IN THE UNITED STATES DISTRICT COURT

FILED

FOR THE EASTERN DISTRICT OF TEXAS

M May 14 1969

BEAUMONT DIVISION

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

By Hazel E. Stoddard DEPUTY

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

CIVIL ACTION NO. 5402

MOTION OF DEFENDANT, FIBREBOARD PAPER PRODUCTS CORPORATION, TO SUBMIT THIS CASE UPON SPECIAL INTERROGATORIES UNDER RULE 49(a)

TO THE HONORABLE JUDGE OF SAID COURT:

In the event any fact issue is submitted to the jury in this case, the defendant, Fibreboard Paper Products Corporation, respectfully requests the Court to submit this case upon special interrogatories under Rule 49(a), Federal Rules of Civil Procedure, and as grounds for said motion would show:

1.

The factual issues in this case are many and complex, and it will be impossible for the jury under a general charge to keep in mind the instructions to the jury and to determine the factual issues which the jury must determine in order to render a verdict.

2.

If a general verdict is rendered, there will be nothing in the record which would enable this defendant to ascertain as to when this defendant is allegedly charged with furnishing its product which was allegedly used by the plaintiff, and this will be highly material upon the issue of whether there is any evidence to support a charge that the plaintiff used this defendant's

product, the time of such use and the issue of whether the plaintiff's claim against this defendant is barred by the Statute of Limitation of the State of Texas of two (2) years. A global submission of the fact issues will make it impossible to determine the factual basis for the findings and verdict of the jury. The jury should be requested to pass upon and find the facts separately as to each separate defense on the claim of the plaintiff against this defendant, as well as to the issues required to be submitted against the cross-defendants who were manufacturers and sellers of products containing asbestos, with which products the plaintiff worked and came in contact, and which the plaintiff at one time contended caused or contributed to cause his injury and disability.

3.

If the case is not submitted upon special interrogatories, it will be impossible for the Trial Court and any Appellate Court to determine the factual basis and the theory upon which the jury decided its case, and if the jury were to hold this defendant liable it would be impossible for all practical purposes to determine the basis of the jury finding.

Accordingly, this defendant prays that the Court submit this case on special interrogatories under Rule 49(a). In the alternative, this defendant prays that the Court submit the case on a combination of a general charge and answers to special interrogatories under Rule 49(b).

Respectfully submitted;

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

The Tomplait v. Combustion Engineering Case File (1962-1969), Motion regarding Rule 49 (special verdict) Published by AsbestosClaims.Law
ACL Doc 10836 · Page 2 of 3 asbestosclaims.law/library/10836/2

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