of action, plaintiff alleges:

1.

That the ground upon which the jurisdiction of this Court depends is diversity of citizenship of the parties hereto.

2.

That the amount in controversy herein exceeds the sum of Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs.

3.

That plaintiff is a resident of the State of Texas, and resides in Orange County, State of Texas.

"EXHIBIT A"

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4.

That defendant COMBUSTION ENGINEERING, INC. is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware; that such defendant has an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

5.

That defendant, R & I REFRACTORY AND INSULATION CORPORATION is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of some State, with an agent for service; however at this time plaintiff does not know the name and address of such agent for service.

6.

That defendants JOHNS-MANVILLE PRODUCTS CORPORATION and JOHNS-MANVILLE FIBER GLASS, INC. were and during all of the times herein mentioned were corporations duly organized, created and existing under and by virtue of the laws of the State of Delaware; that all of such defendants have an agent for service, to-wit: Prentice-Hall Corporation System, Littlefield Building, Austin, Travis County, Texas. That plaintiff is suing both of these corporations and alleges that he is suing whichever one is responsible for the manufacture, production and distribution of the insulation materials hereinafter mentioned, but it is not known by plaintiff at this time which of said corporations is responsible.

7.

That defendant OWENS-CORNING FIBER GLASS CORPORATION is and during all of the times herein mentioned was a

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 8 of 25 asbestosclaims.law/library/10604/8

corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware; that such defendant has an agent for service, to-wit: C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

8.

That defendant PITTSBURGH CORNING CORPORATION is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Pennsylvania; that such defendant has an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

9.

That defendant GUSTIN-BACON MANUFACTURING COMPANY is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Missouri; that such defendant has an agent for service, to-wit, Paul O. Craig, 5531 Armour Drive, Houston, Harris County, Texas.

10.

That defendant PITTSBURGH PLATE AND GLASS COMPANY is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Pennsylvania; that such defendant has an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

11.

That defendant FIBREBOARD PAPER PRODUCTS CORPORATION is and during all of the times herein mentioned was a

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 9 of 25 asbestosclaims.law/library/10604/9

corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware; that such defendant has an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

12.

That defendant EAGLE-PICHER INDUSTRIES, INC. is and during all of the times herein mentioned was a corporation duly organized, created and existing under and by virtue of the laws of the State of Ohio; that such defendant has an agent for service, to-wit, C. T. Corporation System, Republic National Bank Building, Dallas, Dallas County, Texas.

13.

That defendants during all times herein mentioned and for a long time prior thereto, have been and now are engaged in the manufacture of materials used for insulation, such materials containing fiber glass, rock wool, foam glass, magnesium insulation, mineral wool, calcium silicate and asbestos; that the products manufactured, compounded and prepared by defendants, acting through their servants, employees, representatives and agents were and are placed on the market to be purchased and used by the public.

14.

That the various types of insulation compounded, manufactured and placed in containers and sold by the defendants contained chemicals and minerals and deleterious substances and matter which were highly poisonous, dangerous and harmful to human beings and to the health of man; that such materials were defective and were not suitable for the purpose for which they were intended. That each of

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 10 of 25 asbestosclaims.law/library/10604/10

the defendants knew, or should have known, that the chemical compounds and deleterious substances and matter in said insulation as compounded, prepared and manufactured by defendants were highly poisonous, dangerous and harmful to human beings and to the health of man and that such materials were defective and were not suitable for the purposes for which they were intended.

15.

The plaintiff says that in the year 1959, the exact dates being unknown, he was employed by B & B Engineering and Supply Company at the DuPont Plant in Orange, Texas, and that in the course of his employment as an insulator, he was required to come in contact with the following materials: Foamglas, magnesium and fireproofing.

16.

The plaintiff says that in the year 1959, for approximately nine to ten months, he was employed by Brooks-Fisher Insulating Company at the Gallitan Power House in Gallitan, Tennessee, and that in the course of his employment as an insulator, he was required to come in contact with the following materials: Asbestos and magnesium.

17.

The plaintiff says that in the year 1960, for approximately two months, he was employed by The Fluor Corporation, Ltd. at Kaplan, Louisiana on the Cow Island Job, and that in the course of his employment as an insulator, he was required to come in contact with magnesium.

18.

The plaintiff says that in the year 1960, the exact dates being unknown, he was employed by B & B Engineering & Supply Company, Inc., at the DuPont Plant in Orange, Texas,

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 11 of 25 asbestosclaims.law/library/10604/11

and that in the course of his employment as an insulator, he was required to come in contact with foamglas, magnesium and fireproofing.

19.

The plaintiff says that in the year 1960, the exact dates being unknown, he was employed by Armstrong Contracting and Supply Corporation at the Firestone Plant in Orange, Texas, and that in the course of his employment as an insulator, he was required to come in contact with magnesium.

20.

The plaintiff says that in the year 1961, the exact dates being unknown but being for approximately nine months, he was employed by Armstrong Contracting and Supply Corporation at the Firestone Plant in Orange, Texas, and that in the course of his employment as an insulator, he was required to come in contact with magnesium and Careytempt.

21.

The plaintiff says that in the year 1961, from September, 1961, to January, 1962, he was employed by The Aber Company, Inc., at the Gulf States Power House, in Bridge City, Texas, and that in the course of his employment as an insulator, he was required to come in contact with the following materials: Kaytherm (calcium silicate); Aber 2 to 3 (cement); Sealfas 3149 (mastic); Aluminum ells (mastic); Foamglas (foamed silicate); aluminum rolls (foamed silicate); Overkote (asphalt emulsion); Unibestos (asbestos fiber); Chimaseal (mastic); Steel bands (Mastic); and aluminum seals (mastic).

22.

The plaintiff says that from March, 1962, to May, 1962, he was employed by The Aber Company, Inc., at the Gulf

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asbestosclaims.law/library/10604/12

Oil Refinery, in Port Arthur, Texas, and that in the course of his employment as an insulator, he was required to come in contact with the following materials: Kaytherm (calcium silicate); Aber 2 to 3 (cement); Sealfas 3149 (mastic); aluminum ells (mastic); Foamglas (foamed silicate); aluminum rolls (foamed silicate); Overkote (asphalt emulsion; Unibestos (asbestos fiber); Climaseal (mastic); steel bands (mastic); and aluminum seals (mastic).

23.

The plaintiff says that during the year 1962, he worked for Sabine Insulation Company, Inc., at the Firestone Plant in Orange, Texas, and at Levingston Shipbuilding Company in Orange, Texas, and that in the course of his employment as an insulator, he was required to come in contact with the following materials: Calcium silicate, mineral wool insulating cement and aluminum jacketing.

24.

The plaintiff says that during the year 1962, he worked for Armstrong Contracting and Supply Corporation, the exact dates being unknown to him, at the Firestone Plant in Orange, Texas, and that in the course of his employment as an insulator, he was required to come in contact with magnesium.

25.

The plaintiff says that during the year 1962, the exact dates being unknown to him, he worked for Johns-Manville Sales Corporation at the Bridge City Power House, in Bridge City, Texas, and that in the course of his employment as an insulator, he was required to come in contact with the following materials: Kaytherm (calcium silicate); Aber 2 to 3 (cement); Sealfas 3149 (mastic); Aluminum ells (mastic); Foamglas (foamed

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 13 of 25 asbestosclaims.law/library/10604/13

silicate); aluminum rolls (foamed silicate); Overkote (asphalt emulsion); Unibestos (asbestos fiber); Climaseal (mastic); steel bands (mastic); and aluminum seals (mastic).

26.

The plaintiff says that in the year 1962, from about June 11th to June 15th, 1962, he was employed by B & B Engineering & Supply Company, at the Big Three Welding Plant in Orange, Texas, and that in the course of his employment as an insulator, he was required to come in contact with the following materials: Foamglas, Careytemp, Thermoglas and Rock wool.

27.

The plaintiff says that from about November 30, 1962 to January 18, 1963, he was employed by The Aber Company at the Gulf States Power House in Bridge City, Texas, and that in the course of his employment as an insulator, he was required to come in contact with the following materials: Kaytherm (calcium silicate); Aber 2 to 3 (cement); Sealfas 3149 (mastic); aluminum dlls (mastic); Foamglas (foamed silicate); aluminum rolls (foamed silicate); Overkote (asphalt emulsion); Unibestos (asbestos fiber); Climaseal (mastic); steel bands (mastic); and aluminum seals (mastic).

28.

The plaintiff says that in the year 1963, the exact dates being unknown, he was employed by Sabine Insulation Company, Inc., at the Firestone Plant in Orange and Levingston Shipbuilding Company in Orange, Texas, and that in the course of his employment as an insulator, he was required to come in contact with the following materials: Calcium silicate, mineral wool insulating cement, aluminum jacketing and fiberglas.

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 14 of 25 asbestosclaims.law/library/10604/14

29.

The plaintiff says that in the year 1963, he was employed by B & B Engineering Company, at the DuPont Plant in Orange, Texas, the exact date being unknown to him, and that in the course of his employment as an insulator, he was required to come in contact with the following materials: Careytemp.

30.

The plaintiff says that in July and August, 1963, plaintiff was employed by Insulation Engineers, Inc., at some refinery in Pascagoula, Mississippi (the exact name being unknown to plaintiff), and that in the course of his employment as an insulator, he was required to come in contact with the following materials: Foamglas and magnesium.

31.

The plaintiff says that in the year 1963, he was employed by Triangle Insulation Company at the Houston Chemical Plant, in Beaumont, Texas, and that in the course of his employment as an insulator, he was required to come in contact with 85% magnesium.

32.

Plaintiff says that during the month of January, 1964, he was employed by B & B Engineering & Supply Company at the Big Three Welding Company plant in Orange, Texas, and that in the course of his employment he was required to come in contact with Foamglas.

33.

The plaintiff says that in the year 1964, he was employed by Triangle Insulation Company at the Houston Chemical Plant, in Beaumont, Texas, and that in the course of

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 15 of 25 asbestosclaims.law/library/10604/15

his employment as an insulator, he was required to come in contact with 85% magnesium.

34.

The plaintiff says that during the year 1964, he was employed by Industrial Insulation, Inc., at the Jefferson Chemical Plant, in Port Neches, Texas, and that in the course of his employment, he was required to come in contact with asbestos insulating material, fiberglas and magnesium; and he also was employed by Industrial Insulation, Inc. at the Atlantic Refinery, in Port Arthur, Texas, and that in the course of his employment, he was required to come in contact with magnesium.

35.

The plaintiff says that during the year 1964, he was employed by Sabine Insulation Company, Inc. at the Firestone Plant in Orange, Texas, and Levingston Shipbuilding Company, in Orange, Texas, and that in the course of his employment, he was required to come in contact with calcium silicate, mineral wool insulating cement, aluminum jacketing and fiberglas.

36.

The plaintiff says that during the year 1964, he was also employed by Johns-Manville Sales Corporation at the Gulf States Power Plant, Bridge City, Texas, and that in the course of his employment, he was required to come in contact with calcium silicate, rock wool and 85% magnesium.

37.

That at all times herein mentioned, the plaintiff was employed as an insulator, and that in the performance of his employment as an insulator, he was required to handle large

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 16 of 25 asbestosclaims.law/library/10604/16

quantities of the said insulation hereinabove mentioned, compounded, manufactured and prepared by the defendants. That in addition to the fact that the plaintiff actually used the products named above, and many more, as an insulator, and specifically many and various products containing asbestos, the plaintiff on many of the jobs while not using himself the specific products mentioned or perhaps not even using products containing asbestos himself, was nevertheless exposed to the dangerous materials and especially asbestos dust and fibers which were used by other workers in the same area at which the plaintiff was working.

38.

That during the period of time in which the plaintiff was employed as an insulator, in the course of his employment, due to the negligence and carelessness of the defendants, he was caused to come in contact with the insulation produced by defendants and its chemical compounds, deleterious substances and matter and directly in consequence of said negligence and carelessness of the defendants did sustain severe, permanent and disabling injuries as hereinafter set forth.

39.

That the injuries and damages complained of herein were directly and proximately caused by the negligence and carelessness of the defendants in the following additional particulars:

(a) That the defendants knew, or in the exercise of ordinary or reasonable care, ought to have known that the insulation they so prepared and manufactured were deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, and that plaintiff would

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 17 of 25 asbestosclaims.law/library/10604/17

not know of such danger to his health, notwithstanding which defendants negligently failed to take any reasonable precautions or exercise reasonable care to warn plaintiff of the danger and harm to which he was exposed while handling the defendants' said insulation;

(b) That the defendants knew or in the exercise of ordinary care, ought to have known that their said insulation was deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, and that the plaintiff would not know of such dangerous character, notwithstanding which defendants failed and omitted to provide plaintiff with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there was any, to protect him from being poisoned and disabled as he was by exposure to such deleterious and harmful compound substances and other material contained in said defendants' insulation.

(c) That the defendants knew or in the exercise of ordinary or reasonable care, ought to have known that their insulation was deleterious, poisonous and highly harmful to plaintiff's body, lungs, respiratory system, skin and health, notwithstanding which defendants negligently and carelessly packaged said insulation so that in the ordinary handling for installation thereof, this plaintiff would come in contact with such deleterious, poisonous and highly harmful compound substances and other material contained in said defendants' insulation.

(d) That the defendants knew, or in the exercise of ordinary or reasonable care, ought to have known that the insulation they produced contained deleterious, poisonous and

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 18 of 25 asbestosclaims.law/library/10604/18

highly harmful substances to human body, lungs, respiratory system, skin and health, notwithstanding which defendants negligently failed to take any reasonable precautions or exercise reasonable care by placing any warnings on their containers of said insulation to warn the handlers thereof of the dangers to health in coming in contact with said insulation.

(e) That the defendants knew or, in the exercise of ordinary or reasonable care, ought to have known that its insulation contained deleterious, poisonous and highly harmful substances to the human body, lungs, respiratory system, skin and health, notwithstanding which defendants negligently supplied to plaintiff containers of said insulation which were broken open and could not be transported without coming in contact with plaintiff's skin and body.

(f) That the defendants knew or in the exercise of reasonable care, ought to have known that their insulation contained deleterious and highly harmful substances to plaintiff's health, body, lungs, respiratory system, and skin, and defendants knew or, in the exercise of ordinary or reasonable care, should have known that plaintiff would not know the dangerous characteristics of their said insulation, notwithstanding which defendants negligently failed to take reasonable precautions or exercise reasonable care to warn the plaintiff of said danger and to instruct the plaintiff in the proper handling of their said insulation, or to take any reasonable precautions or exercise any reasonable care to protect plaintiff from harm and negligently failed to adopt and enforce a reasonable safe plan and method of handling and installing said insulation.

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 19 of 25 **asbestosclaims.law/library/10604/19**

(g) That the defendants knew or, in the exercise of reasonable care, ought to have known that their insulation was defective and that such insulation was not suitable for the purposes for which it was intended.

(h) That the defendants should have tested their products, especially those containing asbestos, to ascertain the safe or dangerous nature of such products before offering them for sale, or in the alternative, should have removed such products from the market upon ascertaining that such products would cause asbestosis.

(i) That the defendants should have devised a method of application of their products, especially those containing asbestos, that would have kept those using such products from contracting asbestos if the defendants would not remove such products from sale to the public.

(j) That the products of the defendants, especially asbestos, were warranted, either expressly or implied, to be merchantable, when in truth they were not, and therefore the defendants breached to the plaintiff, as well as to others the warranty of merchantability.

40.

The plaintiff would further show unto the Court that at all the times material hereto, over the period of years in which plaintiff has been employed as an insulator, the manufacture, sale and distribution of insulation materials with which plaintiff came in contact, was under the exclusive control of the defendants, their agents, servants and employees, and that had the defendants herein not been guilty of negligence as hereinabove set forth, the plaintiff would not have sustained his injuries and damages as herein set forth, and therefore, the plaintiff says that he is entitled to recover from the defendants under the doctrine of res ipsa loquitur.

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 20 of 25 asbestosclaims.law/library/10604/20

41.

That as a direct and proximate cause of the aforesaid occurrence and circumstances and the negligence and carelessness of the defendants, plaintiff was permanently and severely injured; that he has sustained a very serious and permanent injury to his lungs and respiratory system, which has affected other parts of his body; that he suffers from shortness of breath, inability to breathe, clubbing of the fingers and toes; that it is necessary that plaintiff have available to him at all times a container containing oxygen in order that he may be able to breathe; that the plaintiff has extreme difficulty with sleeping; that he tires easily; that he constantly coughs; that he has suffered from an extreme loss of weight; that his future outlook is over dim; that he has sought the services of many physicians in an effort to cure or arrest the condition from which he is suffering, but to no avail; that the plaintiff has lost his good health, all of which is permanently disabling to him.

42.

That by reason of the negligence and carelessness of the defendants, and each of them, as hereinbefore alleged, and because of the harm and injury to his health and the resulting disability therefrom, plaintiff has suffered a total loss of wages and earnings and will continue to suffer such loss; that he was unable to continue in his employment as an insulator, an employment that he had been engaged in for many years, or to engage in any gainful activity at the present time, and his earning capacity has been greatly and forever permanently diminished and impaired.

43.

That in an effort to treat, relieve and heal himself of said injuries and to regain his health, the plaintiff was

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 21 of 25 asbestosclaims.law/library/10604/21

obliged to incur and will incur in the future an expense amounting to a considerable sum of money for medical and hospitalization care, expenses for medicines, supplies, and so forth, the exact amount of which plaintiff is unable to accurately estimate at this time.

44.

That by reason of the facts hereinbefore alleged, plaintiff has suffered and sustained at the hands of the defendants, and each of them, general and special damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

45.

The plaintiff further says that his injuries and damages were directly and proximately caused by the gross negligence, wantonness, omission and conscious indifference on the parts of the defendants herein, their agents, servants, employees, managers, superintendents, supervisors and officers, and their utter disregard for the lives and welfare of persons coming in contact with their products; that the award for this count should be in such an amount that it would act as a deterrent to the defendants and others from the future commission of like offenses and wrongs; and plaintiff further says that if each of the acts of negligence alleged above did not independently and of themselves constitute gross negligence, then certainly all of said acts of negligence combined and in the aggregate constituted gross negligence, and the proximate cause of the plaintiff's injuries; that as a result of plaintiff's injuries, he has suffered actual damages as herein shown, which were the direct and proximate cause of his injuries, for which plaintiff is entitled to recover exemplary damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 22 of 25 asbestosclaims.law/library/10604/22

That by reason of the facts hereinabove alleged, plaintiff has suffered and sustained at the hands of the defendants, and each of them, general and special damages in the sum of Five Hundred Thousand ($500,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants and each of them, in the sum of Five Hundred Thousand ($500,000.00) Dollars general and special damages, together with the sum of Five Hundred Thousand ($500,000.00) Dollars exemplary damages, together with his costs and disbursements herein, and interest on said judgment from the date thereof until paid at the rate of six (6%) per cent per annum, and such other and further relief to which he may be entitled to receive.

STEPHENSON, THOMPSON AND MORRIS

By_____
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Orange, Texas 77630

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 23 of 25 asbestosclaims.law/library/10604/23

CERTIFICATE OF SERVICE BY MAIL

A copy of the foregoing notice and motion with attached amended complaint has been forwarded to the following attorneys of record on this the 11th day of June, 1968:

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Attorney for Plaintiff

The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco Published by AsbestosClaims.Law
ACL Doc 10604 · Page 24 of 25 asbestosclaims.law/library/10604/24

CIVIL ACTION NO. 5402

CLAUDE J. TOMPLAIT

vs.

COMBUSTION ENGINEERING, INC., ET AL

THIRD PARTY COMPLAINT

(Impleading UNARCO INDUSTRIES, INC.)

LAW OFFICES OF
WELLS, DUNCAN AND BEARD
BEAUMONT SAVINGS BUILDING
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The Tomplait v. Combustion Engineering Case File (1962-1969), Third-party complaint against Unarco
ACL Doc 10604 · Page 25 of 25
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asbestosclaims.law/library/10604/25