NO. 88-C-0015

HERMAN A. STARLS, JR	§	THE DISTRICT COURT OF
	§	
VS	§	BRAZORIA COUNTY, TEXAS
	§	
OWENS-CORNING FIBERGLAS CORPORATION et al	§	
	§	23RD JUDICIAL DISTRICT

MOTION FOR PROTECTIVE ORDER
OF INTERVENOR, COMBUSTION ENGINEERING, INC.

COMES NOW, Intervenor, Combustion Engineering, Inc., and files this its Motion for Protective Order and in support thereof would respectfully show unto the Court the following:

REQUEST FOR ORAL HEARING

Combustion Engineering, Inc. request an oral hearing on this Motion for Protective Order.

FACTUAL BACKGROUND

I

Combustion Engineering, Inc. (hereinafter referred to as "CE") is not a party to the above-entitled and numbered cause of action. The Travelers Insurance Company (hereinafter referred to as "Travelers"), a defendant in this lawsuit, provided certain documents to CE which are ostensibly within the scope of discovery propounded by Plaintiffs to Travelers in this case. The documents are provided under procedures approved by the Special Master for review of documents and assertion of privileges by Travelers' insureds who are not named as defendants in this case. In accordance with that procedure, CE seeks to intervene in this lawsuit for the purpose of obtaining a ruling that certain documents in Travelers possession, but generated by

or on behalf of CE are exempt from discovery under the lawyer-client, work product, and/or party communication privileges under Texas Rule of Civil Procedure, Rule 166b 3 and the Texas Rules of Civil Evidence, Rule 503. In relevant part, Rule 166b 3 reads:

> 3. Exemptions. The following matters are protected from disclosure by privilege:
>
> a. Work Product. The work product of an attorney, subject to the exceptions of Texas Rule of Civil Evidence 503(d) which shall govern as to work product as well as to attorney client privilege.
>
> . . .
>
> d. Party Communications. . . . [C]ommunications, between agents or representatives or the employees of a party to the action or communications between a party and that party's agents, representatives or employees, when made subsequent to the occurrence or transaction upon which the suit is based and in anticipation of the prosecution or defense of the claims made a part of the pending litigation. . . .

II.

An index of the documents provided to CE by Travelers is attached hereto as Exhibit A. The numbering system in the index corresponds to Travelers' designation of each page of the documents by the initials "TRA" followed by a six-digit number. The same numbering system is used below in reference to the documents.

III.

CE interposes no objection to production by Travelers of the following documents: TRA 029768-033705, 033707, and 033768-033771. CE takes no position with respect to any claim of privilege or confidentiality which Travelers may assert with respect to those documents.

IV

CE contends that the contested documents are non-discoverable under the lawyer-client, work product, and other applicable privileges for the reasons set forth below in this Motion, Affidavits, and other documents which are incorporated herein by reference.

CE LOCAL COUNSEL HANDBOOK
TRA 030459-030814

V

A Lawyer-Client Privilege

Plaintiffs in their Request for Production, seeks production of material which is clearly protected from discovery by the lawyer client privilege. As stated in the Affidavits of Ellis R. Mirsky (former Chief of the Litigation Department at CE), Robert B. Preston (outside counsel for CE) and Stewart D. Rod (outside counsel for CE) attached hereto respectively as Exhibits "B", "C" and "D," CE in 1983 requested the law firm of Arter & Hadden prepare the Local Counsel Handbook, document numbers TRA 030459-030814, which contains material to assist its other counsel in their representation and legal defense of CE. This material was prepared by CE's attorneys for its attorneys and included confidential information from the client, and the opinions, observations, conclusions, and mental impressions of CE's attorneys related to the defense of their client. The purpose of the Local Counsel Handbook was to provide other lawyers retained by CE with information necessary to formulate appropriate defense strategies. In fact, as stated in the Affidavit of Ellis R. Mirsky, the first page of the Local Counsel Handbook , document number TRA 030460 states the material contained therein is "confidential" and was "prepared by . . . Arter & Hadden to provide guidance and information for the defense of asbestos-related action."

Orrick Arter & Hadden prepared the Local Counsel Handbook, it distributed the same only to other lawyers retained by CE to defend it in asbestos litigation and Travelers. CE permitted Travelers to have a copy of the handbook because Travelers provided CE with insurance, retained Arter & Hadden and other attorneys to defend CE, and aided in the resolution of the asbestos-related claims and cases. Pursuant to the insurance contract between Travelers and CE, CE and Travelers agreed to cooperate in the joint defense of these asbestos cases. At that time, CE and Travelers had a common interest, and Travelers was a necessary party in helping CE resolve the over 45,000 asbestos-related cases then pending against CE. (See, the Preston Affidavit, Roll Affidavit, and the Affidavit of William Askinazi (Assistant General Counsel for CE), which will supplement this Motion as Exhibit E).

Furthermore, as stated in the Affidavits of Ellis R. Mirsky, Robert B. Preston, and Stewart D. Roll, each and every handbook was numbered and that number recorded prior to being assigned to individual local area counsel. The reason for maintaining such tight control over these manuals is to ensure the confidential material contained therein is not disseminated or disclosed to third parties and therefore, remains protected under the lawyer-client privilege. As further stated in the previously mentioned Affidavits, CE prohibited the materials in the handbook from being photocopied or otherwise distributed to anyone to ensure that confidential material would remain protected under the lawyer-client privilege. In addition to the first page of the manual addressing its confidentiality, numerous other pages throughout the handbook indicate the information contained therein is "PRIVILEGED AND CONFIDENTIAL." All local CE lawyers were additionally cautioned to take all steps

necessary to maintain the handbook's confidentiality. There can be no doubt that this manual which contains the opinions, observations, conclusions, and mental impressions of CE's attorneys which is highly confidential and was prepared at the request of CE is privileged under the lawyer-client privilege and non-discoverable under both Texas Rule of Civil Procedure Rule 166b.3 and Texas Rule of Evidence 503.

CE, the client in the above-described lawyer-client relationship, asserts the lawyer-client privilege as to the Local Counsel Handbook and requests the confidential information contained therein remain privileged. (See, the Affidavit of William Askinazi).

B. Attorney Work Product Privilege

As stated in the Affidavits of Robert B. Preston and Stewart D. Roll, the Local Counsel Handbook contained specific documents, reports, communications, memorandums, mental impressions, conclusions, legal theories, and/or thought processes of CE's attorneys. As Ellis R. Mirsky states in his Affidavit, CE's attorneys prepared and assimilated this handbook at the request of CE. In short, the handbook is the work product of Arter & Hadden's lawyers. At the time CE sought preparation of the Local Counsel Handbook, it anticipated continued asbestos-related litigation. Pursuant to those concerns, CE's attorneys assimilated and distributed the manual to CE's local defense counsel to assist them in analyzing the strengths and weaknesses of asbestos cases then pending, and expected in the future. As stated in the Mirsky, Preston, and Roll Affidavits, both the first page and numerous other pages appearing within the handbook specifically state it is confidential "ATTORNEY WORK PRODUCT." The words "ATTORNEY WORK PRODUCT" were repetitively printed within the Local Counsel Handbook to ensure local area counsel would

understand the handbook was attorney work product. There cannot be a more unambiguous statement than this that the handbook prepared by CE's attorneys at the corporation's request was intended to be treated as attorney work product. For this reason, the Local Counsel Handbook is protected under the attorney work product privilege of Texas Rule of Civil Procedure, Rule 166b in addition to the other discussed privileges.

C. Party Communication Privilege

The Local Counsel Handbook is clearly privileged under the lawyer-client privilege and is unequivocally attorney work product. However, if necessary, CE further asserts that the aforementioned handbook is non-discoverable under the party communication privilege set forth in Texas Rule of Civil Procedure 166b 3d. As generally stated in the Affidavits of Ellis R. Mosley, Robert B. Preston, and Stewart D. Roll, the Local Counsel Handbook was created as a communication in anticipation of the defense of the claims made a part of the above-entitled and numbered pending lawsuit as well as other similar claims. Granted, Texas Rule of Civil Procedure Rule 166b 3d limits application of this privilege to communications made "in anticipation of the ... defense of the claims made a part of the pending litigation." However, to achieve the objective of the Texas Rules of Civil Procedure, as stated in Rule 1, it requires that "these rules shall be given a liberal construction." Accordingly, the "pending litigation" must be interpreted as asbestos-related litigation, rather than in terms of particular plaintiffs' cases in light of the immense number of and similarity between all asbestos-related lawsuits. At the time CE contacted its attorneys and requested the preparation of this handbook, CE both objectively and subjectively anticipated this unique and overwhelming wave of asbestos litigation, including the above-entitled and numbered

lawsuit and prepared the handbook specifically for this type of lawsuit. Objectively, CE recognized its exposure to substantial potential liability and cost of defending the then pending and future asbestos suits and for this reason had its attorneys assimilate the Local Counsel Handbook. (See, the Affidavit of Boris R. Mirsky).

As further stated in the Mirsky Affidavit, subjectively, CE believed this wave of asbestos litigation, including the case at bar, would require a uniform method of management and communication between it, CE, and its attorneys. Pursuant to this subjective belief, CE instructed its attorneys to draft the Local Counsel Handbook and distribute the same to all of its other counsel defending CE. This handbook was the means of implementing CE's desired method of case management and communication between the corporation and its outside counsel. Therefore, the Local Counsel Handbook falls under the party communication privilege because CE both objectively and subjectively anticipated that it would have to defend itself from the numerous asbestos claims filed against it, including the present case.

LETTERS PREPARED BY CE AND ITS ATTORNEYS

VI.

In addition to the Local Counsel Handbook discussed above, two letters written by Robert B. Preston, one letter written by Stewart D. Roll, and six letters written by David P. Laird were communications between CE and its attorneys, are also privileged under the lawyer client and attorney work product privileges and thus, non-discoverable.

A. Lawyer-Client Privilege:

Letters Prepared by Robert B. Preston
TRA 030133-030134 and 030139

As stated in the Affidavit of Robert B. Preston, two letters written by him in his capacity as CE's national coordinating counsel, document numbers TRA 030133-030134 and 030139, were prepared to assist other counsel in the representation and legal defense of CE. The letters contained factual information necessary to assist local counsel in properly defending CE in asbestos litigation and were clearly intended to be privileged and confidential.

Letter Prepared by Stewart D. Roll
TRA 030148-030206

As stated in the Affidavit of Stewart D. Roll, the letter written by him with attachments, document numbers TRA 030148-030206, was prepared to assist other counsel in the representation and legal defense of CE. After preparing those documents, Mr. Roll sent them to the same recipients of the Local Counsel Handbook and they were transmitted as replacement pages for the handbook. The transmittal letter and replacement pages were subject to the same privileges and confidentiality obligations as discussed above in reference to the Local Counsel Handbook.

Letters Prepared by David P. Land
TRA 030135, 030136-030138,
030140-030141, 030142-030144, 030145 and 030146-030147

Further, as stated in the Affidavit of William Askinazi, Mr. Land wrote as a representative of CE six letters, document numbers TRA 030135, 030136-030138, 030140-030141, 030142-030144, 030145, and 030146-030147, and all such correspondence was

addressed to CE's defense counsel. Such correspondence from CE to its attorneys contained confidential information, opinions, conclusions, and mental impressions of CE which was for its attorneys' eyes only and CE intended that these communications remain privileged under the lawyer-client privilege. William Askinazi also states in his Affidavit these letters addressed to CE's attorney which contained confidential information were prepared to assist its outside local counsel in properly representing and defending CE. Thus, these communications between CE and its attorneys which were made pursuant to its attorneys' legal representation of the corporation and which were intended to be confidential are clearly protected by the lawyer-client privilege and non-discoverable under Texas Rule of Civil Procedure 166b 3 and Texas Rule of Evidence 503.

CE now asserts the lawyer-client privilege as to all nine of the above-described letters and requests the contents of this correspondence remain confidential. (See, the Affidavit of William Askinazi).

B. Attorney Work Product Privilege

Letters Prepared by Robert B. Preston
TRA 030133-030134 and 030139

Additionally, as Robert B. Preston states in his Affidavit, letters from him to all of CE's local defense counsel, document numbers TRA 030133-030134 and 030139, contain factual information brought to his attention regarding the ongoing asbestos litigation. The information in these letters was necessary to assist CE's local counsel in properly defending the corporation in asbestos litigation. Mr. Preston generated these letters addressed to other CE attorneys in his capacity as an attorney for CE. Therefore, these letters are clearly

attorney work product and as such are protected from discovery by the attorney work product privilege.

Letter Prepared by Stewart D. Roll
TRA 030148-030206

Further, as stated in Stewart D. Roll's Affidavit, in his capacity as an attorney for CE, he generated a letter with attachments, document numbers TRA 030148-030206, which is non-discoverable attorney work product. This letter and its attachments contained additional information to be incorporated into the Local Counsel Handbook described above. Since this letter contained replacement pages for the Local Counsel Handbook which is used by the corporation's lawyers in the defense of asbestos cases, and is clearly attorney work product those documents are, likewise, attorney work product and non-discoverable under that privilege as well.

Letters Prepared by David P. Land
TRA 030135, 030136-030138,
030140-030141, 030142-030144, 030145 and 030146-030147

Finally, William Askinazi states in his Affidavit, Mr. Land in his capacity as in-house counsel for CE, prepared six letters, document numbers TRA 030135, 030136-030138, 030140-030141, 030142-030144, 030145 and 030146-03014. All these letters previously described contained Mr. Land's thought processes relating to, mental impressions regarding, and reports on CE's involvement as a party to the numerous then pending asbestos suits and potential future asbestos-related litigation. These documents are also clearly attorney work product and non-discoverable in this proceeding pursuant to the attorney work product privilege.

WHEREFORE, PREMISES CONSIDERED, Intervenor, Combustion Engineering, Inc. respectfully prays that a hearing be held on its Motion for Protective Order, and that the Court make an in camera inspection of the aforementioned documents, and upon such hearing and in camera review of the documents, that this Court find all said documents (except those identified in Paragraph III above) are exempt from Plaintiffs' discovery because they are privileged under the lawyer-client, attorney work product, and/or party communication privileges, granting Combustion Engineering, Inc.'s Motion for Protective Order, and other relief to which it may show itself justly entitled.

Respectfully submitted,

ARTER & HADDEN

By: Milton G. Hammond

Milton G. Hammond
State Bar No. 08867720
1717 Main Street
Suite 4100
Dallas, Texas 75201
(214) 761-4321

ATTORNEYS FOR INTERVENOR,
COMBUSTION ENGINEERING, INC.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record by certified mail, return receipt requested, on this 28th day of September, 1990.

Milton G. Hammond

Milton G. Hammond

MH2-318

EXHIBIT "A"

INDEX OF COMBUSTION ENGINEERING, INC. DOCUMENTS

TRA 029768
TYPE OF DOCUMENT: Memo
FROM: Secretary Coppeler of Travelers - Home Office
TO: A.M. Delahoussaye of Travelers - Port Arthur
DATE: September 17, 1971
RE: Travelers' management of the then pending asbestos lawsuits against its insureds.

TRA 030133, 030134
TYPE OF DOCUMENT: Letter
FROM: Robert B. Preston, attorney at Arter & Hadden
TO: All C-E Local Counsel
DATE: December 23, 1987
RE: C-E personnel changes affecting verification of discovery responses.

TRA 030135
TYPE OF DOCUMENT: Letter
FROM: David P. Land, in-house counsel for C-E
TO: All C-E Defense Counsel in Asbestos Litigation
DATE: August 27, 1982
RE: C-E's litigation strategies relating to the J-M and Unarco bankruptcies.

TRA 030136, 030137, 030138
TYPE OF DOCUMENT: Letter with attachments
FROM: David P. Land, in-house counsel for C-E
TO: All C-E Defense Counsel in Asbestos Litigation
DATE: October 5, 1982
RE: C-E's litigation strategies relating to the J-M and Unarco bankruptcies.

TRA 030139
TYPE OF DOCUMENT: Letter
FROM: Robert B. Preston, attorney at Arter & Hadden
TO: All C-E Defense Counsel
DATE: December 23, 1982
RE: Deletion of a C-E product from the Master Products List used by C-E attorneys in asbestos litigation.

TRA 030140, 030141
TYPE OF DOCUMENT: Letter
FROM: David P. Land, in-house counsel for C-E
TO: All C-E Defense Counsel in Asbestos Litigation
DATE: January 5, 1983
RE: C-E's litigation strategies and other litigation matters relating to C-E, Travelers, and the Detrick Company.

TRA 030142, 030143, 030144
TYPE OF DOCUMENTS: Letter with attachments
FROM: David P. Land, in-house counsel for C-E
TO: C-E Defense Counsel in Asbestos Litigation
DATE: March 23, 1983
RE: A change in litigation strategies in light of a certain court ruling discussed therein.

TRA 030145
TYPE OF DOCUMENT: Letter
FROM: David P. Land, in-house counsel for C-E
TO: All C-E Defense Counsel in Asbestos Litigation
DATE: October 1, 1982
RE: Litigation strategies relating to the defense of railroad asbestos suits.

TRA 030146, 030147
TYPE OF DOCUMENTS: Letter with attached affidavit
FROM: David P. Land, in-house counsel for C-E
TO: Christopher Lombardi, attorney at Martin & Stamp
DATE: February 17, 1983
RE: Litigation strategies relating to the defense of railroad asbestos suits.

TRA 030148-030206
TYPE OF DOCUMENTS: Letter with attachment
FROM: Stewart D. Roll, attorney at Arter & Hadden
TO: All C-E Defense Counsel in Asbestos Litigation
DATE: October 22, 1987
RE: Cover letter with attached information to be incorporated into the Local Counsel Handbook.

TRA 030459-030814
TYPE OF DOCUMENTS: Local Counsel Handbook
FROM: Combustion Engineering
TO: All Local C-E Counsel in Asbestos Litigation
DATE: 1987
RE: Defense of asbestos lawsuits.

TRA 033706
TYPE OF DOCUMENT: Travelers Interoffice Memorandum
FROM: A/S Yates
TO: Secretary Andrews
DATE: June 19, 1975
RE: Catastrophe Products Committee at C-E.

TRA 033707
TYPE OF DOCUMENT: Traveler Interoffice Memorandum
FROM: Secretary Jackson
TO: Secretary Yates
DATE: June 3, 1975
RE: Catastrophe Products Committee at C-E.

TRA 033768-033771
TYPE OF DOCUMENT: Memorandum
FROM: H.W. Wrapp, Superintendent, Engineering Division
TO: Vice-President Carter, Second Vice-President Montgomery, Second Vice-President Wright, Second Vice-President Hoss, Secretary Nash, Secretary Newton and Assistant Secretary Watch
DATE: August 12, 1969
RE: Potential exposure to future liability in asbestos lawsuits based on the filing of past claims.

EXHIBIT "B"

NO. 88-C-0615

SHERMAN A. SEARLS, JR.	§	THE DISTRICT COURT OF
	§	
VS.	§	BRAZORIA COUNTY, TEXAS
	§	
OWENS-CORNING FIBERGLAS CORPORATION, et al.	§	23RD JUDICIAL DISTRICT

AFFIDAVIT OF ELLIS R. MIRSKY IN SUPPORT OF
COMBUSTION ENGINEERING, INC.'S MOTION FOR PROTECTIVE ORDER

STATE OF NEW JERSEY	§	
	§	
COUNTY OF PASSAIC	§	

Personally appeared before the undersigned officer duly authorized to administer oaths, came Ellis R. Mirsky, who after being duly sworn, deposed and stated:

My name is Ellis R. Mirsky and I was at all material times discussed herein until March 31, 1990, the Vice President, and Chief of the Litigation Department at Combustion Engineering, Inc. (hereinafter referred to as "CE"), and have personal knowledge of or information concerning the facts set forth herein.

As in-house attorney for and a representative of CE, I had authority to obtain legal services on behalf of the corporation. In that representative capacity for CE, I contacted the law firm of Arter & Hadden in 1987 and requested that it prepare the "Local Counsel Handbook," document numbers TRA 030459-030814, referred to in this Motion Protective Order.

CE requested that Arter & Hadden prepare the Local Counsel Handbook to assist its other counsel in the representation and legal defense of CE. All the material contained in the Local Counsel Handbook was prepared by CE's attorney for its attorneys and included highly confidential information from CE, as well as the opinions, observations, conclusions, and mental impressions of CE Attorneys relating to the defense of asbestos-related lawsuits in which CE was, or could be, a defendant.

All materials contained in the Local Counsel Handbook were, and are, intended to be confidential. In fact, the first page of the Local Counsel Handbook so states the material contained therein is "confidential" and was "prepared by. . . Arter & Hadden to provide guidance and information for the defense of asbestos-related action." Further, CE prohibited the handbook from being reproduced in any manner. Also, numerous other pages throughout the handbook indicated in bold print that the information contained therein is "PRIVILEGED AND CONFIDENTIAL."

Furthermore, every Local Counsel Handbook was given a specific number and that number was recorded prior to the handbook being distributed to any particular local area counsel. CE and its attorneys maintained strict controls over the manuals to ensure the lawyer-client privilege remained intact and the materials contained therein remained confidential.

Furthermore, the materials contained in the Local Counsel Handbook were the work product of CE's attorneys at Arter & Hadden. To ensure local area counsel would understand the handbook was attorney work product, the words "ATTORNEY WORK PRODUCT" appeared on numerous pages within the handbook.

CE objectively and subjectively anticipated the mass wave of asbestos-related litigation and its potential exposure which may arise from these types of lawsuits. In response to this potential exposure, CE's attorneys prepared for its local area counsel the handbook and distributed the same which contained the thoughts, impressions, conclusions, and legal theories of its attorneys to its other local area defense counsel. CE believed the then pending and future asbestos cases would require a uniform method of management and communication between the corporation and its outside counsel. The Local Counsel Handbook was the means of implementing CE's desired method of case management and communication with its attorneys. This communication was made in anticipation of defending asbestos-related lawsuits such as the present case.

CE intended that the confidential material prepared by its attorneys for its attorneys in defense of asbestos-related claims remain confidential and privileged under the lawyer-client privilege. CE intended that this attorney work product be communicated only to its local defense counsel and used in the defense of all asbestos litigation, including the case at bar, filed against CE.

ELLIS R. MIRSKY

SUBSCRIBED AND SWORN TO BEFORE ME by ELLIS R. MIRSKY this 19th day of September, 1990, to certify which, witness my hand and seal of office.

NOTARY PUBLIC
STATE OF NEW JERSEY

JUDITH R. SANDLIN
Typed or Printed Name of Notary

My Commission Expires: 2-28-95

0397s

EXHIBIT "C"

No. 88-C-0615

SHERMAN A. SEARLS, JR.	*	IN THE DISTRICT COURT OF
	*	
VS.	*	BRAZORIA COUNTY, TEXAS
	*	
OWENS-CORNING FIBERGLAS CORPORATION, ET AL	*	23RD JUDICIAL DISTRICT

AFFIDAVIT OF ROBERT B. PRESTON IN SUPPORT OF COMBUSTION ENGINEERING INC'S. MOTION FOR PROTECTIVE ORDER

STATE OF OHIO	*	
	*	SS.
COUNTY OF CUYAHOGA	*	

ROBERT B. PRESTON personally appeared before the undersigned officer, who was authorized by the State of Ohio to administer oaths; after being duly sworn, Robert B. Preston stated:

1. At all material times relevant to this Affidavit, I have been an attorney at law with the law firm of Arter & Hadden in Cleveland, Ohio.

2. I have personal knowledge of the facts contained in this Affidavit and I am providing this Affidavit in support of Combustion Engineering Inc's. (hereinafter "C-E") Motion For Protective Order in this case.

3. During all material times herein, I was one of Arter & Hadden's attorneys who represented C-E as national coordinating counsel for asbestos related claims and litigation (hereinafter

"Asbestos Litigation"). C-E requested Arter & Hadden to provide legal services for it by preparing a document to aid other lawyers retained by C-E to defend it in the national asbestos litigation. I assisted in preparation of that document, which is known as the Local Counsel Handbook. I understand that the Local Counsel Handbook has been identified as document TRA 03045-030818 in the captioned matter.

4. The purpose of the Local Counsel Handbook was to provide local counsel retained by C-E to defend it in the Asbestos Litigation with factual and background information necessary to formulate appropriate defense strategies for C-E's defense of the Asbestos Litigation. All of the materials contained in the Local Counsel Handbook was either prepared or collected by Arter & Hadden. Those materials include confidential information obtained from C-E as well as Arter & Hadden's opinions, observations, conclusions and mental impressions relative to the defense of C-E in the Asbestos Litigation. At the time the Local Counsel Handbook was prepared, C-E either was or had been involved in approximately 45,000 asbestos related cases and anticipated many more.

5. To insure that the Local Counsel Handbook would retain its character as confidential and subject to the attorney work product privilege, the following actions were taken: Each copy of the Local Counsel Handbook was individually numbered. The numbers assigned to the Local Counsel Handbooks were kept indicating the

particular lawyer who had a copy. The first page of each Local Counsel Handbook stated unequivocally that the material in the handbook "is privileged and confidential attorney work product". In addition, lawyers to whom the handbook were assigned were instructed (a) not to make any copies of the Local Counsel Handbook or any of its contents, (b) not to distribute or loan it to anyone else, and (c) to take all steps necessary to maintain its confidentiality.

6. The Local Counsel Handbook is the work product of Arter & Hadden's lawyers. No copies of it have been distributed by Arter & Hadden to any person or entity other than lawyers retained by C-E to defend it in the Asbestos Litigation and the Travelers Insurance Company, which insured C-E in the Asbestos Litigation. The insurance relationship between Travelers and C-E created a common interest in the defense of the Asbestos Litigation. That relationship and common interest required confidential communications between Travelers, C-E, and its counsel in connection with defending the Asbestos Litigation. Since it was necessary for Travelers to approve all settlements, it was necessary for Travelers to have the information contained in the handbook in order to make an appropriate judgment with respect to the trial or settlement of the cases.

7. Further, as attorney for C-E, I prepared a number of letters including the two letters bearing documents numbers TRA 030133-030134 and 030139, to advise local counsel of factual

situations that came to my attention which local counsel needed to be aware of in order to properly defend Combustion Engineering in the Asbestos Litigation. These letters constitute attorney work product, they were drafted by me in my capacity as C-E's national coordinating counsel, and were prepared in connection with the numerous asbestos claims which were then pending against C-E.

8. All of the above communications, as well as the Local Counsel Handbook, were clearly intended to be privileged and confidential and all were attorney work product.

ROBERT B. PRESTON

SUBSCRIBED AND SWORN TO BEFORE ME by ROBERT B. PRESTON this 20 day of September, 1990, to certify which, witness my hand and seal of office.

NOTARY PUBLIC
STATE OF OHIO

Carolyn B. Schaal
Typed or Printed Name of Notary

My Commission Expires: N-Exp 0-94

EXHIBIT "D"

No. 88-C-0615

SHERMAN A. SEARLS, JR.	*	IN THE DISTRICT COURT OF
	*	
VS.	*	BRAZORIA COUNTY, TEXAS
	*	
OWENS-CORNING FIBERGLAS CORPORATION, ET AL	*	23RD JUDICIAL DISTRICT

AFFIDAVIT OF STEWART D. ROLL IN SUPPORT OF
COMBUSTION ENGINEERING INC'S. MOTION FOR PROTECTIVE ORDER

STATE OF OHIO	*	
	*	SS.
COUNTY OF CUYAHOGA	*	

STEWART D. ROLL personally appeared before the undersigned officer, who was authorized by the State of Ohio to administer oaths; after being duly sworn, Stewart D. Roll stated:

1. At all times relevant to this Affidavit, I have been an attorney-at-law with the law firm of Arter & Hadden in Cleveland, Ohio.

2. I have personal knowledge of the facts contained in this Affidavit and I am providing this Affidavit in support of Combustion Engineering Inc's. (hereinafter "C-E") Motion For Protective Order in this case.

3. As one of Arter & Hadden's attorneys who represnets C-E as national coordinating counsel for personal injury asbestos-

related claims and litigation (hereinafter the "Asbestos Litigation"), C-E requested Arter & Hadden to provide legal services for it by preparing a confidential document to aid other lawyers retained by C-E to defend it in the Asbestos Litigation. I helped prepare that document, which is known as the Local Counsel Handbook. I understand that the Local Counsel Handbook has been identified as document TRA030459-030814 in the captioned case.

4. The purpose of the Local Counsel Handbook was to provide other lawyers retained by C-E to defend it in the Asbestos Litigation with information necessary to formulate appropriate defense strategies. All of the materials contained in the Local Counsel Handbook were either prepared or collected by Arter & Hadden. Those materials include confidential information from C-E, and Arter & Hadden's opinions, observations, conclusions, and mental impressions relative to the defense of C-E in the Asbestos Litigation. At the time the Local Counsel Handbook was prepared, C-E either was or had been involved in approximately 45,000 asbestos related cases and anticipated many more.

5. To ensure that the Local Counsel Handbook would remain a confidential communication, and be subject to the attorney work product and attorney client privileges, the following actions were taken. Each copy of the Local Counsel Handbook was individually numbered. Numbered Local Counsel Handbooks were assigned to each lawyer retained by C-E to defend it in the Asbestos Litigation. A record of which numbered Local Counsel Handbooks were assigned

to those lawyers has been retained by Arter & Hadden. Those lawyers were instructed: (a) not to make any copies of the Local Counsel Handbook, (b) not to distribute or loan it to anyone else and (c) to take all steps necessary to maintain its confidentiality.

6. The Local Counsel Handbook is the work product of Arter & Hadden's lawyers. No copies of it have been distributed by Arter & Hadden to any person or entity other than lawyers retained by C-E to defend it in the Asbestos Litigation, and the Travelers Insurance Company, which insured C-E in the Asbestos Litigation. The insurance relationship between Travelers and C-E created a common interest in the defense of the Asbestos Litigation. That relationship and common interest required confidential communications between Travelers, C-E, and its counsel in connection with defending the Asbestos Litigation. Since it was necessary for Travelers to approve all settlements, it was necessary for Travelers to have the information contained in the handbook in order to make an appropriate judgment with respect to the trial or settlement of the cases.

7. I have been advised that Plaintiffs in this case also seek to discover additional documents prepared by me. I understand that those documents are identified in this case as TRA0300148-300206. Those documents were sent by me to the same recipients of the Local Counsel Handbook, and transmitted replacement pages for the Local Counsel Handbook. I believe that my transmittal letter, and those

pages are also subject to the privileges and confidentiality obligations noted above.

8. All of the above communications, as well as the Local Counsel Handbook, were clearly intended to be confidential and subject to the attorney client and attorney work product privileges.

STEWART D. ROLL

Subscribed and sworn to before me the 10th day of September, 1990.

Notary Public

NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R. C.

EXHIBIT "E"

The William Ashkenazi Affidavit will be filed later as a supplement to this Motion.

NO. 88-C-0515

SHERMAN A. SEARLS, JR.	§	THE DISTRICT COURT OF
	§	
VS.	§	BRAZORIA COUNTY, TEXAS
	§	
OWENS-CORNING FIBERGLAS CORPORATION, et al	§	23RD JUDICIAL DISTRICT

ORDER SETTING HEARING DATE

It is ORDERED that the hearing on Intervenor, Combustion Engineering, Inc.'s, Motion for Protective Order in connection with the above-entitled and numbered case is set for ___ o'clock __.m., on _____, 1990, in the office of Special Master Carolyn Johnson, The Johnson Law Firm, 5000 Caroline Street, Houston, Texas 77004.

SIGNED this ___ day of _____, 1990.

_____
JUDGE PRESIDING

ARTER & HADDEN

1717 Main Street, Suite 4100
Dallas, Texas 75201
214/761-2100
Telecopier 214/761-7129

(214) 761-4321

September 26, 1990

Ms. Frances Bennett
District Clerk
23rd District Court
Brazoria County Courthouse
111 Locust Street
Angelton, Texas 77515

Re: Cause No. 88-C-0615; Sherman A. Searls, Jr. v. Owens-Corning Fiberglas Corporation, et al.

Dear Ms. Bennett:

Enclosed are the original and one copy of the Affidavit of William Askinazi in support of Combustion Engineering, Inc.'s Motion for Protective Order which was filed on September 21, 1990. For reference purposes, the enclosed Affidavit will be Exhibit E to the referenced Motion.

Please return the extra copy of the Affidavit, file-marked, to me in the return envelope provided. By copy of this letter, I am providing all counsel of record with a copy of the enclosed Affidavit.

Thank you for your good services.

Very truly yours,

Milton G. Hammond

MH2-324/kh:B
Enclosure

Exhibit "E"

NO. 88-C-0615

SHERMAN A. SEARLS, JR.	§	IN THE DISTRICT COURT OF
	§	
VS.	§	BRAZORIA COUNTY, TEXAS
	§	
OWENS-CORNING FIBERGLAS CORPORATION, et al.	§	23RD JUDICIAL DISTRICT
	§	

AFFIDAVIT OF WILLIAM ASKINAZI IN SUPPORT OF COMBUSTION ENGINEERING INC.'S MOTION FOR PROTECTIVE ORDER

STATE OF §

COUNTY OF §

Personally appeared before the undersigned officer duly authorized to administer oaths, came William Askinazi who after being first duly sworn, deposed and stated:

1. My name is William Askinazi and I am currently Assistant General Counsel for Combustion Engineering, Inc. (Hereinafter referred to as "CE"). I have been an employee, representative and attorney with CE from 1987 to the present time. I have personal knowledge of or information concerning the facts set forth herein.

2. In my capacity as in-house counsel for, and as a representative for CE, I worked closely with Ellis Mirsky, also an in-house counsel for CE, on asbestos litigation. I have reviewed and am familiar with the local counsel handbook, numbered TRA 030459-030814. CE requested its national coordinating counsel for asbestos litigation, Arter & Hadden, to prepare this confidential document to help provide legal services to CE and to aid other local attorneys retained by CE to better defend CE.

3. CE asserts its attorney client privilege to keep this local counsel handbook confidential. Travelers was CE's insurance

company for asbestos litigation and Travelers retained Arter & Hadden and other attorneys to defend CE.

4. Pursuant to the insurance contract between Travelers and CE. CE and Travelers agreed to cooperate in the joint defense of these asbestos cases. Travelers and CE shared an identical legal interest in defending these cases. Travelers was an integral and necessary part of the common defense of CE and a necessary part of the rendition of legal services provided to defend CE. CE relied on Travelers, as its representative, to help control and coordinate the defense of these cases.

5. In my capacity as in-house counsel for, and as a representative of CE, I worked with Dan Roll and Robert Preston from Arter & Hadden on asbestos litigation. I have reviewed and am familiar with the pieces of correspondence which are numbered TRA 030135, 030136, 030138, 030140-030141, 030142-030144, 030145, 030146-030147, 0300148-300206, 030133-030134 and 030139.

6. The correspondence from David Land were confidential communications from an authorized representative of CE, i.e. an attorney in charge of asbestos litigation, to CE's defense counsel. The correspondence from Dan Roll and Robert Preston, attorneys defending CE, to other attorneys defending CE were also confidential communications.

7. These communications were made were made to assist attorneys defending CE to provide the best possible legal service to CE.

8. The correspondence noted above contain extremely confidential information and also contain mental impressions and

opinions of counsel working for CE. CE asserts its attorney-client privilege to keep these correspondence confidential.

9. The correspondence noted above contain confidential information related to pending and anticipated litigation in the asbestos area;

10. The aforementioned documents constituted attorney client communications and work product of in-house counsel for CE, and relate to the defense of CE in then pending and future asbestos lawsuits, such as the case at hand.

Further this affiant sayeth naught.

William Askinazi

SUBSCRIBED AND SWORN TO BEFORE ME by WILLIAM ASKINAZI this 27th day of September, 1990, to certify which, witness my hand and seal of office.

NOTARY PUBLIC
STATE OF Connecticut

MARY W. WILSON
NOTARY PUBLIC
My Commission Expires March 31, 1993

Typed or Printed Name of Notary

My Commission Expires: _____

JPG&co