IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

MAR 17 1969 19

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

By Virginia R. Jones DEPUTY

CLAUDE J. TOMPLAIT :

VS. : CIVIL ACTION NO. 5402

COMBUSTION ENGINEERING, INC., ET AL :

ANSWER TO 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:

Comes now the plaintiff and in respect to the Motion for Further Discovery in this case and Motion for Postponement of the Trial Setting of March 24, 1969, filed on behalf of Fibreboard Paper Products Corporation, says:

I.

That Fibreboard Paper Products Corporation has had a cross-action for contribution and indemnity against each and all of the settling defendants for many months. That settlement negotiations between the plaintiff and all of the defendants have been conducted for many months. That Fibreboard Paper Products Corporation has consistently taken the attitude that they would not make any contribution towards settlement, and, therefore, plaintiff says that Fibreboard Paper Products Corporation should have done such things as it now considers necessary to do by way of preparation. That even though the plaintiff has entered into a settlement agreement with the balance of the defendants, the burden has always been and still is on Fibreboard Paper Products Corporation to prove that it is entitled to contribution and indemnity from the other defendants. The burden has not shifted by the settlement and has not altered defendant Fibreboard Paper Products Corporation's position in any

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way. That under the laws of the State of Texas, as evidenced by the East Texas Salt Water Disposal Company case and others, this has been and continues to be an action for joint and several liability and the burden has been and still is upon any defendant who wants to lay the blame on any other party to plead and prove facts entitling such defendant to contribution or indemnity or to lay the blame in any way on any other party. The statement of Fibreboard Paper Products Corporation's attorney in the Motions to which this answer is directed which states "At no time was this burden placed upon this defendant." is erroneous and incorrect.

II.

Plaintiff at all times has had the complete and perfect right to dismiss his case against any of the defendants, and as a matter of fact, as to three of the defendants who manufactured silica products only, these three defendants were dismissed and no objection was made at that time and the defendant Fibreboard Paper Products Corporation did not even agree to allow these defendants to get out of the case on Fibreboard Paper Products Corporation's cross-action and claim for contribution and indemnity.

III.

Plaintiff says that this case should not be postponed from its present setting of March 24, 1969; that Fibreboard Paper Products Corporation agreed to this setting and the parties have proceeded on the assumption that trial would be had at that time and no just cuase has been shown for postponement.

IV.

Plaintiff further says that he has no objection to any of the defendants answering written interrogatories that have been served, but that this obligation is not upon the plaintiff because he has settled with such defendants, and to require the plaintiff to endeavor to make the defendant Fibreboard Paper Products Corporation's proof would not be proper.

The Tomplait v. Combustion Engineering Case File (1962-1969), Reply to Fibreboard's motion for further discovery Published by AsbestosClaims.Law
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WHEREFORE, plaintiff prays that the Motion for Further Discovery in this case and Motion for Postponement of the trial setting of March 24, 1969, be in all things DENIED.

Respectfully Submitted;

STEPHENSON, THOMPSON AND MORRIS

By _____
WARD STEPHENSON

Stephenson Building
Orange, Texas

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE BY MAIL

I, Ward Stephenson, hereby certify that a copy of the foregoing Answer to Motion for Further Discovery in this Case and Motion for Postponement of the Trial Setting of March 24, 1969, has on this 13th day of March, 1969, been mailed to the following named attorney for the following named defendant:

Mr. George A. Weller
Attorney at Law
P. O. Box 350
Beaumont, Texas 77701

Attorney for defendant Fibreboard
Paper Products Corporation

_____
WARD STEPHENSON

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CIVIL ACTION NO. 5402

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC.,
ETAL

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

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

LAW OFFICES
STEPHENSON, THOMPSON & MORRIS
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