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

CLAUDE J. TOMPLAIT :

VS. : CIVIL ACTION NO. 5402

FIBREBOARD PAPER PRODUCTS COMPANY :

FILED
JUN 3 - 1969
M ____ 19____
James R. Cooney, Clerk, U. S. Court
By Virginia R. Lemmet
DEPUTY

MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES CLAUDE J. TOMPLAIT, plaintiff, and moves the Court to grant a new trial and for grounds therefor would respectfully show unto the Court the following:

1.

That heretofore, the Court directed the plaintiff to amend his complaint and allege certain dates, times and places where the plaintiff worked beginning with the year 1959. It is believed that this was done because the Court at that time felt that Fibreboard Paper Products Company had raised a question of the two-year statute of limitation, when such was not the case. The two-year statute of limitation does not apply in an occupational disease case. On the trial of this case, counsel for the defendant was able to and did refer to the pleadings of the plaintiff as though this were the plaintiff's theory of the case, to-wit: "That the plaintiff since 1959 has worked for the following employers, etc." and omitting any reference to Fibreboard Paper Products Company. That this gave the jury the impression that the plaintiff had to or was trying to establish that he had used Fibreboard's products since 1959 to the date of filing suit, when this was entirely contrary and diametrically opposed to the plaintiff's

theory of the case. The plaintiff's theory of the case, of course, was that this was an occupational disease contracted over many years' period of time and in all likelihood originating several years before 1959. This gave the defendant Fibreboard Paper Products Company an undue and unfair advantage, because defendant's counsel was able to argue to the jury that the pertinent time covered by the plaintiff's complaint was from the year 1959 to 1961.

2.

Further, the plaintiff says that the Court should not have submitted any issue of fact to the jury on negligence or on warranties because the same were established by total evidence, and the jury should not and could not have found otherwise.

WHEREFORE, the plaintiff moves the Court for an order setting aside the verdict and judgment in this cause and granting a new trial to plaintiff.

Respectfully submitted,

STEPHENSON, THOMPSON & MORRIS

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas 77630

CERTIFICATE OF SERVICE

I, Ward Stephenson, hereby certify that a true and correct copy of the foregoing Motion for New Trial was on this the 2nd day of June, 1969, mailed to George A. Weller, P. O. Box 350, Beaumont, Texas, Attorney for Defendant Fibreboard Paper Products Company, by certified mail, return receipt requested.

Ward Stephenson
Ward Stephenson

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