UNITED STATES OF AMERICA
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
} ss.

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

NICK BOJKO

vs. No 43363

JOHNS-MANVILLE CORPORATION,
a corporation.

ANSWER OF JOHNS-MANVILLE CORPORATION,
A CORPORATION.

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

1. Denies that on the dates and occasions in plaintiff's complaint set forth, defendant did business in Waukegan, Lake County, Illinois, or owned or operated the factory, mill, or establishment alleged, or that plaintiff was employed by or worked for defendant.

2. Denies that any fumes, gases, or dusts arose from any work done or process operated by plaintiff, or that plaintiff was exposed to the inhalation of any fumes, gases, or dusts.

3. Denies that 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

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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.

4. Denies that the plaintiff was caused to or did, during the time in the plaintiff's complaint alleged, or any other time, necessarily, or otherwise, inhale large quantities of arbestos dust, fibre dust, cement dust, rock dust, or other dusts through his nose, mouth, or otherwise, or that any such 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.

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

6. Denies that plaintiff has contracted pneumoconiosis or tuberculosis, or that as a result of any occupational disease or other illness arising out of his work, plaintiff has lost weight, or has been incapacitated or weakened to that he cannot perform any work for which he is fitted or that plaintiff has suffered mental or physical

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...ain of in such, 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.

7. Denies that 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 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.

8. Denies that 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.

9. Denies that it negligently caused or permitted premises to be so swept as to raise dust contrary to statute.

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

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FIRST AFFIRMATIVE DEFENSE

11. 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 cremicals, 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.

12. That if, as alleged in plaintiff's complaint, the various substances alleged to have been handled by plaintiff give off various fumes, gases, and dusts in harmful quantities, and which were inhaled by plaintiff and caused

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the illnesses and diseases claimed by plaintiff, then it appears that plaintiff sues for disability due to diseases 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

13. 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 135-200) 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

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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.

14. 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

15. 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 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

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so 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 Pratt & Pratt
Its Attorneys.

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SOL ANDREWS

UNITED STATES OF AMERICA)
STATE OF ILLINOIS) SS

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

NICK BOJKO)
)
VS) GENERAL NO. 43363
)
JOHNS MANVILLE CORPORATION,) AT LAW
a corporation,)

AMENDED COMPLAINT

Now comes the plaintiff, NICK BOJKO, by his attorney, Sol Andrews, and by leave of court first had and obtained, files this, his amendment to the complaint heretofore filed herein, as follows:

That sub-paragraph (a) and following of paragraph 7 of the complaint be changed to read as follows:

(a) Negligently failed to provide a reasonably safe place to work in, in this, that there were in and about said premises no proper suction fans or other reasonable apparatus provided for collecting the injurious dust in the air in the said room where plaintiff worked.

(b) Negligently failed to provide reasonable masks or respirators or other apparatus to be used or worn by said plaintiff, which would effectively prevent theplaintiff from inhaling the said dust caused to impregnate and float in the air in and about the said room, and which would effectively prevent him from contracting the diseases herein complained of.

(c) Negligently failed to warn plaintiff of the

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danger of contracting the said diseases, or to instruct the plaintiff as to how to avoid the said danger, which danger was one that the plaintiff did not have knowledge of nor could he reasonably be expected to know of or appreciate or anticipate from the nature of the work or process being carried on.

(d) Negligently ordered the plaintiff, or caused the plaintiff to be ordered, to go ahead with the work in spite of the danger, of which the defendant had knowledge or by the reasonable exercise of due care and caution should have had.

(e) Wilfully, wantonly and with conscious indifference to the health of the plaintiff, failed to furnish a reasonably safe place to work in, in that the defendant, knowing of the danger and having been given notice thereof, compelled plaintiff to go ahead with his work without protection.

(f) Wilfully, wantonly and with conscious indifference to the health and safety of the plaintiff and other employees, refused to provide masks or respirators or other reasonable apparatus to prevent plaintiff from inhaling the injurious dusts.

(g) Wilfully, wantonly and with conscious indifference to the health and safety of the plaintiff, and other employees, failed to warn plaintiff of the dangers.

Plaintiff asks judgment for Fifty Thousand Dollars, ($50,000.00).

Attorney for Plaintiff.

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STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

IN THE SUPERIOR COURT OF COOK COUNTY

NICK BOJKO)
)
VS) No. 34S 2959
)
JOHNS MANVILLE CORPORATION)
)
A CORPORATION)

COMPLAINT AT LAW

COUNT I

The plaintiff, NICK BOJKO, complains of the defendant, JOHNS MANVILLE CORPORATION, a corporation, and says:

1. That on or about the 30th day of March, A.D., 1932, the defendant, JOHNS MANVILLE CORPORATION, was a duly organized and authorized corporation, doing business in the State of Illinois, County of Lake, and City of Waukegan, at which time and place, it owned, operated, and maintained a factory, mill, or establishment for the purpose of manufacturing asbestos in its various forms.

2. That the said defendant, in its factory, owned and operated a certain department known as the mixing room, in which asbestos, fibre, cement, rock, and other ingredients were mixed together for the purpose of making fibre block; that in the mixing room, certain ingredients were mixed together for the purpose of making rock wool blocks, and during the mixing, a great deal of dust from asbestos, fibre, cement, rock, and other materials were caused to and did impregnate the air in said premises in such great quantities as to be greatly injurious to the health of human beings.

3. That on the aforesaid day and at the time and place aforesaid and for a number of years prior thereto, he was in the employ of said defendant, and worked as a laborer, mixing asbestos, fibre, cement, rock, and other ingredients together

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for the purpose of making fibre block, and also mixing other ingredients together for the purpose of making rock wool blocks, during which time, he was exposed and subjected to a great deal of the aforesaid dusts circulating in and about the said mixing room.

4. That in the carrying on of the said business by the defendant as the same was being done and for many years prior thereto had been conducted, the defendant knew and by the exercise of due care and caution should have known that the same was apt to and did produce the illness and disease in the plaintiff of which the plaintiff now complains, which illness and disease is peculiar to such work and process used in the carrying on of said business, to which employees were and are not ordinarily exposed in other lines of employment.

5. That the plaintiff was caused to and did, during the period aforesaid, continuously inhale large quantities of asbestos dust, fibre dust, cement dust, rock dust, and other dusts through his nose and mouth, and said dusts became lodged in his throat and lungs, causing the illnesses herein complained of, while he, the plaintiff, was in the exercise of due care and caution for his own personal health and safety.

6. That the plaintiff was in entire ignorance of the [illegible] character of the various dusts to which he was exposed and to the specific nature of the disease or diseases that would or could result from the inhalation of the aforesaid dusts, and was never, at any time, informed by any agent of the defendant of the fact that such danger did or could possibly exist.

7. That at and during the aforesaid time and place, the defendant did one or more of the following acts, thereby causing the plaintiff to contract and succumb to the occupational diseases known as pneumononiosis and tuberculosis, as a result whereof, he has lost considerable weight, he has been incapa-

entitled and required so that he can not seriously work for which he is fitted; that he has suffered great mental and physical pain and anguish and will continue to so suffer for the rest of his life; that he has become liable for and expended large sums of money in and about endeavoring to be cured of his illnesses aforesaid; he has been prevented and hindered from attending to his usual occupation and business whereby he has lost divers great sums and profits and will continue to lose divers great sums and profits.

(a) wilfully failed to provide reasonable and approved devices, methods, or means for the prevention of said diseases, contrary to the provisions of Section I of an Act entitled, "An Act to Provide for the Public Health by Protecting Certain Employees in this State from the Dangers of Occupational Diseases", and providing for the enforcement thereof, in this that there were, in and about the said premises, no proper suction fans or other apparatus provided for collecting the injurious dusts in the air in and around the said premises where plaintiff worked; that the defendant failed to provide masks or respirators or other apparatus to be used or worn by said plaintiff which would effectively prevent him from inhaling the said dusts caused to impregnate and float in the air in and about the said premises as provided by the said statute, and which would effectively prevent the plaintiff from contracting the diseases herein complained of.

(b) negligently failed to remove as far as practicable, by either ventilating or exhaust devices, the aforesaid injurious dusts from the premises in which the plaintiff worked, contrary to Section 10 of an Act concerning the health and safety of employees in factories, textile establishments, mills, and workshops in the State of Illinois.

(c) negligently caused and permitted the premises to be kept so as to cause asbestos dust, fibre dust, cement dust,

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[redacted] governing the health and safety of employees in factories, [redacted] establishments, mills, and workshops.

Plaintiff asks judgment for Fifty Thousand Dollars ($50,000).

SOL ANDREWS
Attorney for Plaintiff

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1st March

Summons

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