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

FILED
JAN 17 1969
M ____ 19 ____
James R. Cooney, Clerk, U. S. Court
By Virginia K Jones DEPUTY

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

DEFENDANT UNARCO INDUSTRIES, INC.'S
RESPONSE TO PLAINTIFF'S MOTION TO
INCLUDE UNARCO INDUSTRIES AS DEFENDANT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW third-party defendant, UNARCO INDUSTRIES, INC., and files this its response to Plaintiff's Motion to Include Unarco Industries, Inc. as a defendant and would respectfully show unto the Court the following:

I.

Third-party defendant Unarco Industries, Inc. objects to the said Motion of plaintiff for the reason that this suit was originally filed by plaintiff on December 3, 1966, a period of over two (2) years ago. Notwithstanding the limitations issues that exist in this suit for the period of time prior to December 3, 1966, third-party defendant would show that this suit, having been on file for a period of more than two years, on its face would show that any such claim that the plaintiff has, if any, against this third-party defendant, is long since barred by the Statute of Limitations.

Third-party Defendant Unarco Industries, Inc. would respectfully move the Court to deny plaintiff's Motion to include Unarco Industries, Inc. as a defendant since the pleadings on file herein on their face show that any claim plaintiff may have would now be barred by limitations.

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in that event, third party defendant would insist that Rule 14(a) be complied with in that the Rule provides:

> "The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-actions as provided in Rule 13."

In this connection, third-party defendant would show that it has obtained a copy of plaintiff's Third Amended Complaint herein and would not require plaintiff to amend this lengthy pleading, however, third-party defendant would respectfully submit to the Court that at the very least, Plaintiff should be required to supplement his Third Amended Complaint as to his allegations and contentions pertaining to Unarco Industries, Inc., so that Unarco can make some intelligent reply and be apprised of what plaintiff expects to prove against Unarco. Further, it is respectfully submitted that the proposed form of order on the motion submitted by the plaintiff should be amended to read that the third-party defendant Unarco has twenty (20) days in which to file its answer to plaintiff's Third Amended Complaint and the supplement thereto and further that Unarco Industries, Inc. be permitted to assert in its response its defenses as provided for in Rule 12 and its counterclaims or cross-actions as provided for in Rule 13 of the Federal Rules of Civil Procedure.

Third-party defendant Unarco attaches hereto the proposed form of Order for the Court's approval, should the

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Court overrule its request to deny the Motion of plaintiff to include Unarco Industries, Inc. as a defendant.

Respectfully submitted,

VINSON, ELKINS, WEEMS & SEARLS

By: Gerald P. Coley

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ATTORNEYS FOR THIRD-PARTY DEFENDANT,
UNARCO INDUSTRIES, INC.

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CERTIFICATE OF SERVICE BY MAIL

I, Gerald P. Coley, hereby certify that a copy of the foregoing Response to Plaintiff's Motion has on this the 16th day of January, 1969, been mailed by certified mail, return receipt requested, to the following named attorneys for the following named defendants:

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Stephenson, Thompson & Morris
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Orange, Texas 77630
ATTORNEYS FOR PLAINTIFF

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Houston, Texas 77002
ATTORNEYS FOR DEFENDANT EAGLE-PICHER INDUSTRIES, INC.

Mr. John D. Rienstra
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Beaumont, Texas 77701
ATTORNEY FOR DEFENDANT OWENS-CORNING
FIBER GLASS CORPORATION

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P. O. Box 1632
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ATTORNEY FOR DEFENDANTS COMBUSTION ENGINEERING, INC.
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Mr. George E. Duncan
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ATTORNEYS FOR DEFENDANT JOHNS-MANVILLE PRODUCTS
CORPORATION.

Gerald P. Coley

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VS.

COMBUSTION ENGINEERING, INC., ET AL

DEFENDANT UNARCO INDUSTRIES, INC.'S RESPONSE TO PLAINTIFF'S MOTION TO INCLUDE UNARCO INDUSTRIES AS DEFENDANT

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