UNITED STATES OF AMERICA)
NORTHERN DISTRICT OF ILLINOIS)
EASTERN DIVISION)

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

GEORGE RUSKELL

vs.

JOHNS-MANVILLE PRODUCTS CO., a corporation, and JOHNS-MANVILLE SALES CORPORATION, a corporation.

No. 43218

ANSWER OF JOHNS-MANVILLE SALES CORPORATION, A CORPORATION

JOHNS-MANVILLE SALES CORPORATION, a corporation, by Heth & Lister, its attorneys, answering the complaint of the plaintiff in this action:

1. Admits that it is a foreign corporation qualified to do business in the State of Illinois and engaged in the business of selling building materials.

2. Denies that on the dates and occasions in plaintiff's complaint set forth, or at any other time, it was engaged in the business of manufacturing building materials, or that it owned or operated the factory alleged, or that plaintiff was employed by or worked for this defendant.

3. Denies that any fumes, gases, or dusts arose from any work done or process operated by the plaintiff, or

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that plaintiff was exposed to the inhalation of any fumes, gases, or dusts.

4. Denies that this defendant knew, or should have known, that the inhalation of any dusts, fumes, or gases to which plaintiff is alleged to have been exposed was apt to or did produce illness or disease to the plaintiff of which the plaintiff now complains, or that any such illness or disease is or was peculiar to the work or operations carried on or used in said business, or that any such work or operation subjected plaintiff to dangers of illness or disease incident to such work or process to which employees were or are not ordinarily exposed in other lines of employment.

5. Denies that plaintiff was caused to or did, during the time in plaintiff's complaint alleged, or any other time, necessarily, or otherwise, inhale large quantities of silica dusts, or other fumes, gases, or dusts, through his nose, mouth, or otherwise, or that any silica dust or other fumes, gases, or dusts became lodged in plaintiff's throat or lungs, or caused any illness or disease in plaintiff, and further denies that plaintiff was in the exercise of due care and caution for his own personal health and safety.

6. Denies that plaintiff was exposed to various fumes, gases, and dusts of dangerous character, or that any such exposure could or would result in any illness or disease.

7. Denies that plaintiff has contracted silicosis or any other occupational disease, or that as a result of any occupational disease, or other illness arising out of

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his work, plaintiff has lost weight, or has been incapacitated or weakened so that he cannot perform any work for which he is fitted, or that plaintiff has suffered mental or physical pain or anguish, or will continue to suffer such, for any length of time, or that plaintiff has become liable for, or expended, any sums of money in and about endeavoring to be cured, or has been kept from his usual occupation, or lost pecuniary gains which he might have made had he been employed, by reason of any such occupational disease or illness arising out of his employment.

8. Denies that this defendant wilfully failed to provide reasonable or approved devices, methods, or means for the prevention of occupational disease incident to such employment; denies that there were in and about said factory, no proper suction fans, or other apparatus, provided for collecting fumes, gases, or dusts in the room in said factory where plaintiff was employed, or that this defendant failed to provide masks or respirators, or other apparatus, to be used or worn by the plaintiff to protect him from inhaling any fumes, gases, or dusts in the air.

9. Denies that this defendant negligently failed to remove, so far as practicable, by either ventilation or exhaust devices, any injurious fumes, gases, or dusts in the room in which plaintiff worked, contrary to statute.

10. Denies that this defendant negligently caused or permitted premises to be so swept as to raise dust contrary to statute.

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11. Denies that plaintiff sustained damage in the sum of Fifty Thousand ($50,000) Dollars, or any sum whatsoever.

FIRST AFFIRMATIVE DEFENSE

12. That there is and was, during all of the time in plaintiff's complaint alleged, in full force and effect, a certain statutory provision, namely, "An Act to Promote Public Health by Protecting Certain Employees in this State from the Dangers of Occupational Diseases, and providing for the enforcement thereof." (Callaghan's Illinois Statutes Annotated, Chapter 48, paragraphs 185-200) in Section 2 of which certain classes of industries were listed, viz:

> (1) Employers engaged in carrying on 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,
>
> (2) Employers engaged in the manufacture of brass or the smelting of lead or zinc,
>
> (3) Employers engaged in any process of manufacture in which poisonous chemicals, minerals, or other substances are used or handled by the employees therein in harmful quantities or under harmful conditions,

and that in and by Section 15, subdivision B-4 of said Act it is provided that no common law or statutory right to recover damages for injury or death exists in favor of any employee by reason of an occupational disease arising out of or in the course of his employment in one or more of the occupations referred to in Section 2 of said Act.

13. That if, as alleged in plaintiff's complaint, the various substances alleged to have been handled by

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plaintiff gave off various fumes, gases, and dusts in harmful quantities, and which were inhaled by plaintiff and caused the illnesses and disease claimed by plaintiff, then it appears that plaintiff sues for disability due to disease incurred in a process of manufacture or labor in which poisonous chemicals, minerals, or other substances are used or handled by the employees therein in harmful quantities or under harmful conditions, and that no common law or statutory right of action accrues to the plaintiff by reason of the injuries in plaintiff's complaint alleged.

SECOND AFFIRMATIVE DEFENSE

14. That there is and was, during all of the time in plaintiff's complaint alleged, in full force and effect, a certain statutory provision, namely, "An Act to Promote Public Health by Protecting Certain Employees in this State from the Danger of Occupational Diseases, and providing for the enforcement thereof," (Callaghan's Illinois Statutes Annotated, Chapter 48, paragraphs 185-200) in Section 2 of which certain classes of industries were listed, viz:

> (1) Employers engaged in carrying on 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,
>
> (2) Employers engaged in the manufacture of brass or the smelting of lead or zinc,
>
> (3) Employers engaged in any process of manufacture in which poisonous chemicals, minerals, or other substances are used or handled by the employees therein in harmful quantities or under harmful conditions,

and that in and by Section 15, subdivision E-4 of said Act it

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is provided that no common law or statutory right to recover damages for injury or death exists in favor of any employee by reason of an occupational disease arising out of or in the course of his employment in one or more of the occupations referred to in Section 2 of said Act.

15. That in said factory, located at Waukegan, Illinois, wherein plaintiff is alleged to have been employed, there was used in the manufacturing processes carried on therein, certain substances named in said Section 2 of said Occupational Disease Act, viz: lead chromate and litharge, wherefore plaintiff's employer was engaged in processes of manufacture in which lead chromate and litharge were employed, used, and handled, and no common law or statutory right of action exists in favor of the plaintiff herein for the occupational disease alleged to have been contracted by the plaintiff.

THIRD AFFIRMATIVE DEFENSE

16. That Section 1 of said "Act to Promote Public Health by Protecting Certain Employees in this State from the Dangers of Occupational Diseases, and providing for the enforcement thereof," (Par. 185, Chapter 48, Callaghan's Illinois Statutes Annotated) is in violation of the Fourteenth Amendment to the Constitution of the United States, and Section 2 of Article II and Article III of the Constitution of the State of Illinois, in that

(A) Said Section is so vague, indefinite, and uncertain that an employer may not reasonably know

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whether he is engaged in a work or process within its provisions, or what illnesses or diseases are peculiar to the work carried on and to which employees are not ordinarily exposed in other lines of employment; that no standard of approval is provided that an employer may know with reasonable certainty what are approved devices, means, or methods, or what is necessary to be done to avoid the criminal and civil penalties provided; that said section places obligations on an employer in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application;

(B) Said Section is an unlawful delegation of legislative power by the legislature of Illinois to the jury impanelled, or the Court sitting without a jury, for the purpose of trying any case under said Section, to determine, ex post facto, the obligations of an employer under said Act, and whether his attempted compliance therewith will be approved.

JOHNS-MANVILLE CORPORATION,
a corporation.

BY Hitch & Lentz
Its Attorneys.

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