IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED

APR 1 1969 M 19

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

By Virginia R. Lewis DEPUTY

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

OBJECTION OF DEFENDANT, FIBREBOARD PAPER PRODUCTS CORPORATION, TO THE DISMISSAL OF THE CROSS-ACTIONS FOR CONTRIBUTION AGAINST REMAINING DEFENDANTS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant, Fibreboard Paper Products Corporation, and files this, its objection to the motion of all defendants, cross-plaintiffs and intervenors, other than Fibreboard Paper Products Corporation, requesting that the Court enter a proposed judgment disposing of all claims and causes of action, including all cross-actions and counter-claims with the exception of the claim of Claude J. Tomplait asserted against the defendant, Fibreboard Paper Products Corporation.

The defendants allege that they have entered into a compromise with the plaintiff and assert they are no longer necessary or proper parties to this suit or any counterclaim or cross-action herein. The defendant, Fibreboard Paper Products Corporation, objects to the dismissal of its cross-claim against each of the defendants, and as grounds therefor would show:

1.

Plaintiff's third amended complaint alleged that the defendants, Combustion Engineering, Inc., R & I Refractory &

Insulation Corporation, Johns-Manville Products Corporation, Johns-Manville Fiber Glass, Inc., Owens-Corning Fiberglas Corporation, Pittsburgh Plate Glass Company, Pittsburgh Corning Corporation, Fibreboard Paper Products Corporation and Eagle-Picher Industries were jointly guilty of negligence proximately causing damage to the plaintiff.

Fibreboard Paper Products Corporation, as one of said alleged joint tort feasors, filed a cross-action against each and all of the defendants for contribution. Each and all of the cross-defendants are before the Court on the cross-action of Fibreboard Paper Products Corporation. Each of said defendants filed answers to said cross-action for contribution.

The co-defendants allege that they have entered into a compromise settlement agreement with the plaintiff whereby each of said defendants are released, however, this defendant, Fibreboard Paper Products Corporation, is not a party to such compromise settlement agreement and has in no wise entered into a compromise settlement with the co-defendants and has not agreed that said co-defendants may be dismissed.

2.

Plaintiff alleges that all of the defendants are joint tort feasors, and if this be true, then this defendant will be entitled to contribution on its cross-action and is entitled to have said co-defendants remain as cross-defendants on its cross-action for contribution. Likewise, it is entitled to treat each of said co-defendants and cross-defendants as adverse parties on its cross-action. Under the law, in order for this defendant to be entitled to credit for the payments heretofore made by the co-defendants and cross-defendants, it is necessary to obtain a finding that said co-defendants caused or contributed to cause

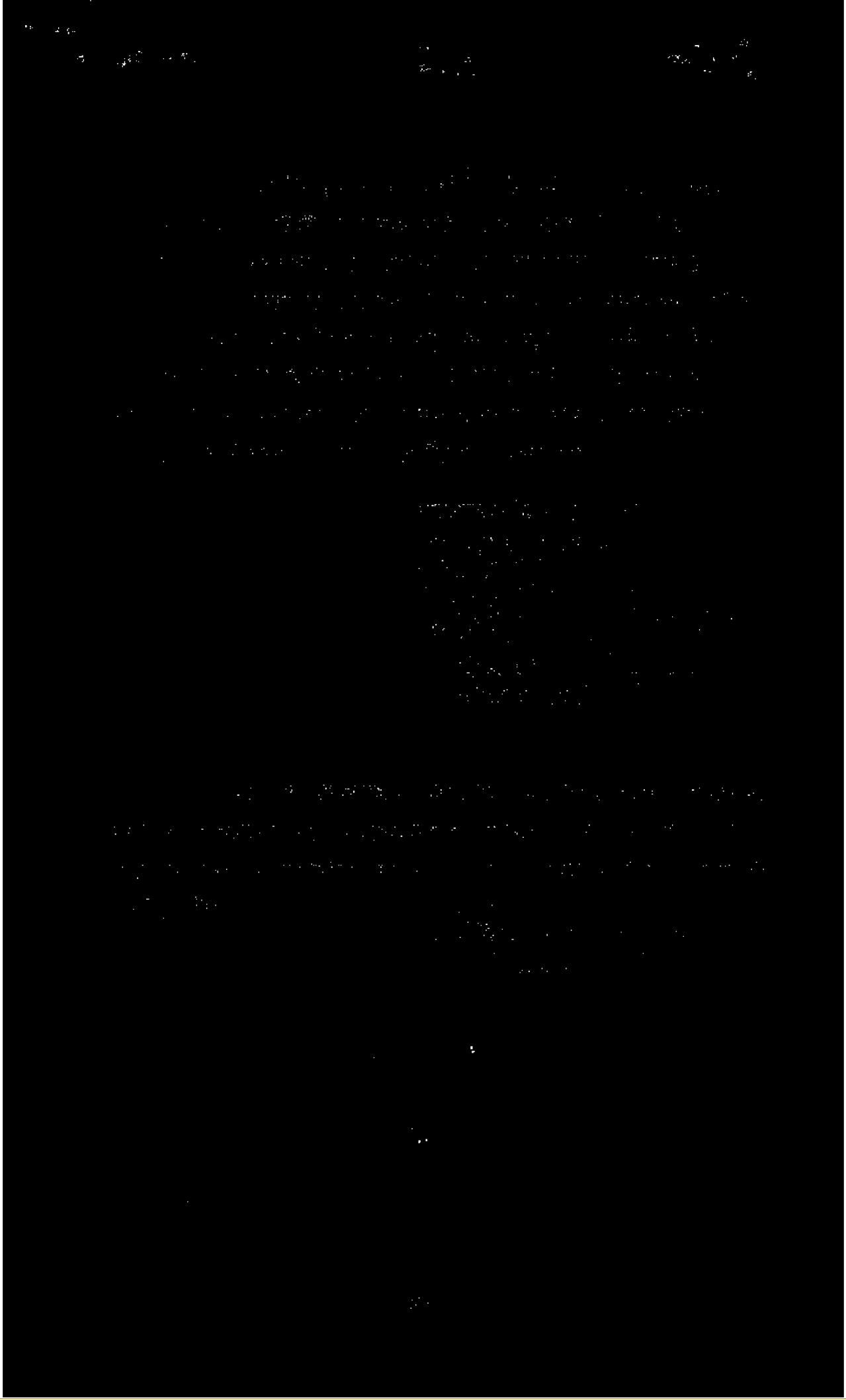
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the plaintiff damage, and since said co-defendants are also cross-defendants of Fibreboard Paper Products Corporation and have answered said cross-action and are before the Court, this defendant would object to the dismissal of its cross-action against the cross-defendants for contribution. Under Rule 41, Texas Rules of Civil Procedure, there is no authority in the Court to dismiss the cross-claim or third-party claim of this defendant against each and all of the co-defendants, and this defendant would object thereto, and objects to the entry of the judgment presented with the motion for the reason that such judgment disposes of the cross-claim of this defendant and cross-plaintiff without a hearing and without evidence being heard, and such judgment would in fact be a final judgment on the cross-claim of this defendant for contribution against each and all of the remaining defendants, particularly Combustion Engineering, Inc. and R & I Refractory & Insulation Corporation, Johns-Manville Products Corporation, Owens-Corning Fiberglas Corporation, Eagle-Picher Industries, Inc., Pittsburgh Corning Corporation, Unarco Industries, Inc. and Union Asbestos & Rubber Company.

3.

The defendant, Fibreboard Paper Products Corporation, would further show the Court that this case has been pending on the docket of this Court since December, 1966, numerous depositions have been taken of various witnesses, including employees or officers of cross-defendants, interrogatories have been propounded to and answers made by representatives of cross-defendants, and it would be highly prejudicial to the rights of this defendant for the Court to enter the order and dismiss the cross-defendants from this suit.

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