882

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

JACK COLEMAN

vs.

JOHNS-MANVILLE CORPORATION,
a corporation.

No. 43634

ANSWER OF JOHNS-MANVILLE CORPORATION,
A CORPORATION

JOHNS-MANVILLE CORPORATION, a corporation, by Heth & 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 asbestos dust, cement 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 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 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,

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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.

3.

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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 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.

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

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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

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 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

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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.

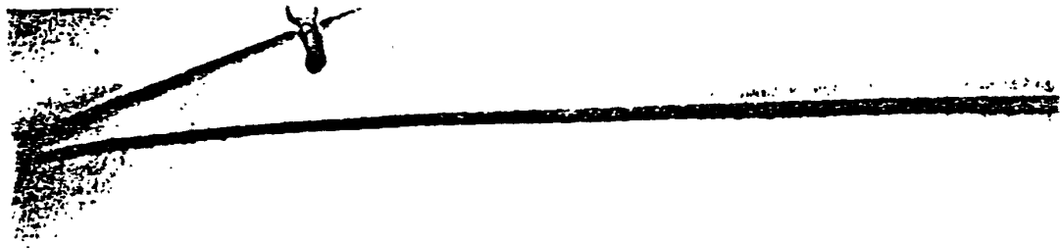
THIRD AFFIRMATIVE DEFENSE

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 Keth & Leslie
Its Attorneys.

CRMC-Motley1000-Subj-004636

43634

Record From

Superior Court of Cook County

To

U. S. District Court

Gen. No. 34 S. 10422

Jack Coleman

VS.

Johns-Manville Corporation, a Corp.

370 BM 8-32 FORM 207

CRMC-Motley1000-Subj-004637



United States of America

STATE OF ILLINOIS
County of Cook } ss.

PLEAS, before the Honorable Charles A. Williams one of the Judges of the Superior Court of Cook County, in the State of Illinois, holding a branch Court of said Court, at a regular term of said Superior Court of Cook County, begun and holden at the Court House, in the City of Chicago, in said County, and State, on the first Monday, being the Sixth day of August, in the year of our Lord, one thousand nine hundred and Thirty Four, and of the Independence of the United States of America, the one hundred and Fifty Ninth

Present:—The Honorable Charles A. Williams
Judge of the Superior Court of Cook County.

THOMAS J. COURTNEY, State's Attorney.

WILLIAM D. MEYERING, Sheriff of Cook County.

Attest: FRANK V. ZINTAK, Clerk.

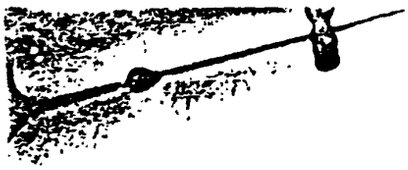
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Be it remembered ... on the
16th day ... A.D 1934
... Complaint ...
... was filed in the ... Court, to

CRMC-Motley1000-Subj-004639



STATE OF ILLINOIS }
COUNTY OF C O O K }

Jury Demanded

IN THE SUPERIOR COURT OF COOK COUNTY

JACK COLEMAN
VS
JOHNS-MANVILLE CORPORATION, a corporation.

No. 349 10422
JURY DEMANDED List #6 P.P.

C O M P L A I N T A T L A W

The plaintiff, JACK COLEMAN, complains of the defendant, JOHNS MANVILLE CORPORATION, a corporation, and says:

1. That on or about the 15th of March, A. D. 1934, 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 certain departments in which trucks were loaded with asbestos cement, and where bags of asbestos cement were weighed, and during these processes a great deal of dust from asbestos, cement, and other ingredients, were caused to and did impregnate the air in said premises in such great quantities as to be greatly deleterious to the health of human beings.

100 N. La Salle Street Phone Andover 30097

CRMC-Motley1000-Subj-004640

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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, loading trucks with 100 pound bags of asbestos cement, weighing open bags of asbestos cement, and doing general work, during which time, he was exposed and subjected to a great deal of the aforesaid dusts circulating in and about the said departments.

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, necessarily breathe in large quantities of asbestos dust, cement dust, and other dusts through his nose and mouth, and said dusts became lodged in his throat and lungs, causing the illnesses here complained of, which 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 dangerous character of the various dusts to which he was

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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 said premises as provided by the said statute, which would effectively prevent the plaintiff from contracting the disease 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 12 of an Act concerning the health and safety of employees in factories, mercantile establishments, mills, and workshops in the State of Illinois.

(c) negligently caused and permitted the premises to be swept so as to raise asbestos dust, cement dust, and other dusts, contrary to Section 13 of an Act concerning the health and safety of employees in factories, mercantile establishments, mills, and workshops.

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

Sol Andrews
ATTORNEY FOR PLAINTIFF.

100 N. LaSalle Street, Chicago, Phone Andover 2580

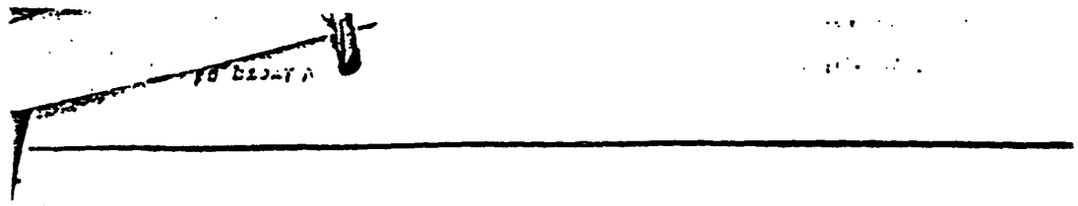
CRMC-Motley1000-Subj-004642

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 other of the following acts, thereby causing the plaintiff to contract and succumb to the occupational disease known as pneumoconiosis, as a result whereof, he has lost considerable weight; he has been incapacitated and weakened so that he cannot perform any work for which he is fitted; that he has suffered great mental and physical pain and anguish and will continue so to suffer for the rest of his life; that he has become liable for and expended large sums of money in and about endeavoring to cure himself of his illness as aforesaid; he has been prevented and hindered from attending to his usual occupation and business whereby he has lost divers great gains and profits and will continue to lose divers great gains 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 1 of an Act entitled: "And Act to promote 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

CRMC-Motley1000-Subj-004643



Thereupon a
A. D. 1934 a
of the Office of th
to the Sheriff
return of the
writ.

16th day of July
Summons issued
together with

100 N. LaSalle Street Phone ANDover 3500-4

CRMC-Motley1000-Subj-004644

PP

JACK COLEMAN

Plaintiff

vs.

No.

JOHNS MANVILLE CORPORATION,

A corporation.

Defendant

To the above named defendant:

You are hereby summoned to answer the complaint in the above entitled cause.

Take notice that you must file your answer or otherwise make your appearance in said court held in the courthouse in the City of Chicago, Illinois, on or before the first ~~(or next)~~ third Monday in the month of August, 1934, provided this writ shall be served upon you not less than 20 days prior to said date.

If this writ shall be served upon you less than 20 days before said date, you will file your answer or otherwise make your appearance in said court on or before the ~~third (or next)~~ first Monday in the month of September, 1934.

If you do not appear according to the command of this writ, plaintiff may take judgment against you by default.

This summons must be returned, in person or by mail, by the officer or other person to whom it was given for service, with indorsement thereon of service and fees, if any, not later than 5 days after service thereof and in no event later than the date first above named

Witness, FRANK V. ZINTAK, the clerk of said court, and the seal thereof, at Chicago, Illinois, this Jul 16 1934 day of ....., 19....

(copy seal of Court)

FRANK V. ZINTAK
Clerk

Plaintiff's Attorney (or Plaintiff, if he be not represented by Attorney)

Sol Andrews

Address

160 N. La Salle Street Phone Andover 5806-9

CRMC-Motley1000-Subj-004645

No. 10422

rt of Cook County

...GMAN

vs.

...LE CORPORATION,

...ID.

MMONS

at
th Michigan Ave.
, Illinois

...rews
La Salle St.
...ne - 5809
...icago

...V. ZINTAK
...e Superior Court

M. Kallis & Co.

Leave to sue as a Poor person

Frank V. Zintak, Clerk

I certify that I served this writ on the within named defendant
John Manville Corporation a corporation b
delivering a copy thereof to W. H. Fogarty an Agent
of said corporation this 27th day of July 1934.
~~The president of said corporation not found in my county.~~

CRMC-Motley1000-Subj-004646

CRMC-Motley1000-Subj-004647



JACK COLEMAN

vs.

JOHNS MANVILLE COR ORATION, A COR-
PORATION.

ACTION

349 10422

We hereby enter the special appearance of JOHNS MANVILLE COR'ORATION, ~~herein named~~ a corporation, and ourselves as its attorneys for the sole purpose of having the above entitled cause transferred and remo ed from the Superior Court of Cook County to the United States District Court for the Northern District of Illinois, Eastern Division.

~~Defendant~~ Herb & Lister

Attorney for JOHNS MANVILLE COR ORATIO

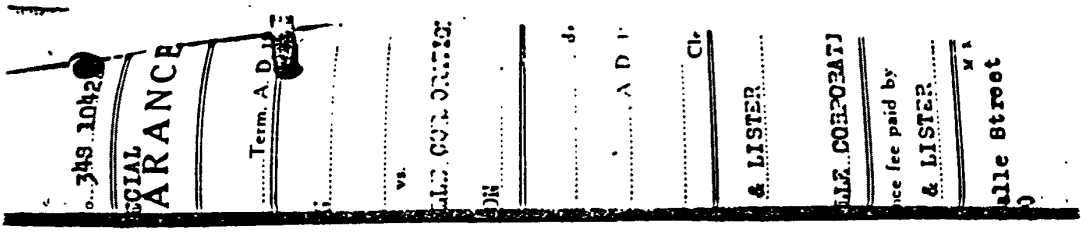
Chicago, Ill. August 19 34

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Default
Motion

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ILLINOIS)
COOK) ss.

IN THE SUPERIOR COURT OF COOK COUNTY

COLEMAN)
)
-vs-) No. 34 S 10422
)
-MANVILLE CORPORATION,)
poration.)

NOTICE

Sol Andrews
160 North LaSalle St.
Chicago, Illinois

PLEASE TAKE NOTICE that on Monday the 20th day of August, 1934, at the hour of 9:30 o'clock A.M., or as soon thereafter as counsel can be heard, we shall appear before His Honor, Judge Chas Williams, in the room in the County Building usually occupied by him as a Court Room, or in his absence before any other Judge sitting in his stead, and then and there move the Court to enter an order removing the above entitled cause to the District Court of the United States for the Northern District of Illinois, Eastern Division, and in support of such motion shall present a petition and bond, as per copies attached hereto, at which time and place you may appear if you so see fit.

DATED this 17th day of August, 1934.

Clark & Slater
Attorneys for defendant.

Page 1
Motion #1

CRMC-Motley1000-Subj-004650

STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

FLORENCE KOOM, being first duly sworn, on oath deposes and says that she is an employee of the law firm of Heth & Lister, attorneys for Johns-Manville Corporation, a corporation, defendant in the above entitled cause; that she caused a copy of the above and foregoing notice, together with a copy of petition and bond, to be served upon the following, by depositing a copy thereof in the United States Mail, in the mail chute in the One LaSalle Building, at 1 North LaSalle Street, Chicago, Illinois, postage prepaid, at the hour of 11:00 o'clock, A. M., on 17th August, 1934, in an envelope addressed as follows:

Mr. Sol Andrews
100 North LaSalle Street
Chicago, Illinois

F. Florence Koom

SUBSCRIBED and SWORN to before me this 17 day of August, A. D. 1934.

Beryl Farrell
Notary Public

(Notary Seal)

CRMC-Motley1000-Subj-004651



20th

August

A. D. 1934

CRMC-Motley1000-Subj-004652

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STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

IN THE SUPERIOR COURT OF COOK COUNTY

JACK COLEMAN
-vs-
JOHNS-MANVILLE CORPORATION, a corporation

No. 348 10422

P E T I T I O N

The petition of JOHNS-MANVILLE CORPORATION, a corporation, defendant in the above entitled cause, respectfully represents unto the Court:

1. That the above entitled suit is brought by the plaintiff, JACK COLEMAN, to recover of the defendant named therein the sum of Fifty Thousand ($50,000) Dollars for alleged injuries in the nature of an occupational illness or disease to the plaintiff, and is wholly of a civil nature; that the matter and amount in dispute in said suit exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000) Dollars, all of which will more fully appear by the complaint filed in said suit, which is hereby referred to and make a part hereof; that there is a controversy in said suit which is wholly between citizens of different states; that the defendant JOHNS-MANVILLE CORPORATION, a corporation, is a foreign corporation, and was, at the time of the commencement of said suit, and still is a corporation duly formed, created, and organized under and

CRMC-Motley1000-Subj-004653

by virtue of the [illegible] of New York, and was then and still is a citizen of the State of New York; that JACK COLEMAN, plaintiff, was, at the time of the commencement of this suit, and still is, a citizen and resident of the State of Illinois.

2. That at the time within which the said defendant is required by the laws of the State of Illinois and the rules and practice of this Court to answer or plead in said suit has not yet expired.

3. That the defendant makes and files herewith a bond in the sum of FIVE HUNDRED ($500) DOLLARS with good and sufficient surety for its entering in the District Court of the United States for the Northern District of Illinois, Eastern Division, within thirty days from the date of filing of this petition, a certified copy of the record in this suit and for paying all costs that may be awarded by said District Court if it shall hold that this suit was wrongfully or improperly removed thereto.

WHEREFORE, defendant, JOHNS-MANVILLE CORPORATION, a corporation, prays that this Court proceed no further herein except to make an order of removal as required by law and to accept the bond presented herewith and direct a transcript of the record herein to be made for said District Court of the United States for the Northern District of Illinois, Eastern Division, as provided by law.

JOHNS-MANVILLE CORPORATION
a corporation.

By [signature]

CRMC-Motley1000-Subj-004654

STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

JOHN J. FLYNN, being first duly sworn, on oath deposes and says that he is a member of the firm of Heth & Lister and one of the attorneys of record of and for the defendant, JOHNS-MANVILLE CORPORATION, a corporation, in the above entitled cause, the petitioner named in the foregoing petition; that he has read the same and believes the same to be true; and affiant further says that said petitioner is absent from and is a non-resident of the County of Cook, State of Illinois, in which said suit is brought, and that there are no officers of defendant within the State of Illinois to make this verification, and that affiant makes this affidavit for the reason that the defendant and its officers are absent from and non-residents of the County of Cook, State of Illinois, in which said suit is brought.

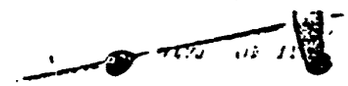
John J. Flynn

Subscribed and sworn to before
me this 14 day of August 1934.

Notary Public

(Notarized)

CRMC-Motley1000-Subj-004655



...ons affix...
day of
a certain
was fil...
in words

20th
August A.D. 1934
Bond
...of said Court.

CRMC-Motley1000-Subj-004656

STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

IN THE SUPERIOR COURT OF COOK COUNTY

JACK COLEMAN)
)
-vs-) No. 343 10422
)
JOHNS-MANVILLE CORPORATION,)
a corporation)

BOND

KNOW ALL MEN BY THESE PRESENTS, That we, JOHNS-MANVILLE CORPORATION, a corporation, as principal, and ROYAL INDEMNITY COMPANY, a corporation, as surety, are held firmly bound unto JACK COLEMAN, plaintiff, in the penal sum of FIVE HUNDRED ($500.00) DOLLARS, lawful money of the United States, to be paid to said plaintiff, his executors, administrators, or assigns for which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated the 24th day of August, A. D. 1934.

WHEREAS, the said JOHNS-MANVILLE CORPORATION, a corporation, has applied by petition to the Superior Court of Cook County, Illinois, for removal of a certain cause therein pending, wherein JACK COLEMAN is plaintiff, and the said JOHNS-MANVILLE CORPORATION, a corporation, is defendant, to the District Court of the United States for

1.

CRMC-Motley1000-Subj-004657

the Northern District of Illinois, Eastern Division, for further proceedings [illegible] petition set forth, and that the [illegible] in said motion in said Superior Court of Cook County be denied.

NOW, THEREFORE, if the said JOHNS-MANVILLE CORPORATION, a corporation, shall enter in said District Court of the United States for the Northern District of Illinois, Eastern Division, within thirty days from the date of filing said petition, a certified copy of the record in said suit, and shall well and truly pay or cause to be paid, all costs that may be awarded therein by said District Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise it shall remain in full force and virtue.

JOHNS-MANVILLE CORPORATION,
a corporation

(Corporate Seal)

BY Vandiver Brown (Seal)
Assistant Secretary

ROYAL INDEMNITY COMPANY,
a corporation.

BY [illegible] (Seal)
Attorney-in-fact

(Corporate Seal)

CRMC-Motley1000-Subj-004658

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STATE OF [illegible]
COUNTY OF [illegible]

Before me, [illegible] a Notary Public in and for the county and state aforesaid, personally appeared [illegible] to me known to be the [illegible] Assistant Secretary of [illegible] CORPORATION, a corporation, and then and there acknowledged the he executed the foregoing instrument as his free and voluntary act as such officer of said corporation, and the free and voluntary act of said corporation.

GIVEN under my hand and notarial seal this 14th day of [illegible], A. D. 1934.

Carlita Andrews (SEAL)
Notary Public.
(Notary Seal)

New York County Clerk's No. 143.
New York County Register's No. 3A 181.
Commission Expires March 30, 1935.

CRMC-Motley1000-Subj-004659

STATE OF ILLINOIS)
) s.
COUNTY OF COOK)

On this 15th day of August, 1934, before me personally appeared Edna F. Daley, with whom I am personally acquainted, who, being by me duly sworn, said; that he resides in the State of Illinois, County of Cook; that he is Attorney-in-fact of the ROYAL INDEMNITY COMPANY, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto as Attorney-in-fact by like authority; and that the liabilities of the said Company do not exceed its assets, as ascertained in the manner provided in Chapter 33 of the Laws of 1909, constituting Chapter 28 of the Consolidated Laws of the State of New York, and known as the Insurance Law.

(Notary Seal) John R. Kelly
Notary Public.

Com. Exp. 6/6/36.

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And afterwards, to-wit: 20th
day of August A. D. 1934
the following proceedings were had and entered of
record in said Court, to-wit:

CRMC-Motley1000-Subj-004661

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STATE OF ILL...)
) ss.
COUNTY OF C...)

IN THE ... COURT OF COOK COUNTY

JACK COLEMAN)
)
-vs-) No. 34B 10422
)
JOHNS-MANVILLE CORPORATION,)
a corporation.)

ORDER

This cause coming on for hearing upon the petition and bond of the defendant herein for an order transferring this cause to the United States District Court for the Northern District of Illinois, Eastern Division, and it appearing to the Court that the defendant has filed its petition for such removal in due form of law, and that the defendant has filed its bond, duly conditioned, with good and sufficient sureties as provided by law, and that defendant has given plaintiff due and legal notice thereof; and it appearing to the Court that this is a proper cause for removal to said District Court;

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED THAT SAID PETITION AND BOND are hereby accepted and that this cause be and it is hereby removed to the United States District Court for the Northern District of Illinois, Eastern Division, and the clerk is hereby directed to make up the record in said cause for transmission to said Court forthwith.

ENTER Charles A. Wallin
Judge

CRMC-Motley1000-Subj-004662

I, FRANK V. ZINTAK, Clerk of the Circuit Court of Cook County, in and for the State of Illinois and the keeper of the records and files thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of the Record

in a certain cause Entitled pending in said Court on the Law side thereof, wherein Jack Coleman was Plaintiff and Johns Manville Corporation a corp. defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of said Court, at Chicago, this 28th day of August A. D. 1934

Frank V. Zintak Clerk

CRMC-Motley1000-Subj-004663

UNITED STATES OF AMERICA)
) ss.
STATE OF ILLINOIS)

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

JACK COLEMAN)
)
vs.) No. 43634
)
JOHNS-MANVILLE CORPORATION,)
a corporation.)

M O T I O N

Now comes JOHNS-MANVILLE CORPORATION, a corporation, by Heth & Lister, its attorneys, and moves the Court that the above entitled cause be dismissed, and as grounds for said motion, defendant shows unto the Court that plaintiff's complaint is substantially insufficient in law in the following particulars:

1. That it appears from said complaint that plaintiff sues for disability due to an alleged occupational 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, as provided in Section 2 of the Occupational Diseases Act of the State of Illinois, being "An Act to promote public health by protecting certain employees in this State from the dangers of occupational disease, and providing for the enforcement thereof, approved

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STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

JOHN J. FLYNN does hereby certify that he is one of the attorneys of record for the defendant, JOHNS-MANVILLE CORPORATION, a corporation; that in his opinion the foregoing motion is well founded in point of law and that it is not interposed for the purpose of delay.

John J. Flynn

Subscribed and sworn to before me
this 28th day of September, 1934.

Betty L. Hartel
Notary Public.

CRMC-Motley1000-Subj-004665

UNITES STATES OF AMERICA)
) ss.
STATE OF I L L I N O I S)

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

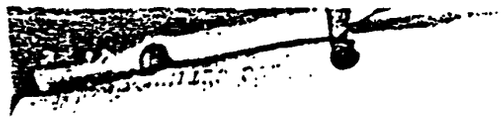
JACK COLEMAN)
)
vs.) No. 43634
)
JOHNS-MANVILLE CORPORATION,)
a corporation.)

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

Plaintiff sues for the alleged contraction of an occupational disease, namely, pneumonoconiosis, 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 re-interprets 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."

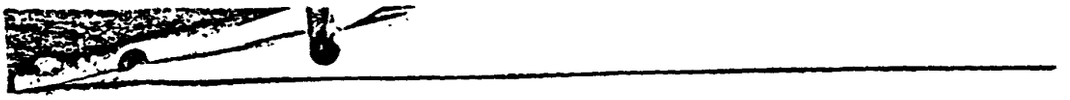
Stedman's Medical Dictionary defines poison to be "any substance which, when taken into the body, is injurious to health and dangerous to life."

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 illness and disease 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 staturory 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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United States District Court, Northern District of Illinois

Cause No. 43634 Date May 29, 1936

Title of Cause. JACK COLEMAN

-vs-

JOHNS-MANVILLE CORPORATION,
a corporation.

Brief Statement of Motion: Leave to withdraw defendant's answer and to file motion to dismiss and to dismiss the cause.

Name of moving Counsel: HETH & LISTER

Representing: defendant

Name of opposing Counsel (if any): SOL ANDREWS

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

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