UNITED STATES OF AMERICA
STATE OF I L L I N O I S } ss.

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

FRANK BROWN
vs. No. 43633.
JOHNS-MANVILLE CORPORATION,
a corporation.

MEMORANDUM OF POINTS AND AUTHORITIES ON DEFENDANT'S MOTION TO DISMISS

Plaintiff sues for the alleged contraction of the occupational diseases known as pneumoconiosis and tuberculosis, as a result of inhaling dangerous and deleterious dusts.

In a very recent decision, Burns v. The Industrial Commission, 356 Ill. 602, the Supreme Court of Illinois reinterprets Section 2 of the Illinois Occupational Diseases Act, and creates a third class of employments which are subject to the provisions of Section 2 of said Occupational Diseases Act: namely those "engaged in any 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." The test of liability in this newly designated third class would seem to be whether the disability arises from the use of

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"poisonous chemicals, minerals, or other substances."

Bouvier's Law Dictionary defines poison to be "any substance, which, when taken into the living organism, is capable of causing impairment or cessation of function."

Stedman's Medical Dictionary defines poison to be "any substance which, when taken into the body, is injurious to health and dangerous to life."

The substances alleged to have been handled by plaintiff, and to which he was exposed, and designated by him in his said complaint to be "dangerous" and "deleterious to the health of human beings" certainly bring themselves within the classification of "capable of causing impairment or cessation of function," particularly in the light of the illnesses and diseases which the plaintiff says they caused.

Paragraph (b) of Section 15 of the Occupational Diseases Act (paragraph 199 of Chapter 48 of Callaghan's Illinois Statutes, Annotated) provides:

> This subdivision (b) of this section shall apply automatically and without election to all employees and employers engaged in the occupations referred to in section 2 of this Act. No common law or statutory right to recover damages for injury or death sustained by any employee by reason of 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, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this subdivision (b) of this section, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury. The compensation herein provided, together with the provisions of this subdivision (b) of this section, shall be the full, complete and only measure of responsibility of any employer engaged in any of the occupations referred to in section 2 of this Act.

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Defendant therefore urges that it appears from said complaint that plaintiff sues for disability due to alleged occupational disease incurred in "process of manufacture or labor in which poisonous chemicals, minerals, or other substances are used or handled by the employees thereof in harmful quantities or under harmful conditions," as provided in Section 2 of the Occupational Diseases Act of the State of Illinois; and that under the provisions of Section 15 of said Act, no common law or statutory right of action accrues to the plaintiff by reason of the injuries in plaintiff's complaint alleged.

Defendant therefore respectfully submits that said complaint should be dismissed.

Attorneys for Defendant.

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