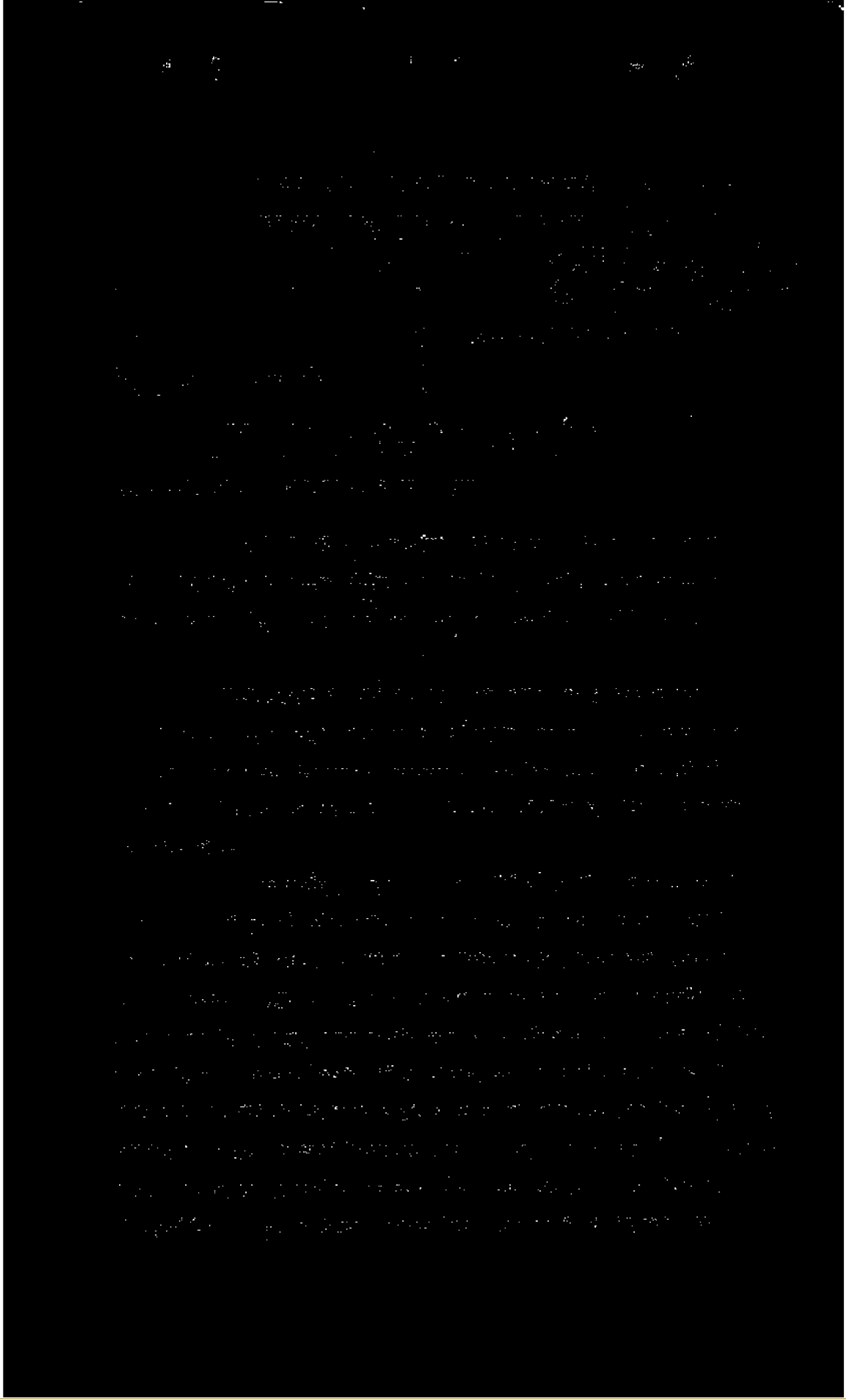


employers in the insulation industry governs working conditions, etc. and plaintiff is in effect a party to such contracts.

Therefore, any ruling which would restrict any particular evidence on this point would be highly prejudicial and improper.

2.

This Court should not limit any reference to any workmen's compensation case filed by the plaintiff and pre-judge the evidence for many reasons, some of which are:

The claims for workmen's compensation will contain admissions against interest, will prove notice and knowledge on the part of Tomplait, will be admissible on the issue of the Statute of Limitation of the State of Texas, on the question of knowledge and assumption of risk, etc.

Plaintiff filed certain evidentiary claims, names of physicians, medical reports, and there is other admissible evidence in the workmen's compensation file which is duly certified and is admissible in evidence.

Likewise, the plaintiff is seeking to recover lost wages, medical expense which was paid by his employer, and when he was disabled from other injuries, or drawing unemployment benefits, etc., such evidence is admissible as "evidence of collateral source benefits," and as a reason or explanation as to his failure to work.

In Kinsman v. Panek, Circuit Court, Marathon County, Wisconsin, 1968, the Court allowed the plaintiff to be cross-examined as to his wage continuation and other benefits to challenge his credibility regarding the true reason why he did

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not return to work. This case likewise admitted evidence concerning the fact that his employer had paid the medical bills and had continued wage payments during his disability.

3.

This defendant says that the Court should not limit reference to social security benefits that the plaintiff has received or will receive in the future because inquiry into the filing of this claim and the allowance of social security benefits is admissible to challenge plaintiff's credibility regarding the true reason of why he does not return to work.

4.

Defendant says that the Court should not limit reference to a report of Dr. Leary because such report contains reference to examination of X-rays and an X-ray report concerning an X-ray taken October 19, 1962, and refers to an examination by the doctor, report of which was made to the Industrial Accident Board of the State of Texas. Likewise, the deposition of Dr. Leary was taken in the State Workmen's Compensation case and the plaintiff had an opportunity to cross-examine the doctor and did cross-examine him at that time. The deposition and the exhibits attached are clearly admissible, both under the law of Texas and under the Federal Rules of Evidence.

5.

This defendant objects to plaintiff's request that the Court change the style of this case and that the parties be instructed to refer to this case as Claude J. Tomplait vs. Fibreboard Paper Products Corporation because this defendant has the right to introduce the pleadings in this case as admissions

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against interest, to show the claim asserted by the plaintiff against each of the remaining defendants who are third-party defendants in this case, and it is necessary under the rules of law that this defendant introduce evidence and obtain jury findings in regard to any act or omission of the third-party defendants which caused or contributed to cause or contributed to the plaintiff's alleged injury and damage.

This defendant had understood the Court's ruling heretofore made at the time the Court entered an interlocutory judgment that the plaintiff take nothing against certain defendants and that certain defendants and cross-defendants be dismissed, that such dismissal would be without prejudice to the rights of the remaining defendant, Fibreboard Paper Products Corporation, to introduce evidence upon the trial of this case. It is impossible to try this case without making reference to other names because certain of said defendants submitted interrogatories and for all practical purposes they are still parties defendant in this case. Persons employed by each of the cross-defendants have testified by deposition and the Court ruled that said witnesses would be considered as adverse witnesses to the defendant, Fibreboard Paper Products Corporation, upon the trial of this case.

If the plaintiff is allowed to omit reference to other defendants in reading depositions, etc., he will create a false impression before the jury, in that this defendant will be charged with any cross-interrogatories propounded by other cross-defendants, and the plaintiff's request would make it appear that this defendant did each and every act of the third-party defendants and that this defendant is charged with each of their acts in this case.

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This defendant respectfully requests the Court to require the plaintiff to try this case on the current pleadings, the current interrogatories, requests for admissions of fact, and depositions as they are now written and couched, and not to make the pleadings, the answers to interrogatories and the depositions appear something they are not.

WHEREFORE, premises considered, this defendant prays that upon trial hereof that the plaintiff's motion be in all things denied.

Respectfully submitted;

WELLER, WHEELUS & GREEN
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BY _____
GEO. A. WELLER,
ATTORNEYS FOR DEFENDANT,
FIBREBOARD PAPER PRODUCTS
CORPORATION.

A copy of the foregoing reply was mailed to Mr. Ward Stephenson, Stephenson, Thompson & Morris, Stephenson Building, Orange, Texas, on the 14 day of May, 1969.

_____
OF COUNSEL FOR DEFENDANT

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CIVIL NO. 5402

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

REPLY TO PLAINTIFF'S MOTION TO LIMIT AND REQUEST OF PLAINTIFF.

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