COPY

WELLER, WHEELUS & GREEN

ATTORNEYS AT LAW
GOODHUE BUILDING
P. O. BOX 350
BEAUMONT, TEXAS 77704

(713) TE 3-5648

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
THAD HEARTFIELD

JAN 6 - 1969

January 4, 1969

Honorable Joe J. Fisher
United States District Judge
Eastern District of Texas
Federal Building
P. O. Box 231
Beaumont, Texas 77704

Re: Civil No. 5402 - Claude J. Tomplait vs. Combustion Engineering, Inc.

Dear Judge Fisher:

In accordance with the directions of the Court at pre-trial, I wish to advise that the products manufactured by Fibreboard Paper Products Corporation, which are filed with the Clerk, are numbered as follows:

(1) 100,056;

(2) 100,061;

(3) 100,070.

I trust that this complies with the Court's order to advise counsel how these exhibits were numbered.

Very truly yours,

Geo. A. Weller

GAW/ca

cc: Mr. James R. Cooney ✓
Mr. Ward Stephenson
Mr. George E. Duncan
Mr. Gordon R. Pate

cc: Mr. Ben L. Reynolds
Mr. John B. Rienstra
Mr. Gerald P. Coley
Mr. Charles S. Pipkin

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COPY

WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
GOODHUE BUILDING
P. O. BOX 350
BEAUMONT, TEXAS 77704

(713) TE 9-5648

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
THAD HEARTFIELD

JAN 7 - 1969

January 6, 1969

Mr. Ward Stephenson
Attorney at Law
Stephenson Building
Orange, Texas 77630

Re: Civil Action No. 5402 - Claude J. Tomplait
vs. Combustion Engineering, Inc., et al.

Dear Mr. Stephenson:

The representative of Fibreboard Paper Products Corporation, whom I anticipate will be present at the trial of this case, is Mr. Harry P. Hoopes, Fibreboard Paper Products Corporation, San Francisco, California. This is the same representative of the company whose deposition is being taken.

Very truly yours,

Geo. A. Weller

GAW/ca

cc: Mr. James R. Cooney
Mr. George Duncan
Mr. Gordon Pate
Mr. Ben L. Reynolds
Mr. John D. Rienstra
Mr. Gerald P. Coley
Mr. Charles S. Pipkin

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M. L. COOK
C. A. BROWN
E. D VICKERY
MAYO J. THOMPSON
CARL O. BUE, JR.
GEORGE W. RENAUDIN
BRYAN F. WILLIAMS, JR.
EDWARD J. PATTERSON, JR.
GUS A. SCHILL, JR.
BEN L. REYNOLDS
RICHARD D. DAVIS
CHARLES D. KENNEDY
DAVID C. REDFORD
DAVID B. CONNERY, JR.
DONALD K. ECKHARDT

CABLEGRAM "HOUPORT"

ROYSTON, RAYZOR & COOK

ATTORNEYS AT LAW

877 SAN JACINTO BUILDING

HOUSTON, TEXAS, 77002

J. NEWTON RAYZOR
COUNSEL

GALVESTON OFFICE
205 COTTON EXCHANGE BLDG.
GALVESTON, TEXAS, 77550
CABLEGRAM "ROYSTON"

JAN 7 1969

January 4, 1969

Mrs. Rosalie Trahan
Deputy District Clerk
Federal Building
P. O. Box 88
Beaumont, Texas

C. A. No. 5402 - Claude J. Tomplait vs. Combustion Engineering, Inc. -Our File 17,233

Dear Mrs. Trahan:

* Enclosed are samples of products of Eagle-Picher Industries, Inc. which are numbered as follows:

003826 000259 17569

We would appreciate your filing these samples in this case.

Thank you for your courtesy and cooperation.

Yours very truly,

Royston, Rayzor & Cook

BLR:blm
*Enclosure

cc: Mr. Ward Stephenson
Stephenson Building
Orange, Texas

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UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK

EASTERN DISTRICT OF TEXAS

P. O. Box 231
Beaumont, Texas 77704

August 12, 1969

JAMES R. COONEY
CLERK

Kelsey-Seybold Clinic
6624 Fannin Street
Houston, Texas 77025

Re: Civil 5402 - Claude J. Tomplait vs. Combustion Engineering Inc., et al

Gentlemen:

We are returning X-Rays which were mailed to this court in July 1968 to accompany "Answers of Dr. Stanton P. Fischer to Direct and Cross Interrogatories".

Judgment was entered in this case sometime ago, and a note on the cover of the X-Rays requested that they be returned to the Clinic.

Very truly yours,

JAMES R. COONEY, CLERK

By
(Mrs.) Hazel E. Studdard
Deputy Clerk

Enclosures (X-Rays)

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P. O. Box 231
Beaumont, Texas 77704
August 11, 1969

Orange Memorial Hospital
P. O. Box 37
Orange, Texas 77630

Gentlemen:

We are returning records from your hospital which were sent to this office to be used in the trial of the case of Claude J. Tomplaint vs. Combustion Engineering, Inc., Civil #5402.

Very truly yours,

JAMES R. COONEY, CLERK

By
(Mrs.) Hazel E. Studdard
Deputy Clerk

Enclosure
cc: Mr. Ward Stephenson
Stephenson Building
Orange, Texas 77630

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KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

July 10, 1969

JUL 11 1969

Mr. James R. Cooney
Clerk, U. S. District Court
Federal Building
Beaumont, Texas 77701

Re: Civil No. 5402, Claude J. Tomplait
vs. Combustion Engineering, Inc. et al

Dear Mr. Cooney:

We do not desire to pursue this case any further in view of the fact that the Court did not grant our motion for new trial. Therefore, we would like to ask the Court's permission to withdraw all of our exhibits offered into evidence.

Yours truly,

STEPHENSON AND THOMPSON

Ward Stephenson

WS:jb

7-16-69

P. O. Box 231
Beaumont, Texas 77704
June 23, 1969

Mr. Ward Stephenson
Stephenson, Thompson & Morris
Stephenson Building
Orange, Texas 77630

Mr. George A. Weller
Weller, Wheelus & Green
P. O. Box 350
Beaumont, Texas 77704

Re: Claude J. Tomplait, vs. Combustion Engineering, Inc., et al - C.A. #5402

Gentlemen:

You are advised Order overruling Plaintiff's Motion for a New Trial, was signed by Judge Fisher, filed and entered in the above cause as of June 23, 1969.

Very truly yours,

JAMES R. COONEY, CLERK

By _____
(Mrs.) Virginia R. Sens
Deputy Clerk

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WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
GOODHUE BUILDING
P. O. BOX 350
BEAUMONT, TEXAS 77704

(713) 833-5648

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
ANTHONY G. BROCATO

June 13, 1969

JUN 13 1969

Mr. James R. Cooney, Clerk
United States District Court
Federal Building
Beaumont, Texas

Attention: Mrs. Rosalie Trahan

Re: Civil No. 5402 - Claude J. Tomplait vs. Fibreboard Paper Products Corporation.

Dear Mrs. Trahan:

Attached I hand you defendant's reply to plaintiff's motion for new trial, which it is requested that you please submit to Judge Fisher.

Also enclosed is form of order overruling the motion for new trial.

Very truly yours,

Geo. A. Weller

GAW/os
Encl.

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June 6, 1969

Mr. George A. Weller
P. O. Box 350
Beaumont, Texas 77704

Re: Civil No. 5402 Claude J. Tomplait
vs Fibreboard Paper Products Corp.

Dear Mr. Weller:

In view of the circumstances stated in your letter of June 3rd, Judge Fisher asked me to advise you that your request for the Court to postpone consideration on plaintiff's motion until such time as you may reply is granted.

Sincerely yours,

(Miss) Bertha J. Ogilvy
Secretary to Judge Fisher

cc: U.S.District Clerk
Hon. Ward Stephenson

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WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
GOODHUE BUILDING
P. O. BOX 350
BEAUMONT, TEXAS 77704

(713) 833-5648

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
ANTHONY G. BROCATO

June 3, 1969

Honorable Joe J. Fisher
United States District Judge
c/o Mr. James R. Cooney, Clerk
United States District Court
P. O. Box 231
Beaumont, Texas 77704

Re: Civil No. 5402 - Claude J. Tomplait vs. Fibreboard Paper Products Corporation.

Dear Judge Fisher:

I am in receipt of motion of the plaintiff in the above case for a new trial. I am leaving town to attend the graduation of my son, Bruce, from Texas Christian University and his commissioning in the United States Army and will be unable to make a reply to this motion until early next week. I would appreciate it if you would postpone the consideration of the motion until I have had time to reply.

Very truly yours,

Geo. A. Weller

GAW/os

cc: Mr. Ward Stephenson (Certified Mail)
Mr. James R. Cooney, Clerk

6/5/69

KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

June 2, 1969

JUN 3 - 1969

Mr. James R. Cooney
Clerk, United States District Court
Federal Building
Beaumont, Texas 77701

Re: Civil No. 5402, Claude J. Tomplait vs.
Fibreboard Paper Products Company

Dear Mr. Cooney:

We are enclosing the plaintiff's Motion for New Trial to be filed in this case. It will be very much appreciated if you will present this Motion to Judge Fisher for his consideration as soon as possible.

Yours truly,

STEPHENSON, THOMPSON & MORRIS

Ward Stephenson

Ward Stephenson

WS:jb
Encl.
cc:
Mr. George A. Weller
Attorney at Law
P. O. Box 350
Beaumont, Texas 77701 (W/Encl.)
CERTIFIED MAIL, RETURN
RECEIPT REQUESTED

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WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
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(713) 833-5648

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
ANTHONY G. BROCATO

JUN 4 - 1969

June 3, 1969

Honorable Joe J. Fisher
United States District Judge
c/o Mr. James R. Cooney, Clerk
United States District Court
P. O. Box 231
Beaumont, Texas 77704

Re: Civil No. 5402 - Claude J. Tomplait vs.
Fibreboard Paper Products Corporation,

Dear Judge Fisher:

I am in receipt of motion of the plaintiff in the above case for a new trial. I am leaving town to attend the graduation of my son, Bruce, from Texas Christian University and his commissioning in the United States Army and will be unable to make a reply to this motion until early next week. I would appreciate it if you would postpone the consideration of the motion until I have had time to reply.

Very truly yours,

Geo. A. Weller

GAW/os

cc: Mr. Ward Stephenson (Certified Mail)
Mr. James R. Cooney, Clerk

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KEMPER W. STEPHENSON, 1956
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of STEPHENSON, THOMPSON AND MORRIS

STEPHENSON BUILDING / ORANGE, TEXAS 77630

June 2, 1969

JUN 3 - 1969

Mr. James R. Cooney
Clerk, United States District Court
Federal Building
Beaumont, Texas 77701

Re: Civil No. 5402, Claude J. Tomplait vs.
Fibreboard Paper Products Company

Dear Mr. Cooney:

We are enclosing the plaintiff's Motion for New Trial to be filed in this case. It will be very much appreciated if you will present this Motion to Judge Fisher for his consideration as soon as possible.

Yours truly,

STEPHENSON, THOMPSON & MORRIS

Ward Stephenson

Ward Stephenson

WS:jb
Encl.
cc:
Mr. George A. Weller
Attorney at Law
P. O. Box 350
Beaumont, Texas 77701 (W/Encl.)
CERTIFIED MAIL, RETURN
RECEIPT REQUESTED

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P. O. Box 231
Beaumont, Texas 77704
May 29, 1969

Mr. Geo. A. Weller
Weller, Wheelus & Green
P. O. Box 350
Beaumont, Texas 77704

Mr. Ward Stephenson
Stephenson, Thompson & Morris
Stephenson Building
Orange, Texas 77630

Re: Claude J. Tomplait, vs. Combustion Engineering, Inc., et al - C.A. #5402

Gentlemen:

You are advised that the Final Judgment was signed by Judge Fisher, filed and entered in the above cause as of May 28, 1969.

Very truly yours,

JAMES R. COONEY, CLERK

By _____
(Mrs.) Virginia R. Sens
Deputy Clerk

cc: Mr. John G. Tucker
Mr. Gordon R. Pate
Mr. Ben L. Reynolds
Mr. John D. Rienstra
Mr. Charles S. Pipkin
Mr. Geo. E. Duncan
Mr. Jas. W. Mehaffy
Mr. Gerald P. Coley
Mr. George E. Murphy

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WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
GOODHUE BUILDING
P. O. BOX 350
BEAUMONT, TEXAS 77704

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
ANTHONY G. BROCATO

(713) 833-5648

May 28, 1969

Honorable Joe J. Fisher
United States District Judge
c/o United States District Clerk
P. O. Box 231
Beaumont, Texas 77704

Re: Civil No. 5402 - Claude J. Tomplait vs.
Combustion Engineering, Inc., et al.

Dear Judge Fisher:

I submitted the enclosed judgment to Mr. John Tucker and obtained his approval on the original, which I sent to Mr. Ward Stephenson with copy of my letter of May 22, 1969, asking that he sign and return it to me. In view of the fact that I have not received the original, I am filing a motion for judgment and submit herewith photocopy of the original and copy of the final judgment. Mr. John Tucker has heretofore approved this form of judgment.

Very truly yours,

Geo. A. Weller

GAW/os
Encl.

cc: Mr. Ward Stephenson
Mr. John G. Tucker

WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
GOODHUE BUILDING
P. O. BOX 350
BEAUMONT, TEXAS 77704

(713) 833-5648

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
ANTHONY G. BROCATO

May 22, 1969

Mr. James R. Cooney
United States District Clerk
Federal Building
P. O. Box 231
Beaumont, Texas 77704

Attention: Mrs. Rosalie Trahan, Chief Deputy Clerk

Re: Civil No. 5402 - Claude J. Tomplait, Plaintiff, vs. Combustion Engineering, Inc., et al, Defendants.

Dear Mrs. Trahan:

Attached we hand you for filing motion for judgment on behalf of the defendant, Fibreboard Paper Products Corporation, together with draft of the final judgment.

We are sending a copy of the motion for judgment and the final judgment to Mr. Ward Stephenson, as well as counsel for the remaining defendants in this case, since the judgment heretofore entered was an interlocutory judgment and not a final judgment.

With a copy of this letter I am asking that if any counsel has any objection to the form of the judgment that they please notify me promptly.

Very truly yours,

Geo. A. Weller

GAW/os
Encl.

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cc: Mr. Ward Stephenson
Mr. Charles S. Pipkin
Mr. Gordon Pate
Mr. John Rienstra
Mr. Ben L. Reynolds
Mr. Gerald P. Coley
Mr. John G. Tucker

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P. O. Box 231
Beaumont, Texas 77704
May 7, 1969

Mr. George A. Weller
Weller, Wheelus & Green
P. O. Box 350
Beaumont, Texas 77704

Mr. Ward Stephenson
Stephenson, Thompson & Morris
Stephenson Building
Orange, Texas 77630

Re: Claude J. Tomplait, vs. Combustion Engineering, Inc., Et Al - C.A. #5402

Gentlemen:

Enclosed is certified copy of Order signed by Judge Fisher, filed and entered in the above cause as of May 6, 1969, granting Plaintiff's Motion to Limit, except as to Paragraph I, which is denied.

Very truly yours,

JAMES R. COONEY, CLERK

By _____
(Mrs.) Virginia R. Sens
Deputy Clerk

enc.

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KEMPER W. STEPHENSON, 1956
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

MAY 2 - 1969

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

May 1, 1969

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

Re: Civil No. 5402, Claude J. Tomplait vs. Combustion Engineering, Inc. et al

Dear George:

I was over checking the exhibits today and find that you have not placed all of the exhibits of Fibreboard products with the Clerk's office as directed by the Court. The only exhibits you have are Caltemp in three forms. You will recall in answer to your interrogatories your company has manufactured since 1925 85% magnesia, and also Super Caltemp, as well as cement, none of which have been filed with the clerk. We should like to have these exhibits placed with the clerk on or before Monday morning, May 5, 1969.

It has been very difficult to get this case ready for trial because you have not complied with the Court's order in this regard and until today had not complied with the Court's order in giving us the sales literature.

Yours truly,

Ward Stephenson

WS:jb
cc:
Mr. James R. Cooney
Clerk, U. S. District Court
Federal Building
Beaumont, Texas 77701

WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
GOODHUE BUILDING
P. O. BOX 350
BEAUMONT, TEXAS 77704

(713) 833-5648

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
ANTHONY G. BROCATO

May 2, 1969

Mr. James R. Cooney, Clerk
United States District Court
Federal Building
Beaumont, Texas

Attention: Mrs. Rosalie Trahan, Chief Deputy Clerk

Re: Civil No. 5402 - Claude J. Tomplait vs. Combustion Engineering, Inc., et al.

Dear Mrs. Trahan:

Attached I hand you for filing reply to plaintiff's motion to limit and proposed order in connection with said reply, which reply should be submitted to Judge Fisher. The motion of the plaintiff only reached me on May 1, so the motion should not have been heard by the Judge up to this time.

I also hand you for consideration of Judge Fisher motion to declare plaintiff's answers to defendant's requests for admissions admitted and to strike plaintiff's answers to defendant's interrogatories, which should be submitted to Judge Fisher at the same time as the other motion.

Very truly yours,

Geo. A. Weller

GAW/os
Encl.

cc: Mr. Ward Stephenson

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KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

April 30, 1969

MAY 1 1969

Mr. James R. Cooney
Clerk, U. S. District Court
Federal Building
Beaumont, Texas 77701

Re: Civil No. 5402, Claude J. Tomplait vs.
Combustion Engineering, Inc., et al

Dear Mr. Cooney:

We are enclosing the motion to limit and request of plaintiff which we will appreciate you filing in this case. It will also be appreciated if you will call Judge Fisher's attention to the filing of this motion.

Yours truly,

STEPHENSON, THOMPSON & MORRIS

Ward Stephenson

WS:jb
Encl.
cc:
Mr. George Weller
Attorney at Law
P. O. Box 350
Beaumont, Texas 77701

P.S. Also enclosed is a proposed form of Order to be submitted to the Court.

W.S.

KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of STEPHENSON, THOMPSON AND MORRIS

STEPHENSON BUILDING / ORANGE, TEXAS 77630

April 30, 1969

MAY 1 - 1969

Mr. James R. Cooney
Clerk, U. S. District Court
Federal Building
Beaumont, Texas 77701

Re: Civil No. 5402, Claude J. Tomplait vs. Combustion Engineering, Inc., et al

Dear Mr. Cooney:

We are enclosing the motion to limit and request of plaintiff which we will appreciate you filing in this case. It will also be appreciated if you will call Judge Fisher's attention to the filing of this motion.

Yours truly,

STEPHENSON, THOMPSON & MORRIS

Ward Stephenson

Ward Stephenson

WS:jb
Encl.
cc:
Mr. George Weller
Attorney at Law
P. O. Box 350
Beaumont, Texas 77701

P.S. Also enclosed is a proposed form of Order to be submitted to the Court.

W.S.

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WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
GOODHUE BUILDING
P. O. BOX 350
BEAUMONT, TEXAS 77704

(713) 833-5648

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
ANTHONY G. BROCATO

May 1, 1969

Mr. James R. Cooney, Clerk
United States District Court
P. O. Box 231
Beaumont, Texas 77704

Attention: Mrs. Rosalie Trahan

Re: Civil No. 5402 - Claude J. Tomplait
vs. Combustion Engineering, Inc., et al

Dear Mrs. Trahan:

Please issue the following subpoenas and subpoenas duces tecum:

Mr. R. D. Hodges, Business Manager and Custodian of Records of Orange Memorial Hospital, to appear and produce the following records:

X-rays, medical reports concerning Claude J. Tomplait.

All hospital and medical records showing hospitalization on the following dates: April 3, 1963; April 27, 1963; March 12, 1964; September 9, 1964; January 2, 1968.

The following X-ray films and X-ray reports:

7/21/61 - chest X-ray;
4/2/63 - chest X-ray;
4/9/63 - chest X-ray;
4/27/63 - chest X-ray;
5/17/63 - chest X-ray;
1/24/64 - chest X-ray;
9/14/64 - chest X-ray;
1/2/68 - chest X-ray;
2/17/64 - spine X-ray;
3/27/61 - hand X-ray.

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The appearance for Mr. Hodges should be at 10:00 o'clock A. M. on Monday, May 5, 1969.

(2) J. J. Hoard, Sabine Insulation Company, Inc., 501 Dayton Street, Orange, Texas, to appear and produce the following:

Records of employment of Claude J. Tomplait for the years 1959 to date, with the name of each job on which the said Claude J. Tomplait worked;

Copy of contract between Sabine Insulation Company, Inc. and the International Association of Heat and Frost Insulators and Asbestos Workers of America, AFL-CIO, Local at Lake Charles, Louisiana. The contract or contracts covering the period 1959 to 1968 should be produced.

The appearance for Mr. Hoard should be at 9:00 o'clock A. M. on Wednesday, May 7, 1969.

(3) Mrs. Theresa Bowers, c/o Sabine Insulation Company, Inc., 501 Dayton Street, Orange, Texas, to appear and produce the following:

Canceled check No. 24554 issued by Sabine Insulation Company, Inc. to Emmett James, and memoranda of material attached.

Purchase order issued by Sabine Insulation Company, Inc. to Fibreboard Corporation, No. 8368, dated January 4, 1968, together with memoranda of material attached.

Purchase order No. 6196 issued by Sabine Insulation Company, Inc. to Industrial Products Division, Fibreboard Corporation, dated 3/7/67, together with memoranda of material attached.

Original invoice 18582 issued by Fibreboard Corporation to Sabine Insulation Company, Inc., order date 3/9/67.

The appearance for Mrs. Bowers should be at 9:00 o'clock A. M. on Wednesday, May 7, 1969.

Very truly yours,

Geo. A. Weller

GAW/os

Subpoenas duces tecum issued, to be picked up by Marshal 5-2-69.

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Send to Mr. Weller

WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
GOODHUE BUILDING
P. O. BOX 350
BEAUMONT, TEXAS 77704

(713) 833-5648

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
ANTHONY G. BROCATO

May 1, 1969

Mr. James R. Cooney, Clerk
United States District Court
P. O. Box 231
Beaumont, Texas 77704

Attention: Mrs. Rosalie Trahan

Re: Civil No. 5402 - Claude J. Tomplait vs. Combustion Engineering, Inc., et al.

Dear Mrs. Trahan:

Please issue a subpoena to Mr. Paul E. Petrofsky, President of The Aber Company, 3480 W. 12th Street, Houston, Texas.

Please deliver this subpoena to me and I will see that it is served in Harris County. The witness will be notified as to the time to appear, which will be on and after the case proceeds to trial on May 5, 1969.

Very truly yours,

Geo. A. Weller

GAW/os

Subpoena sent to Mr. Weller 5-1-69.

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KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

April 22, 1969

APR 23 1969

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

Re: No. 5402, Claude J. Tomplait vs. Combustion Engineering, Inc., et al

Dear George:

Judge Fisher in his order on plaintiff's motion for discovery directed you to provide me with current copies of sales literature. You have not done this, but have only sent Xerox copies of certain pages. You have sent nothing at all on 85% magnesia, nothing on how to use the insulations, and so on. I request that I be furnished with your complete sales literature at once. If I do not hear from you by Friday, I will have to proceed with an application and order to the Court.

Yours truly,

Ward Stephenson

WS:jb
cc:
Mr. James R. Cooney
Clerk, U. S. District Court
Federal Building
Beaumont, Texas 77701

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P. O. Box 231
Beaumont, Texas 77704
April 8, 1969

Mr. John G. Tucker
Orgain, Bell & Tucker
Beaumont Savings Building
Beaumont, Texas 77701

Re: Claude J. Tomplait, vs. Combustion Engineering, Inc., et al - Civ. #5468

Dear Sir:

The Interlocutory Judgment, prepared pursuant to the Court's ruling, dismissing all defendants except Fiberboard Paper Products Corporation; was signed by Judge Fisher, filed and entered in the above cause as of April 7, 1969.

Very truly yours,

JAMES R. COONEY, CLERK

By _____
(Mrs.) Virginia K. Sims
Deputy Clerk

cc: Mr. Ward Stephenson
Mr. Charles S. Pipkin
Mr. Gordon R. Pate
Mr. John D. Kiesewetter
Mr. Ben L. Reynolds
Mr. George H. Duncan
Mr. Gerald P. Coley
Mr. Geo. A. Weller

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WILL E. ORGAIN (1882-1965)
MAJOR T. BELL
JOHN G. TUCKER
BENJ. D. ORGAIN
CLEVE BACHMAN
STANLEY PLETTMAN
HOWELL COBB
JAMES W. HAMBRIGHT
DAVID J. KREAGER
BENNY H. HUGHES, JR.
GILBERT I. LOW
GEORGE H. KOLB
J. HOKE PEACOCK II
LAWRENCE LOUIS GERMER

ORGAIN, BELL & TUCKER
ATTORNEYS AT LAW
BEAUMONT SAVINGS BUILDING
BEAUMONT, TEXAS
77701

TELEPHONE TE 8-6412

April 4, 1969

APR 7-1969

Re: Civil Action 5402 - Claude J. Tomplait v.
Combustion Engineering, Inc., et al

Mr. James R. Cooney, Clerk
United States District Court
Eastern District of Texas
Beaumont Division
P. O. Box 231
Beaumont, Texas 77704

Dear Mr. Cooney:

* You will find herewith original and copy of judgment to be entered in the above case, which has been approved as to form by attorneys for all concerned.

The judgment was prepared pursuant to the Court's ruling today.

Very truly yours,

ORGAIN, BELL & TUCKER

John G. Tucker

JGT:DFG
* encl.
cc-Weller, Wheelus & Green
Goodhue Building
Beaumont, Texas 77701
Attn. Mr. George Weller

WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
GOODHUE BUILDING
P. O. BOX 350
BEAUMONT, TEXAS 77704

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
ANTHONY G. BROCATO

TELEPHONE 833-5648

April 1, 1969

APR 1 1969

Honorable Joe J. Fisher
United States District Judge
Federal Building
Beaumont, Texas

Re: Civil No. 5402 - Claude J. Tomplait
vs. Combustion Engineering, Inc., et al.

Dear Judge Fisher:

I am filing with the Clerk objection to the motion for judgment by the defendants, cross-plaintiffs and intervenors, as well as objection to the form of the judgment proposed. The parties seek to dispose of the cross-claims of the defendant, Fibreboard Paper Products Corporation, for contribution without a trial and merely by the process of presenting a judgment. This defendant is entitled to have the co-defendants who are cross-defendants remain in this lawsuit as cross-defendants.

The dismissal of actions is covered by Rule 41 and Rule 41 (b) has no application. Likewise, 41 (c) does not apply or authorize the procedure which the defendants are attempting in this instance.

The case of Broadway and 96th Street Realty Corporation v. Leows, Inc., U. S. District Court, Southern District of New York, 23 Federal Rules Decision 9, recognizes the position of this cross-defendant as follows:

> "Even if the objecting defendants had already served a cross-claim for contribution on the moving defendants, the moving defendants would have been entitled to have the plaintiff's complaint against them dismissed and they would remain in the case only as third party defendants opposing the objecting defendants' cross-claim."

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In the Broadway case no objecting defendant had served any cross-claim against a moving defendant.

In Moore's Federal Practice, 2nd Edition, Volume 5, Rule 41 is discussed:

> "The second sentence of Paragraph (2) of Rule 41 (a) provides that 'if a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection,' if such action would destroy Federal jurisdiction and thus deprive the court of the power to proceed to an adjudication of the counterclaim. xxxx"

The text at Page 1102 continues:

> "A proper counterclaim will prevent dismissal if it cannot be maintained as a separate action, xxx."

In Harvey Aluminum v. American Cyanamid Company, 2nd Circuit, Opinion by Judge Augustus N. Hand, 203 F. (2d) 105, the Court held that the plaintiff could not take a voluntary dismissal under Rule 41 (a) 1, where there had been a hearing on a preliminary injunction, stating that the purpose of this rule is to facilitate voluntary dismissal, but to limit them to an early stage of the proceedings before issue is joined. The Court further said that Rule 41 (a) 1 provides for the voluntary dismissal of an "action" not a "claim"; the word "action" as used in the rules denotes the entire controversy whereas "claim" refers to what has traditionally been termed "cause of action."

Rule 41 (c) makes the provisions of Rule 41 on dismissal of plaintiff's claim applicable to the dismissal of counterclaims, cross-claims and third-party claims. Moore's Federal Practice, 2nd Edition, Volume 5, Page 1187.

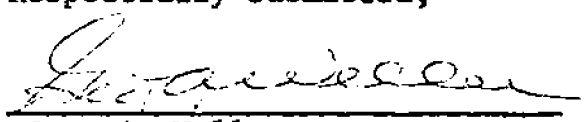
Here, in the Tomplait case before the Court, there was not any voluntary dismissal by the plaintiff or by the cross-plaintiffs before all issues had been joined, therefore such rules do not apply and prohibit the dismissal of this defendant's cross-claims, such as is attempted by the co-defendants in this case.

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In further discussion, the text states, referring to voluntary dismissal of counterclaims before a responsive pleading is filed, that the filing of a motion for summary judgment by one defending against a counterclaim, cross-claim or third-party claim, or an answer to the cross-claim cuts off the absolute right of a cross-plaintiff or cross-defendant to dismiss the cross-claim. In other words, the cross-defendants lost their right to require a dismissal when the cross-claim was filed. In our case, the cross-defendants have filed an answer to the cross-claim.

It is respectfully submitted that the Court should refuse to enter any order of dismissal of the cross-claim of Fibreboard Paper Products Corporation against the respective cross-defendants, and the Court should not enter the judgment which has been proposed by the cross-defendants.

Respectfully submitted;



Geo. A. Weller
Weller, Wheelus & Green
P. O. Box 350
Beaumont, Texas 77704

GAW/os

cc: Mr. John G. Tucker
Mr. Gordon R. Pate
Mr. Ben L. Reynolds
Mr. Ward Stephenson
Mr. Charles S. Pipkin
Mr. John D. Rienstra
Mr. George Duncan
Mr. Gerald P. Coley

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION
March 25, 1969

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

CIVIL NO. 5402

The following motion was filed on March 25, 1969:

Motion for Judgment, by all defendants, cross-plaintiffs and intervenors, with exception of Fibreboard Paper Products Corporation.

There was (~~XXXXXXX~~) evidence received of the necessary service of motion on the adverse parties. No motion will be presented to the Judge until indication of service is received by the Clerk and the proper time has elapsed as governed by the Rules of this Court. Indication of service is usually given by a statement at the bottom of the motion, below the signature, showing the date a copy of the motion was mailed to adverse party. This statement should be signed.

All motions are to be answered within ten (10) days unless otherwise allowed by the Court or some applicable rule of the Federal Rules of Civil Procedure.

THE LOCAL RULE is to consider motions on the pleadings, without oral hearing, unless on showing good cause an oral hearing is granted. Request for oral hearing, if any, should be made when the motion, or the reply, is filed. If oral hearing is granted, the Judge will set a date for same and the interested attorneys will be notified.

THE JUDGE desires that memorandum briefs containing authorities relied on as to matters raised in the motion be filed by the respective parties before the motion is submitted.

Please note also that it is Judge Fisher's rule that all documents, including forms of orders and judgments, be sent to the Clerk's Office and not direct to the Judge.

IF YOU DO NOT DESIRE TO OPPOSE THE ABOVE MOTION, PLEASE INFORM THE CLERK BY LETTER.

JAMES R. COONEY, CLERK
By: Virginia R. Lewis
Deputy

To: Mr. Geo. A. Weller

cc: Mr. John G. Tucker
Mr. Gordon R. Pate
Mr. Ben L. Reynolds
Mr. Charlie G. Parker
Mr. John D. Rienstra
Mr. George Duncan
Mr. Gerald P. Coley
Mr. Ward Stephenson

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KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

MAR 25 1969

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

March 24, 1969

Mr. Ben L. Reynolds
Attorney at Law
877 San Jacinto Bldg.
Houston, Texas 77002

Mr. Charles S. Pipkin
Attorney at Law
P. O. Box 1632
Beaumont, Texas 77704

Mr. Gerald P. Coley
Attorney at Law
First City Nat'l. Bank Bldg.
Houston, Texas 77002

Mr. George E. Duncan
Attorney at Law
Beaumont Savings Bldg.
Beaumont, Texas 77701

Mr. Gordon R. Pate
Attorney at Law
1119 Beaumont Savings Bldg.
Beaumont, Texas 77701

Mr. John D. Rienstra
Attorney at Law
707 Beaumont Savings Bldg.
Beaumont, Texas 77701

Re: Civil No. 5402, Claude J. Tomplait
vs. Combustion Engineering, Inc., et al

Gentlemen:

I am enclosing a copy of an itemization of the taxable court costs which we have incurred in this case. I have copies of our invoices and check vouchers if you need them to substantiate these costs.

I am also enclosing a copy of this itemization together with a copy of this letter to the Clerk in Beaumont.

Yours truly,

Ward Stephenson

WS:jb
Encl.
cc:
Mr. James R. Cooney (W/Encl.)

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11/25/68	Theresa M. Glowinski, Court Reporter, for interrogatories to Dr. Edward F. Murphy	50.00
12/3/68	Gaines Reporting Service for interrogatories of F. H. Edwards	48.95
12/12/68	Vera Mae Gant, Court Reporter, for interrogatories of Herman Huelster	25.00
1/8/69	Dahl and Reed, Court Reporters, for interrogatories of M. C. Parmley	37.50
1/13/69	Daniel W. Benard, Court Reporter, for interrogatories of Harry Hoopes	35.00
1/17/69	William F. Dalton, Court Reporter, for interrogatories of Dr. Lee Grant	31.50
1/20/69	Southern Dist. Court Reporters for interrogatories of Santry, Jr.	42.50
2/4/69	Southern Dist. Court Reporters for reobtaining signature of Dr. Irving J. Selikoff	25.00
3/24/69	Charles V. Ruane, Court Reporter, for interrogatories of A. S. Arwine	50.00
	TOTAL TAXABLE COSTS UP TO AND INCLUDING 3/24/69	$ 832.57



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

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

ITEMIZATION OF TAXABLE COURT COSTS

DATE PAID	TO	AMOUNT
12/23/66	U.S. District Clerk, Court costs deposit	$ 15.00
1/6/67	U.S. Marshal pd. $45.00 U.S. Marshal pd. 30.00 Less refund . . 26.46	48.54
3/22/68	Southern District Court Reporters for original of written interrogatories to Dr. Irving J. Selikoff	50.40
4/29/69	Dahl and Reed, Court Reporters for orig. of interrogatories to Paul Petrofsky and Harold Driemeier	76.00
5/23/68	Jo Wolaver, Court Reporter for written interrogatories of J. J. Hoard (Sabine Insulation)	25.00
6/4/68	Dahl and Reed, Court Reporters for orig. of interrogatories to R. C. Abrahams ($45.18) Wm. O. Daily ($37.50) Harold Driemeir ($37.50) Edmund Hines ($37.50) Paul Petrofsky ($37.50)	195.18
7/1/68	Dahl and Reed, Court Reporters for orig. of interrogatories of Davis Russell	37.50
7/15/68	Dahl and Reed, Court Reporters, for orig. deposition of Dr. Stanton Fischer	39.50

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KEMPER W. STEPHENSON, 1956
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

MAR 25 1969

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

March 24, 1969

Mr. James R. Cooney
Clerk, United States District Court
Federal Building
Beaumont, Texas 77701

Re: Civil No. 5402, Claude J. Tomplait vs.
Combustion Engineering, Inc., et al

Dear Mr. Cooney:

We are enclosing for filing the oral deposition of Dr. Irving J. Selikoff together with the exhibits attached to such deposition.

The plaintiff knows of no other depositions to be filed and of course, the interrogatories that plaintiff filed are already filed among the papers and there is nothing further for the plaintiff to file in regard to interrogatories.

Yours truly,

STEPHENSON, THOMPSON AND MORRIS

Ward Stephenson

Ward Stephenson

WS:jb
Encl.
cc:
Mr. George A. Weller

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION
March 17, 1969

Mr. Ward Stephenson:
Mr. Geo. A. Weller:
Mr. Charles S. Pipkin:
Mr. Gordon R. Pate:
Mr. George Duncan:
Mr. John Rienstra:
Mr. Ben Reynolds:
Mr. Gerald P. Coley:

RE: CIVIL ACTION NO. 5402
CLAUDE J. TOMPLAIT, vs.
COMBUSTION ENGINEERING, INC.,
ET AL

Gentlemen:

This is to advise that the following instruments were filed in the above cause on March 14, 1969:

Amended Supplemental Answer and Cross-Action of Defendant, Fibreboard Paper Products Corporation, with Order thereon signed by Judge Fisher, granting leave to file.

Order granting Motion of Combustion Engineering, Inc., and R & I Refractory and Insulation Corp. to amend Answers to Interrogatories.

Amended Answers of Defendants, Combustion Engineering, Inc., and R & I Refractory and Insulation Corp. to Interrogatories Under Rule 33, Federal Rules of Civil Procedure.

Order granting Plaintiff's Motion that the Court take judicial knowledge of the States having Workmen's Compensation Laws covering asbestosis.

Order granting Motion of Fibreboard Paper Products Corporation to be allowed further discovery; ordering Plaintiff to complete and file Depositions and Interrogatories; and postponing case until next term of Court.

JAMES R. COONEY, CLERK

By:

Deputy

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KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

March 13, 1969

MAR 17 1969

Mr. James R. Cooney
U. S. District Clerk
Federal Building
Beaumont, Texas

Re: Civil Action No. 5402; Claude J. Tomplait vs. Combustion Engineering, Inc., et al

Dear Mr. Cooney:

Enclosed you will find our Answer to Motion for Further Discovery in this case and Motion for Postponement of the Trial Setting of March 24, 1969. If you will, please present this to Judge Fisher in answer to Mr. Weller's Motions.

I have taken the liberty of preparing the order.

Sincerely yours,

STEPHENSON, THOMPSON AND MORRIS

Ward Stephenson

WARD STEPHENSON

WS:cjd
Enc.
cc: Mr. George A. Weller
Attorney at Law
P. O. Box 350
Beaumont, Texas 77701

United States District Court
Eastern District of Texas

Joe J. Fisher
Chief Judge, U. S. District Court
Beaumont, Texas 77704

March 14, 1969

Mr. Ward Stephenson
Stephenson Building
Orange, Texas

Mr. George Weller
Goodhue Building
Beaumont, Texas

Re: Civil No. 5402 Claude J. Tomplait
vs Combustion Engineering, Inc.,Et al

Gentlemen:

I am rescheduling the trial of the above captioned cause from Monday, March 24th to Monday, May 5, 1969.

This is being done at the request of Mr. Weller, who states that he is physically exhausted from recent trials and does not feel that he is able to be prepared for the trial of this case by March 24th. However, Mr. Weller assures the Court that he will be ready to dispose of this case the week of May 5th.

Sincerely yours,

Joe J. Fisher

cc: U. S. DistrictClerk
P. O. Box 231
Beaumont, Texas

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STRONG, PIPKIN, NELSON & PARKER
ATTORNEYS AT LAW
10TH FLOOR, SAN JACINTO BUILDING - P. O. BOX 1632
BEAUMONT, TEXAS 77704

AREA CODE 713
835-4584

BEEMAN STRONG (1875-1960)
CHARLES S. PIPKIN
EWELL STRONG
LOUIS V. NELSON
KENNETH L. PARKER
PIKE POWERS, JR.

March 10, 1969.

Honorable James R. Cooney, Clerk,
United States District Court,
Beaumont,Texas.

Re: Civil No. 5402 - Claude J. Tomplait vs. Combustion Engineering, Inc., et al. U.S. District Court,Beaumont.

Dear Mr. Cooney:

Herewith for filing motion of two of the defendants, Combustion Engineering and R & I Refractory and Insulation Corporation.

The purpose of the motion is to correct certain answers to interrogatories heretofore served by the plaintiff upon and answered by these defendants. The motion further requests leave to place in the Clerk's office additional representative samples which were requested by the plaintiff. One sample, No. X-21 was inadvertently so placed as it contains no asbestos. We desire to withdraw said sample and replace it with two others, X-23 and X-24.

Respectfully,

Attorney for Combustion Engineering, Inc., and R & I Refractory and Insulation Corporation

CSP/lb
CC-Mr. Ward Stephenson
Mr. Geo. A. Weller
Mr. Gordon R. Pate
Mr. George Duncan
Mr. John Rienstra
Mr. Ben Reynolds
Mr. Gerald P.Coley

P.S. As stated in the motion, the plaintiff has agreed to such corrections.

C.S.P.

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The Tomplait v. Combustion Engineering Case File (1962-1969), Correspondence, 1969
ACL Doc 10859 · Page 41 of 62

WELLER, WHEELUS & GREEN
1008 GOODH[redacted] BLDG. - P. O. BOX 350 - BEAUMONT, [redacted]XAS 77704
(713) TE 3-5648

MESSAGE REPLY

TO Clerk U. S. District Coor DATE

ATTENTION:
MRS ROSALIE TRAHAN

DATE 3/8/69

Re: TOMPLAIT #5402

Attached is reply of defendant to Plaintiff's Motion for the Court to take Judicial Knowledge of certain facts. Please forward this with the other motions to Judge Tisdale.

Thanks.

SIGNED [signature]

cc: W. Ward Stephenson.

SIGNED

FORM AVAILABLE FROM GRAYARC CO., INC
882 THIRD AVE., B'KLYN 32, N. Y.

THIS COPY FOR PERSON ADDRESSED

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KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

March 6, 1969

MAR 7 1969

Honorable Joe J. Fisher
United States District Court
Federal Building
Beaumont, Texas 77701

Re: No. 5402, Claude J. Tomplait vs. Combustion Engineering, Inc., et al

Dear Judge Fisher:

In order to avoid the expense of taking depositions of most of the directors of the Industrial Accident Boards throughout the fifty states of the United States, I should like to submit a motion for the Court to take judicial knowledge of the fact that the various states which I have listed in the attached motion have Workmen's Compensation Laws covering asbestosis and have had them since the dates shown beside the various states. Accompanying this motion you will find a questionnaire sent out by David P. Bell, Executive Director of the Texas Industrial Accident Board to various members of the Workmen's Compensation Commission, Industrial Commission, or Industrial Accident Board, inquiring as to when they first had workmen's compensation effecting asbestosis, and of course, if they do have it. I am Xeroxing answers for you to examine accompanied with this motion to take judicial knowledge of these facts, if you should care to look at these letters.

Sincerely,

Ward Stephenson

Ward Stephenson

WS:jb
Encl.
cc:
Mr. George Weller
P. O. Box 350
Beaumont, Texas 77701
(W/Encl.)

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KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

February 25, 1969

FEB 26 1969

Mr. James R. Cooney
Clerk, U. S. District Court
Federal Building
Beaumont, Texas 77701

Re: No. 5402, Claude J. Tomplait vs. Combustion Engineering, Inc., et al

Dear Mr. Cooney:

We are enclosing interrogatories propounded to defendant Unarco Industries, Inc. Please file this instrument among the papers in this cause.

Yours truly,

Ward Stephenson

WS:jb
Encl.

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
EASTERN DISTRICT OF TEXAS

JAMES R. COONEY
CLERK

P. O. Box 231
Beaumont, Texas 77704

February 26, 1969

Re: Civil 5402, Claude J. Tomplait vs. Combustion Engineering, Inc., et al

To the Attorneys of Record:

This is to notify you that jury will be selected in the above cause at 10:00 a.m., March 3, 1969.

Very truly yours,

JAMES R. COONEY, CLERK

By_____
Deputy Clerk

Mr. Ward Stephenson
Mr. George E. Murphy
Mr. Gordon R. Pate
Mr. Ben L. Reynolds
Mr. Robert Q. Keith
Mr. John G. Tucker
Mr. John D. Rienstra
Mr. Charles S. Pipkin
Mr. George A. Weller
Mr. George E. Duncan
Mr. James W. Mehaffy
Mr. Gerald P. Coley

VINSON, ELKINS, SEARLS & CONNALLY
ATTORNEYS AT LAW
FIRST CITY NATIONAL BANK BUILDING
HOUSTON, TEXAS 77002
TEL: AC 713 225-2411
CABLE ADDRESS: VEWS

February 3, 1969

FEB 4 - 1969

Re: C. A. No. 5402, Claude J. Tomplait v. Combustion Engineering, Inc., et al

Mr. James R. Cooney, Clerk
United States District Court
P. O. Box 231
Beaumont, Texas 77704

Dear Sir:

Enclosed is Answer of the Defendant, Unarco Industries, Inc. to Plaintiff's Third Amended Complaint which we would appreciate your filing among the papers and acknowledging receipt.

All interested counsel has been furnished with a copy of our Answer.

Very truly yours,

VINSON, ELKINS, SEARLS & CONNALLY

By Gerald P. Coley
Gerald P. Coley

196/254A
Encl.
cc: Ward Stephenson
Mr. Ben L. Reynolds
Mr. John D. Rienstra
Mr. George A. Weller
Mr. Charles S. Pipkin
Mr. George E. Duncan
Mr. Gordon R. Pate

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CA 5402 2-26

Please notify all attys.
that jury will be
selected 3-3-69 at
10:00 AM in this case.

Rosalie

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KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

January 23, 1969

JAN 27 1969

Mr. James R. Cooney
Clerk, United States District Court
Federal Building
Beaumont, Texas 77701

Re: Civil No. 5402, Claude J. Tomplait vs.
Combustion Engineering, Inc., et al

Dear Mr. Cooney:

In accordance with Judge Fisher's order in this case, we are enclosing a supplement to plaintiff's third amended original complaint. Please file this instrument among the papers in this cause.

Yours truly,

STEPHENSON, THOMPSON & MORRIS

Ward Stephenson

Ward Stephenson

WS:jb
Encl.
cc:
Mr. Ben L. Reynolds
Mr. John D. Rienstra
Mr. George A. Weller
Mr. Charles S. Pipkin
Mr. George E. Duncan
Mr. Gordon R. Pate
Mr. Gerald P. Coley
(W/Encl.)

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P. O. Box 231
Beaumont, Texas 77704
January 22, 1969

Mr. Ward Stephenson
Stephenson, Thompson & Morris
Stephenson Building
Orange, Texas 77630

Re: Claude J. Tomplait, vs. Combustion Engineering, Inc., Et Al - C.A. #5402

Dear Sir:

Order of the Court on Motion to Include Unarco Industries, Inc. as Defendant, was signed by Judge Fisher, filed and entered in the above cause as of January 22, 1969. This is the Order prepared by Mr. Coley, which allows Plaintiff to make Unarco Industries, Inc. a party defendant by addendum and supplemental pleading to Third Amended Complaint, without necessity of having to file an entire Amended Complaint; Unarco Industries, Inc. to have 20 days from this date to file response.

Very truly yours,

JAMES R. COONEY, CLERK

By _____
(Mrs.) Virginia R. Sens
Deputy Clerk

cc: Mr. Gerald P. Coley
Mr. Gordon R. Pate
Mr. Ben L. Reynolds
Mr. Robt. Q. Keith
Mr. John D. Rienstra
Mr. Charles S. Pipkin
Mr. George E. Duncan
Mr. Geo. A. Weller

VINSON, ELKINS, WEEMS & SEARLS
ATTORNEYS AT LAW
FIRST CITY NATIONAL BANK BUILDING
HOUSTON, TEXAS 77002

TELEPHONE: CAPITOL 5-2411
CABLE ADDRESS: VEWS

January 16, 1969

Re: Civil No. 5402, Claude J. Tomplait vs.
Combustion Engineering, Inc., et al

JAN 17 1969

Mr. James R. Cooney, Clerk
United States District Court
P. O. 231
Beaumont, Texas 77704

Dear Sir:

Enclosed is Defendant Unarco Industries, Inc.'s Response to Plaintiff's Motion to Include Unarco as a defendant. Also enclosed is a proposed form of order which is self-explanatory. We would greatly appreciate your presenting the Response to Plaintiff's Motion and proposed form of Order to the Court.

Very truly yours,

VINSON, ELKINS, WEEMS & SEARLS

BY: Gerald P. Coley
Gerald P. Coley

196:62B
Encl.

cc: Mr. Ward Stephenson
Mr. Ben L. Reynolds
Mr. John D. Rienstra
Mr. George A. Weller
Mr. Charles S. Pipkin
Mr. George E. Duncan
Mr. Gordon R. Pate

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION
January 8, 1969

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

CIVIL NO. 5402

The following motion was filed on January 8, 1968:
Plaintiff's Motion to Include Unarco Industries, Inc. as Defendant.

There was XXXXXXXX evidence received of the necessary service of motion on the adverse parties. No motion will be presented to the Judge until indication of service is received by the Clerk and the proper time has elapsed as governed by the Rules of this Court. Indication of service is usually given by a statement at the bottom of the motion, below the signature, showing the date a copy of the motion was mailed to adverse party. This statement should be signed.

All motions are to be answered within ten (10) days unless otherwise allowed by the Court or some applicable rule of the Federal Rules of Civil Procedure.

THE LOCAL RULE is to consider motions on the pleadings, without oral hearing, unless on showing good cause an oral hearing is granted. Request for oral hearing, if any, should be made when the motion, or the reply, is filed. If oral hearing is granted, the Judge will set a date for same and the interested attorneys will be notified.

THE JUDGE desires that memorandum briefs containing authorities relied on as to matters raised in the motion be filed by the respective parties before the motion is submitted.

Please note also that it is Judge Fisher's rule that all documents, including forms of orders and judgments, be sent to the Clerk's Office and not direct to the Judge.

IF YOU DO NOT DESIRE TO OPPOSE THE ABOVE MOTION, PLEASE INFORM THE CLERK BY LETTER.

JAMES R. COONEY, CLERK

By: Deputy

To: Mr. Ben L. Reynolds
Mr. John D. Rienstra
Mr. George A. Weller
Mr. Charles S. Pipkin
Mr. George E. Duncan
Mr. Gordon R. Pate
Mr. Gerald P. Coley

cc: Mr. Ward Stephenson

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[redacted] KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH [redacted]

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

January 7, 1969

Honorable Joe J. Fisher
Judge, United States District Court
Federal Building
Beaumont, Texas 77701

Re: Civil No. 5402, Claude J. Tomplait vs.
Combustion Engineering, Inc., et al

Dear Judge Fisher:

I am enclosing a motion and order which is self-explanatory. If this meets with your approval, I would appreciate your signing the same.

Yours truly,

Ward Stephenson

Ward Stephenson

WS:jb
Encl.
cc:
Mr. Ben L. Reynolds
Mr. John D. Rienstra
Mr. George A. Weller
Mr. Charles S. Pipkin
Mr. George E. Duncan
Mr. Gordon R. Pate
Mr. Gerald P. Coley
(W/Encl.)

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KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

January 7, 1969

JAN 8 - 1969

Mr. James R. Cooney
Clerk, U. S. District Court
Federal Building
Beaumont, Texas 77701

Re: Civil No. 5402, Claude J. Tomplait vs.
Combustion Engineering, Inc., et al

Dear Mr. Cooney:

We are enclosing notice to take the written interrogatories of A. S. Arwine, c/o C. E. Refractories, Division of Combustion Engineering, Inc., together with attached written interrogatories. Copies of these instruments are being mailed to the attorneys named in the enclosed notice.

Please file this instrument among the papers in this cause.

Yours truly,

STEPHENSON, THOMPSON AND MORRIS

Ward Stephenson

WS:jb
Encl.

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UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK

EASTERN DISTRICT OF TEXAS

JAMES R. COONEY
CLERK

P. O. Box 231
Beaumont, Texas 77704
January 7, 1969

Mr. Ward Stephenson
Stephenson, Thompson and Morris
Stephenson Building
Orange, Texas 77630

Re: Civil 5402 - Claude J. Tomplait
vs. Combustion Engineering, Inc.
et al

Dear Mr. Stephenson:

This is to advise that Order was signed by Judge Fisher and filed in the above cause on January 7, 1969, wherein counsel for each defendant is ordered to submit to plaintiff's attorney the name and address of the company representative assisting in the trial of said cause.

The above information is to be submitted to plaintiff's attorney within one week from the date of said Order, by those defendants who have not already furnished said information.

Yours very truly,

JAMES R. COONEY, CLERK

By Evelyn Y. Walker
(Mrs.) Evelyn Y. Walker
Deputy Clerk

cc: Mr. Gordon R. Pate
Mr. Ben L. Reynolds
Mr. George A. Weller
Mr. John G. Tucker
Mr. John D. Rienstra
Mr. Charles S. Pipkin
Mr. James W. Mehaffy
Mr. George E. Duncan
Mr. Gerald P. Coley

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KEMPER W. STEPHENSON, 1958
WARD STEPHENSON
MARLIN THOMPSON
JAMES A. MORRIS
JOHN CASH SMITH

Law offices of **STEPHENSON, THOMPSON AND MORRIS**

STEPHENSON BUILDING / ORANGE, TEXAS 77630

January 6, 1969

Honorable Joe J. Fisher
United States District Court
Federal Building
Beaumont, Texas 77701

Re: Civil No. 5402, Claude J. Tomplait vs. Combustion Engineering, Inc., et al

Dear Judge Fisher:

There seems to be confusion with at least one of the attorneys in particular representing one of the defendants as to whether or not the defendants were to give me the name and address of the company representative who will appear at the time of trial. I wish, of course, to submit interrogatories to these people to determine the extent of their knowledge and generally get an idea of what their testimony might be in order to prepare myself for trial. Almost all of the attorneys have done this, but I feel that it is necessary to get the balance to comply and for the court to enter a formal order to this effect. I have therefore taken the liberty of preparing such an order for your signature, and this order is enclosed.

Sincerely,

ward stephenson

Ward Stephenson

WS:jb
Encl.
cc:
Mr. Ben L. Reynolds
Mr. John D. Rienstra
Mr. George A. Weller
Mr. Charles S. Pipkin
Mr. George E. Duncan
Mr. Gordon R. Pate
(W/Encl.)

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January 6, 1969

Mr. Charles S. Pipkin
Strong, Pipkin, Nelson & Parker
San Jacinto Building
Beaumont, Texas

Re: Civil No. 5402 Claude J. Tomplait
vs Combustion Engineering, Inc.,et al

Dear Mr. Pipkin:

Your request to extend the time for filing the deposition of Mr. Arthur J. Santry, Jr. is granted, and you may have until and including January 13, 1969, in which to file said deposition.

Sincerely yours,

Joe J. Fisher

cc: Mr. Ward Stephenson
Stephenson Building
Orange, Texas

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COPY

WELLER, WHEELUS & GREEN
ATTORNEYS AT LAW
GOODHUE BUILDING
P. O. BOX 350
BEAUMONT, TEXAS 77704

(713) TE 3-5648

GEO. A. WELLER
KYLE WHEELUS, JR.
EDWARD H. GREEN
THAD HEARTFIELD

JAN 7 1969

January 6, 1969

Honorable Joe J. Fisher
United States District Judge
Federal Building
P. O. Box 231
Beaumont, Texas 77704

Re: Civil No. 5402 - Claude J. Tomplait vs. Combustion Engineering, Inc., et al.

Dear Judge Fisher:

At the pre-trial hearing on December 17, 1968, the Court instructed counsel for all defendants to attempt to select two attorneys from among the representatives of the defendants in this case to conduct the trial on behalf of the defendants.

After a conference of all counsel for defendants, we are unable to agree on two attorneys to conduct the interrogation of the witnesses for and on behalf of all defendants because of the following reasons or objections:

(1) There exists a conflict of interests among the various defendants in the defense of plaintiff's claim;

(2) Each counsel is employed to represent his individual client and has prepared his defense from the viewpoint of this client; and the two counsel, if selected, would not have prepared the defense of the individual defendant and could not be expected to undertake this responsibility for many reasons;

(3) The attorney retained by a specific defendant who has prepared the defense on the part of this defendant would want to present his affirmative defense;

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(4) Jury argument should be made by each individual attorney representing his individual defendant;

(5) Each individual defendant should have the right to make an objection to the admissability of evidence from the standpoint of his individual client. (We would anticipate that the Court would permit a general statement in the record that each defendant would adopt each objection unless an exception to this was noted);

(6) Each individual defendant has a cross action as to each other defendant, and since there is a dispute in the first place as to that defendant's liability to the plaintiff, there will likewise be a dispute among the defendants as to their potential liability on the cross action.

I have been requested to write this letter conveying the viewpoint of all counsel, and trust that I have impartially presented the matter to the Court. I do feel that counsel for the defendant will try this case in such a manner as to eliminate unnecessary repetition in the examination of most witnesses, and will cooperate with the Court in expediting the trial.

Very truly yours,

Geo. A. Weller

GAW/ca

cc: Mr. Ward Stephenson
Mr. James R. Cooney
Mr. George Duncan
Mr. Gordon Pate
Mr. Ben L. Reynolds
Mr. John D. Rienstra
Mr. Gerald P. Coley
Mr. Charles S. Pipkin

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JAN 7 - 1969

January 3, 1969

Re: Civil Action No. 5402 - Claude J. Templait vs. Combustion Engineering, Inc., et al

Mr. Ward Stephenson
Attorney At Law
Stephenson Building
Orange, Texas

Dear Ward:

In accordance with Judge Fisher's ruling at the Pre-Trial Hearing held on December 17, 1968, materials manufactured by Johns-Manville Products Corporation bear the following code numbers:

114	3623	9193
127	3724	8294
1310	3825	9396
1411	4037	3997
1512	6039	8498
1613	7147	9599
1714	6248	86103
1815	7349	97109
1916	6458	88127
3017	7559	99129
3118	6663	92130
3219	7760	83131
3320	6865	94132

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3421	7987	85133
3522	8088	96134

Yours very truly,

GORDON R. PATE

GORDON R. PATE

GRP/je

cc: Mrs. Rosalie Trahan, Deputy Clerk
United States District Court
Federal Building
Beaumont, Texas 77704

Mr. George Duncan
Mr. Ben Reynolds
Mr. George Weller
Mr. John G. Tucker
Mr. John D. Rienstra
Mr. Charles S. Pipkin
Mr. Robert Keith
Mr. Gerald P. Coley

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STRONG, PIPKIN, NELSON & PARKER
ATTORNEYS AT LAW
10TH FLOOR, SAN JACINTO BUILDING – P. O. BOX 1632
BEAUMONT, TEXAS 77704

January 3, 1969.

JAN 6 - 1969

Mr. Ward Stephenson, Attorney,
Stephenson, Thompson & Morris,
Stephenson Building,
Orange, Texas.

Re: Civil No. 3402 - Claude J. Tomplait vs. Combustion Engineering, Inc., et al. United States District Court, Beaumont Division.

Dear Mr. Stephenson:

Please be advised that the samples placed in the Clerk's Office numbered X-18, X-19, X-20, X-21 and X-22 are products of the defendant, R and I Refractory and Insulation Corporation.

The Company representative whom the defendants, Combustion Engineering, Inc., and R and I Refractory and Insulation Corporation will have present in his capacity as such representative, is Mr. A.S. Arwima, c/o C.E.Refractories, Division of Combustion Engineering, Inc., P.O.Box 790, Port Kennedy, Pennsylvania.

Yours very truly,

Charles J. Pipkin

CSP/LB
CC - Mr. Reynolds
Mr. Rienstra
Mr. Wellwr
Mr. Duncan
Mr. Pate
U. S. District Clerk.

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January 3, 1969

Re: Civil Action No. 6402 - Claude J. Tomplait vs. Combustion Engineering, Inc., et al

JAN 6 - 1969

Mr. Ward Stephenson
Attorney At Law
Stephenson Building
Orange, Texas

Dear Ward:

The Company Representative for Johns-Manville Products Corporation upon a trial of the above case will be:

H. C. Parmley, District Manager
Southern District
Industrial Insulation Division
Johns-Manville Sales Corporation
Houston, Texas

Yours very truly,

GORDON R. PATE

GORDON R. PATE

GRP/jo

cc: Mrs. Rosalie Trahan, Deputy Clerk
United States District Court
Federal Building
Beaumont, Texas 77704

Mr. George Duncan
Mr. Ben Reynolds
Mr. George Keller
Mr. John C. Tucker
Mr. John D. Kinsentra
Mr. Charles S. Pipkin
Mr. Robert Keith
Mr. Gerald E. Coley

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VINSON, ELKINS, WEEMS & SEARLS
ATTORNEYS AT LAW
FIRST CITY NATIONAL BANK BUILDING
HOUSTON TEXAS

January 2, 1968

JAN 3 - 1969

Re: C. A. No. 5402, Claude J. Tomplait v. Combustion Engineering, Inc., et al; in the United States District Court for the Eastern District of Texas, Beaumont Division

Mr. Ward Stephenson
Stephenson, Thompson & Morris,
Attorneys at Law
Stephenson Building
Orange, Texas 77630

Dear Ward:

Pursuant to the Court's instruction to notify you of the party who will be designated as the company representative for the trial of the case, please be advised that Mr. Anthony W. Summers, c/o Unarco Industries, Inc., 111 West Perry Street, Bloomington, Illinois, is designated as the company representative for the third-party defendant, Unarco Industries, Inc.

Very truly yours,

VINSON, ELKINS, WEEMS & SEARLS

Original Signed By-
GERALD P. COLEY

By

Gerald P. Coley

196/254A

cc: Mr. George E. Duncan, Attorney
Beaumont Savings Bldg.
Beaumont, Texas

Mr. James R. Cooney, Clerk
U. S. District Clerk's Office
P. O. Box 231
Beaumont, Texas 77704

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