UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL NO. 125-61

FILED

FEB 23 1961

AT 8:30 M
MICHAEL KELLER, JR.
CLERK

FRED C. WENHAM, by BESSIE VINA, Administratrix Ad Prosequendum,

Plaintiff,

vs.

JOHNS MANVILLE PRODUCTS CORPORATION, A Corporation of the State of Delaware,

Defendant.

COMPLAINT AND

DEMAND FOR JURY TRIAL

Plaintiff, residing at 10 Eric Road, London, England by way of complaint says:

FIRST COUNT

1. Plaintiff, FRED C. WENHAM, was a resident and citizen of New Jersey.

2. Defendant, JOHNS MANVILLE PRODUCTS CORPORATION, is a corporation of the State of Delaware.

3. The amount in controversy exceeds the sum of $3,000.00, exclusive of interest and costs.

4. This Court has jurisdiction under Title 28, U.S. Code, §1332.

5. Plaintiff, FRED C. WENHAM, had been employed for some time and until February 24, 1959, as an insulation materials applicator and mechanic.

6. By reason of plaintiff's employment as aforesaid, plaintiff was required to handle, work with and utilize various and sundry products manufactured by the defendant, such products containing asbestos and other fibers, dust and particles.

7. The said products of the defendant were of a dangerous character by reason of their composition and particularly but not limited to the asbestos and other fibers, dust and particles in that continued contact with the said materials and products and handling of them would and did expose plaintiff and other persons similarly situated to the likelihood of contract-

ing serious and crippling diseases, including but not limited to pulmonary asbestosis, fibrosis and pneumoconiosis.

8. Defendant knew or should have known of the dangerous and toxic qualities of its products and of the likelihood of said serious diseases resulting from prolonged exposure to and handling of the said products.

9. Defendant was negligent in failing to conduct or properly to conduct research concerning the contents, make-up and toxic effect of its products, and was further negligent in the manufacture, make-up, packaging and labeling of such dangerous and toxic products and was further negligent in failing to provide any or adequate warnings or instructions as to the use and handling of same. By reason of the defendant's negligence as aforesaid, plaintiff and others have been exposed to and have contracted the aforesaid serious and crippling diseases.

10. By reason of the foregoing, plaintiff contracted a serious and crippling disease effecting his lungs and other parts of his body, and by reason of the same incurred considerable medical and hospital expenses, and expended large sums of money on drugs and medicines, was subjected to great pain and suffering, and was compelled to terminate his employment and became permanently incapacitated for the rest of his life, until May 31st, 1960, on which date plaintiff died as a result of the occupational disease contracted in his employment.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of $100,000.00 and costs of suit upon the First Count.

SECOND COUNT

1. Plaintiff repeats the allegations of Paragraphs 1 to 8 inclusive of the First Count.

2. Defendant in manufacturing and selling said products warranted that same were reasonably fit and safe for the uses to which they were to be put.

Published by AsbestosClaims.Law
asbestosclaims.law/library/23941/2

3. Plaintiff as one of the class of persons whom the defendant intended to, and knew or should have known, would use said products was entitled to the benefits of the aforesaid warranty.

4. The said products were not in fact reasonably fit and safe for the uses to which they were to be put in the respects set forth in Paragraphs 7 and 8 above and further in that they contained no, nor adequate warnings or instructions as to their use and handling.

5. Plaintiff repeats the allegations of Paragraph 10 above.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of $100,000.00, and costs of suit, upon the Second Count.

THIRD COUNT

1. Fred C. Wenham died on May 31st, 1960.

2. On June 30th, 1960, Bessie Vina, the daughter of Fred C. Wenham, was appointed Administratrix Ad Prosequendum, by the Essex County Surrogate's Court on behalf of Fred C. Wenham, who died intestate, authorizing and empowering her to prosecute an action for damages by reason of the wrongful death of FRED C. WENHAM.

3. Plaintiff repeats the allegations of the First and Second Counts and makes the same a part hereof.

4. Defendant, JOHNS MANVILLE PRODUCTS CORPORATION, by its wrongful act, default or neglect, as set forth in the First and Second Counts of this complaint, caused the wrongful death of FRED C. WENHAM.

5. FRED C. WENHAM left him surviving his wife, Annie Florence Wenham, and this action is instituted for her pecuniary injuries suffered by the wrongful death of FRED C. WENHAM.

6. This action for wrongful death is commenced

Published by AsbestosClaims.Law
asbestosclaims.law/library/23941/3

within two years of the date of death of FRED C. WENHAM.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of $100,000.00, and costs of suit, upon th Third Count.

Franklin Swersky

Franklin Swersky, Esq.
Attorney for Plaintiff

Plaintiff hereby demands a trial by jury of all issues in the within action.

Franklin Swersky

Franklin Swersky, Esq.
Attorney for Plaintiff

Published by AsbestosClaims.Law
asbestosclaims.law/library/23941/4