IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

MAR 7 1969

James R. Cooney, Clerk, U. S. Court

By Margaret Stone DEPUTY

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

CIVIL ACTION NO. 5402

MOTION FOR FURTHER DISCOVERY IN THIS CASE AND MOTION FOR POSTPONEMENT OF THE TRIAL SETTING OF MARCH 24, 1969

TO THE HONORABLE JUDGE OF SAID COURT:

1.

On or about Monday, March 3, 1969, it was announced that all defendant in this case except the Fibreboard Paper Products Corporation had entered into a compromise and settlement of the plaintiff's cause of action whereby the plaintiff agreed to execute and deliver a covenant not to sue and a covenant of indemnity for contribution on any judgment which might be obtained against the defendant, Fibreboard Paper Products Corporation. This defendant, Fibreboard Paper Products Corporation, has a cross-action over and against the various defendants, Johns-Manville Products Corporation, Unarco Industries, Inc., Combustion Engineering, Inc., R & I Refractory & Insulation Corporation, Pittsburgh-Corning Corporation, Gustin-Bacon Manufacturing Company, Pittsburgh Plate Glass Company, Eagle-Picher Industries, Inc., and Owens-Corning Fiber Glass Corporation. Prior to the time thatsaid defendants settled and compromised their said suit, the burden was upon the plaintiff in this case to introduce evidence to show that each of the various defendants had negligently contributed to cause the alleged injury to plaintiff. At no time was this burden placed

Published by AsbestosClaims.Law
asbestosclaims.law/library/10708/1

upon this defendant. Since the settlement of this case by the various defendants, in order to obtain contribution from said defendants who actually caused or contributed to cause the alleged injury to plaintiff, it is necessary to prove such fact. The plaintiff is no longer interested in making such proof, and at no time prior to the present were the pleadings couched in such a manner as to place this burden on this defendant.

2.

In view of the change in the complexion of this case wherein the burden of proof as to the remaining defendants has shifted, this defendant says that it should be entitled to make further discovery and to take additional depositions to establish exactly where the plaintiff worked, the times that he worked, and the fact that the remaining defendants, or some of the remaining defendants, furnished materials on the construction projects on which the plaintiff was engaged. In order to produce this evidence, this defendant must be accorded the right for additional discovery, and in order to develop these facts it will take some additional time and there is insufficient time between the present and March 24, 1969.

3.

The plaintiff in this case has served certain interrogatories and submitted certain depositions which have not been returned, and plaintiff should be required to complete the taking of these depositions.

WHEREFORE, the defendant, Fibreboard Paper Products Corporation, prays:

(1) That the Court allow and permit this defendant further discovery as against the co-defendants and cross-defendants and against the plaintiff;

(2) That the Court direct that all depositions and interrogatories which have been propounded to the various co-defendants be completed and filed;

(3) That the Court postpone the trial of this case for a period of at least sixty (60) to ninety (90) days in order to permit the additional discovery. This motion is not made for delay but in order that the facts might be discovered.

Respectfully submitted;

WELLER, WHEELUS & GREEN
P. O. BOX 350
BEAUMONT, TEXAS 77704

BY _____
GEO. A. WELLER,
ATTORNEYS FOR FIBREBOARD
PAPER PRODUCTS CORPORATION.

A copy of this motion has been mailed to Mr. Ward Stephenson, attorney for plaintiff, Stephenson Building, Orange, Texas, by certified mail, on the 7th day of March, 1969.

_____
OF COUNSEL

The Tomplait v. Combustion Engineering Case File (1962-1969), Motion for further discovery
ACL Doc 10708 · Page 3 of 4
Published by AsbestosClaims.Law
asbestosclaims.law/library/10708/3

CIVIL ACTION NO. 5402

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

MOTION FOR FURTHER DISCOVERY IN THIS CASE AND MOTION FOR POSTPONEMENT OF THE TRIAL SETTING OF MARCH 24, 1969.

WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
GOODHUE BUILDING
BEAUMONT, TEXAS 77704