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

FILED
SEP 10 1968
James R. Cooney, Clerk, U. S. Court
By Margaret Turner DEPUTY

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

ANSWER TO THIRD PARTY COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Unarco Industries, Inc., successor in interest to Union Asbestos and Rubber Company, Third Party Defendant herein, and files this its Answer to the Third Party Complaint on file herein and would respectfully show unto the Court the following:

I.

Third Party Defendant says that it can neither admit nor deny the allegations contained in Paragraph I of the Third Party Complaint because it does not have knowledge of the citizenship of Third Party Plaintiff.

II.

Third Party Defendant admits that service of process had upon it was proper, but otherwise denies the remaining allegations contained in Paragraph II.

III.

In answer to Paragraphs III, IV and V of the Third Party Complaint, Third Party Defendant would show that it is not required to respond to such allegations and facts inasmuch as such facts contained therein are merely a recitation of the

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nature of the claim brought by Plaintiff against the Defendant and Third Party Plaintiff Pittsburg Corning Corporation and other Defendants, all of which has been denied by the Third Party Plaintiff Pittsburg Corning Corporation and all of which the Third Party Defendant herein here and now denies generally.

IV.

In answer to Paragraph VI of the Third Party Complaint, Third Party Defendant admits the allegations pertaining to the sale of the plant, patents and patents applications and the other terms and provisions as they are contained in the Agreement of Purchase dated June 30, 1962, but otherwise denies any remaining allegations.

V.

Third Party Defendant denies the allegations contained in Paragraph VII of the Third Party Complaint.

VI.

Third Party Defendant denies the allegations contained in Paragraph VIII of the Third Party Complaint and specifically denies that the alleged indemnity provision has any application under the facts of this case and further denies that Third Party Plaintiff is entitled to any form of contractual indemnity as pertains to this cause of action.

VII.

Third Party Defendant denies the allegations contained in Paragraph IX of the Third Party Complaint and for the relief prayed for in the concluding paragraph of said Complaint.

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VIII.

Subject to all of the foregoing, Third Party Defendant here and now enters its general denial, thereby denying each and every, all and singular, the material allegations contained in the Third Party Complaint and demanding strict proof thereof as required by the laws of this State.

IX.

For affirmative answer herein, Third Party Defendant would show that Plaintiff's alleged exposure or contact with UNIBESTOS was from November 30, 1962 to January 18, 1963, which dates are subsequent to the date of the sale to Pittsburg Corning Corporation of the plant, patents and product formerly owned by Union Asbestos and Rubber Company and that the Third Party Defendant has no responsibility to Plaintiff or Third Party Plaintiff arising out of the operation of this business subsequent to July 2, 1962, the sales or the use of the products thereafter made by Third Party Plaintiff; or alternatively, Third Party Defendant would show that the operation of this business by the Third Party Plaintiff, its use and sale of the products, amount to a new independent and intervening cause as that term is known and defined in law.

X.

For further affirmative defense herein, Third Party Defendant would show that any alleged breach of warranty, either express or implied, if any, was solely that of the Third Party Plaintiff and not any warranty or representation made by this Third Party Defendant; that any alleged negligence or fault in

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the sale of said product, its use or installation, is solely that of the Third Party Plaintiff and not of this Third Party Defendant.

XI.

Answering further affirmatively herein, Third Party Defendant would show that any cause of action which Plaintiff may have against the Defendant Pittsburg Corning Corporation accrued more than two years prior to the filing of this action and this Third Party Defendant pleads the Two Year Statute of Limitations of the State of Texas to bar Plaintiff's right to recover.

XII.

For further affirmative answer herein, this Third Party Defendant says that Plaintiff's physical condition of which he now complains, was due solely to causes other than any negligence, fault or breach of warranty on the part of this Third Party Defendant.

XIII.

For further affirmative defense herein, this Third Party Defendant says that the injuries, conditions and damages of which Plaintiff now complains were proximately caused by, or alternatively solely caused by, negligent acts and omissions committed by the Plaintiff himself while working with and around insulation materials incident to his trade and occupation.

XIV.

For further affirmative defense herein, Third Party Defendant says that the injuries, conditions and damages of which

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Plaintiff complains were proximately caused by, or alternatively were solely caused by, negligent acts and/or omissions committed by various employers for whom Plaintiff allegedly worked during the course of which work he alleges and claims that he was exposed to various types of insulating products.

XV.

For further affirmative answer herein, Third Party Defendant would show that the Plaintiff with full knowledge of the fact that he was working in dust and creating dust from the insulation products knew that he would be subject to injury and that such working conditions and any risk attendant thereto were open and obvious to him and Third Party Defendant here and now invokes the doctrine of volenti non fit injuria as that term is known and defined in law, showing unto the Court that Plaintiff knew and appreciated any dangers or risk attendant thereto and voluntarily exposed himself to any such alleged risk.

XVI.

For further affirmative answer herein, Third Party Defendant would show that Plaintiff was fully apprised of his alleged condition prior to the time that he came in contact with UNIBESTOS and even though he claimed to be disabled at such time he, nevertheless, continued to work with insulation material after the date he discovered such alleged condition, July, 1961, and he, therefore, voluntarily subjected himself to injury with full and complete knowledge of the consequences, voluntarily

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exposing himself to any conditions, dangers or hazards incident to such work and this Third Party Defendant pleads such facts in bar of Plaintiff's rights, if any, to recover.

XVII.

Third Party Defendant would show that Plaintiff's damages, if any, is solely the result of an unavoidable accident as that term is defined in law.

XVIII.

For further grounds of relief, Third Party Defendant would show that in the event judgment is obtained against the Third Party Plaintiff in favor of Plaintiff and Third Party Plaintiff is allowed recover over against the Third Party Defendant, then the Third Party Defendant is entitled to indemnity and contribution against all other defendants herein who are found to be jointly and severally liable to Plaintiff in accordance with the Civil Statutes of the State of Texas.

WHEREFORE, premises considered, Third Party Defendant prays judgment of the Court that Third Party Plaintiff take nothing by its Third Party Complaint and that it go hence without day and recover its cost in this behalf expended, or in the alternative, if judgment is allowed over and against Third Party Defendant, then Third Party Defendant have judgment for indemnity and contribution as set forth herein above.

Respectfully submitted,
VINSON, ELKINS, WEEMS & SEARLS

By: Gerald P. Coley
Gerald P. Coley
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ATTORNEYS FOR UNARCO INDUSTRIES, INC.

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CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Answer to Third Party Complaint was on this the 13th day of September, 1968, served upon counsel for the Third Party Plaintiff by depositing the same in the United States mails, postage paid, addressed to Mr. George E. Duncan, Wells, Duncan and Beard, 515 Beaumont Savings Building, Beaumont, Texas 77701, and also a true copy was served on all other interested counsel of record.

Gerald P. Coley
Attorney for Third Party Defendant,
Unarco Industries, Inc.

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VINSON, ELKINS, WEEMS & SEARLS
ATTORNEYS AT LAW
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GPC

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