IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Luis Perez -vs- Johns-Manville Products Corporation.	No. 43,672.
George Ruskell -vs- Johns-Manville Products Corporation.	No. 43,218.
Nick Bojko -vs- Johns-Manville Products Corporation.	No. 43,363.
Tony Yakobich -vs- Johns-Manville Products Corporation.	No. 43,364.
Pearl H. Barenklau -vs- Johns-Manville Products Corporation et al.	No. 43,448.
Charles Sarounas -vs- Johns-Manville Products Corporation	No. 43,500.
Frank Brown -vs- Johns-Manville Corporation.	No. 43,633.
Jack Coleman -vs- Johns-Manville Corporation	No. 43,634.
Alex Taraban -vs- Johns Manville Corporation	No. 43,635.

M E M O R A N D U M

These cases come on to be heard on the motions of the defendant to dismiss.

The motion was argued in the Luis Perez case, and the court was informed that this case was typical of all the others.

The question raised by the motions to dismiss is whether this court has jurisdiction, or whether the exclusive jurisdiction of the cause of action resides in the Illinois Industrial Commission pursuant to the provisions of the Illinois Workmen's Compensation Act.

Section 2 of the Occupational Diseases Act (Cahill's Illinois Revised Statutes 1933, p. 1375) provides:

AUG 4 1934

CRMC-Motley1000-Subj-002493

"Every employer in this State engaged in the carrying on of any process of manufacture or labor in which sugar of lead, white lead, lead chromate, litharge, red lead, arsenate of lead, or paris green are employed, used or handled, or the manufacture of brass or the smelting of lead or zinc, which processes and employments are hereby declared to be especially dangerous to the health of the employes engaged in any process of manufacture or labor in which poisonous chemicals, minerals or other substances are used or handled by the employes therein in harmful quantities or under harmful conditions, shall provide for and place at the disposal of the employes engaged in any such process or manufacture and shall maintain in good condition and without cost to the employes, proper working clothing *** ***."

Section 15 (b) 1 of the Occupational Diseases Act (Cahill's Illinois Revised Statutes 1933, p. 1375) provides:

"If an employee is disabled or dies, and his disability or death is caused by an occupational disease arising out of and in the course of his employment in one or more of the occupations referred to in section 2 of this Act, he or his dependents, as the case may be, shall be entitled to compensation, in the same manner and subject to the same terms, conditions and limitations as are now or may hereafter be provided by the Workmen's Compensation Act for accidental injuries *** ***."

If the cause of action made by the plaintiff's complaint is a cause of action arising under the underscored clause of Section 2 of the Occupational Diseases Act aforesaid, then this court do s not have jurisdiction and the exclusive jurisdiction resides in the Illinois Industrial Commission.

The court has carefully examined the plaintiff's complaint, and from such examination cannot say that said complaint alleges that the defendant is engaged in the carrying on of a process of manufacture or labor in which "poisonous chemicals, minerals or other substances are used or handled by the employes therein in harmful quantities or under harmful conditions." What the proof will be, of course, the court does not know, but, on the allegations of the plaintiff's complaint, the court is of the opinion that it has jurisdiction.

CRMC-Motley1000-Subj-002494

Therefore, the motion to dismiss in each of the cases aforesaid will be overruled and denied.

Judge.

December 27, 1934..

CRMC-Motley1000-Subj-002495