GENERAL SERVICES ADMINISTRATION
National Archives and Records Service

To all to whom these presents shall come, Greeting:

By virtue of the authority vested in me by the Administrator of General Services, I certify on his behalf, under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in his custody.

(seal)

SIGNATURE: Anthony J Fantozzi

NAME: Anthony J Fantozzi | DATE: 11/3/88

TITLE: Archivist, Archives Branch

NAME AND ADDRESS OF DEPOSITORY:
Federal Archives and Records Center
Building 22 - MOT - Bayonne
Bayonne, N.J. 07002
2NCN

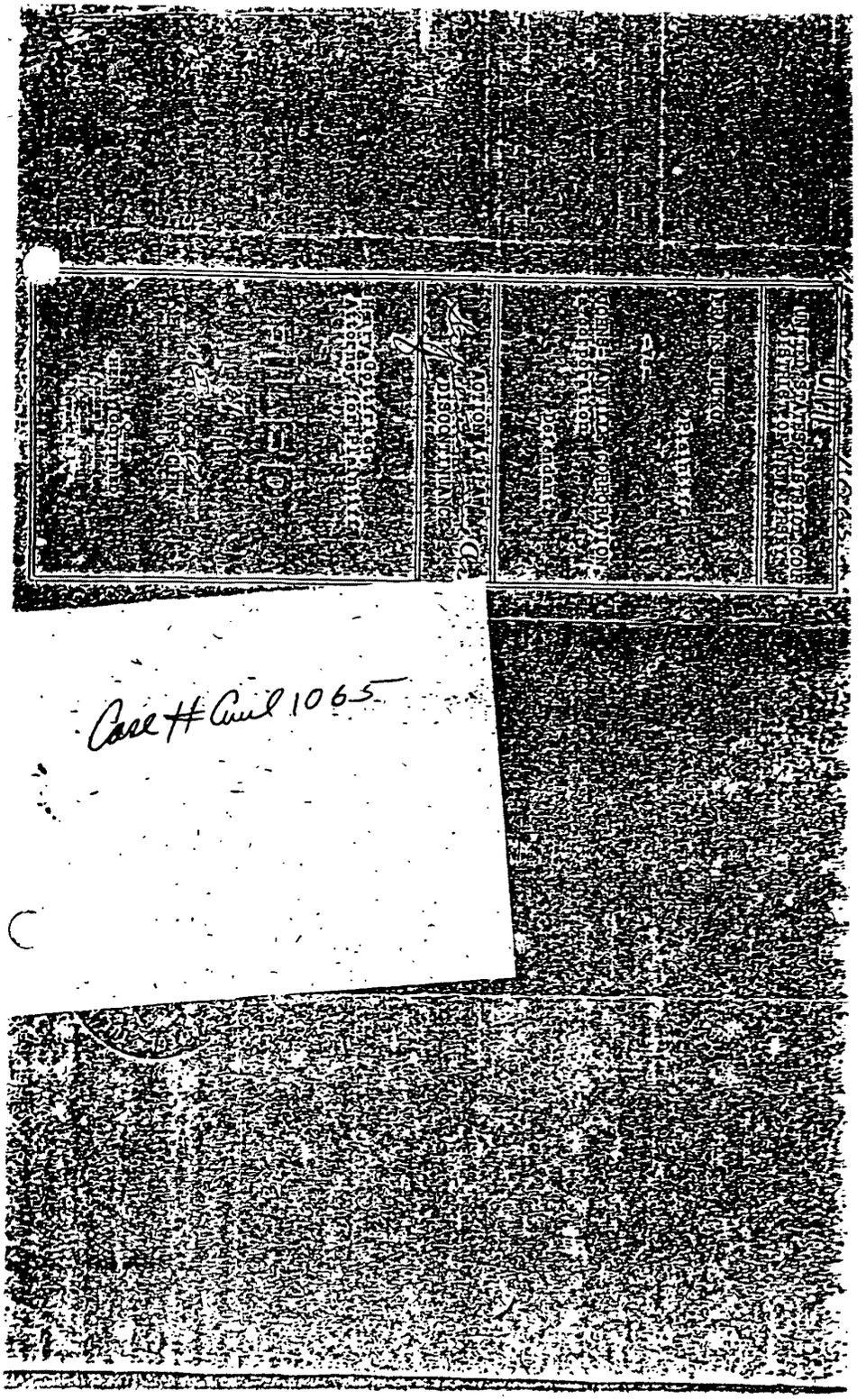
GSA FORM APR 68 6791

Case # Civil 1065

77-25

CRMC-Motley1000-Subj-004047

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CRMC-Motley1000-Subj-004048

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANK SMUTKO

Plaintiff

-vs-

JOHNS-MANVILLE CORPORATION, a corporation

Defendant

ACTION AT LAW

DISCONTINUANCE

The above matter having been amicably settled, it is hereby mutually stipulated and agreed between the parties hereto by their respective attorneys, that the above case be and the same is hereby discontinued without further costs to either party.

Dated: March 24th, 1941

Henry Gottfried
Attorney for Plaintiff

By [illegible]
Hobart, Minard & Cooper
Attorneys for Defendant

It is so ORDERED this
31st day of March, 1941

Thomas Lyon Waller
U. S. D.J.

CRMC-Motley1000-Subj-004049

GENERAL SERVICES ADMINISTRATION
National Archives and Records Service

To all to whom these presents shall come, Greeting:

By virtue of the authority vested in me by the Administrator of General Services, I certify on his behalf, under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in his custody.

(seal)

SIGNATURE: Anthony J Fantozzi

NAME: Anthony J Fantozzi | DATE: 11/3/86

TITLE: Archivist, Archives Branch

NAME AND ADDRESS OF DEPOSITORY:
Federal Archives and Records Center
Building 22 - MOT - Bayonne
Bayonne, N.J. 07002
2NCN

GSA FORM APR '68 679

CRMC-Motley1000-Subj-004050

District of New Jersey.

Frank Smutko,
Plaintiff,
-vs-
Johns-Manville Corporation,
a corporation,
Defendant.

Action at Law
Demand for Trial by Jury

Henry Gottfried,
Attorney for Plaintiff
17 Academy St.,
Newark, N.J.

Filed
Aug 7 1940
at 9 o'clock A.M.
BENJAMIN F. HAVENS, CLERK

CRMC-Motley1000-Subj-004051

UNITED STATE S DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANK SMUTKO,)

Plaintiff,)

-vs-)

JOHNS-MANVILLE CORPORATION, a corporation,)

Defendant.)

Action at Law

DEMAND FOR TRIAL BY JURY

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

S I R:

Frank Smutko, the plaintiff in the above entitled action removed from the New Jersey Supreme Court, Hunterdon County, to this Court, herewith demands a jury trial of the issues involved in this action.

Henry Gottfried

HENRY GOTTFRIED
Attorney for Plaintiff

CRMC-Motley1000-Subj-004052

GENERAL SERVICES ADMINISTRATION
National Archives and Records Service

To all to whom these presents shall come, Greeting:

By virtue of the authority vested in me by the Administrator of General Services, I certify on his behalf, under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in his custody.

(seal)

SIGNATURE

NAME: Anthony J Fantozzi

DATE: 11/3/80

TITLE: Archivist, Archives Branch

NAME AND ADDRESS OF DEPOSITORY
General Archives and Records Center
Building 22 - MOT - Bayonne
Bayonne, N.J. 07002
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CRMC-Motley1000-Subj-004053

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THIS CASE NOW LOCATED IN THE NEWARK OFFICE

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY.

Frank Smutko	:	
vs.	:	CIVIL 1065
Johns-Manville Corporation	:	
	:	

NOTICE OF FIXING PLACE FOR TRIAL.

Pursuant to Rule 12 I have fixed the place for the trial of the above case at Newark,N.J.

Benjamin F. Havens,
Clerk

by
Charles S. Chevrier,
Chief Deputy.

CRMC-Motley1000-Subj-004054

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GENERAL SERVICES ADMINISTRATION
National Archives and Records Service

To all to whom these presents shall come, Greeting:

By virtue of the authority vested in me by the Administrator of General Services, I certify on his behalf, under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in his custody.

(seal)

SIGNATURE: Anthony J Fantozzi

NAME: Anthony J Fantozzi

DATE: 11/3/80

TITLE: Archivist, Archives Branch

NAME AND ADDRESS OF DEPOSITORY:
Federal Archives and Records Center
Building 22 - MOT - Bayonne
Bayonne, N.J. 07002
2NCN

GSA FORM APR 68 6791

CRMC-Motley1000-Subj-004055

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION,
a corporation,
Defendant.

Action at Law.

ANSWER

HOBART & MINARD
COOPER
Attys. for Defendant,
1180 Raymond Boulevard
Newark, New Jersey.

JUL 20 1940

BENJAMIN HAVEN

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY.

FRANK SMUTKO, Plaintiff,	:	
vs	:	Action at Law.
JOHNS-MANVILLE CORPORATION, a corporation, Defendant,	:	ANSWER

Defendant, JOHNS-MANVILLE CORPORATION, a corporation of the State of New York, having its principal office in New Jersey at Manville, Somerset County, says that:

1. The plaintiff was employed by the defendant at the defendant's plant at Manville, Somerset County, New Jersey from September 10, 1935 to September 27, 1935; and again from October 23, 1935 to July 29, 1938, when he ceased working for the defendant, but was retained on their payroll until August 23, 1938. Defendant left employment of Johns-Manville Corporation to take another job.

2. Defendant admits the allegations of paragraph 2.

3. Defendant admits the allegations of paragraph 3.

4. Defendant denies the allegations of paragraph 4.

5. Defendant denies the allegations of paragraph 5.

6. Defendant denies the allegations of paragraph 6.

7. Defendant denies the allegations of paragraph 7.

8. Defendant denies the allegations of paragraph 8.

9. Defendant denies the allegations of paragraph 9.

10. Defendant denies the allegations of paragraph 10.

11. The defendant states that the plaintiff has no disease, illness or ailment which provides him with any legal remedy against the defendant.

CRMC-Motley1000-Subj-004057

FIRST SEPARATE DEFENSE

The injury or disease, if any, as alleged in the complaint, if the result of his employment, was due to one of the risks of his employment assumed by plaintiff as part of the terms of his contract of employment.

SECOND SEPARATE DEFENSE

The injury or the disease, if any, as alleged in the complaint was due to one of the risks of his employment assumed by the plaintiff as part of the terms of his contract of his employment, in that the plaintiff knew, or should have known the alleged danger of his employment.

THIRD SEPARATE DEFENSE

The injury or disease, if any, as alleged in the complaint was caused by contributory negligence on the part of the plaintiff.

FOURTH SEPARATE DEFENSE

The injury or disease, if any, as alleged in the complaint was caused by contributory negligence on the part of the plaintiff in that the plaintiff failed to exercise reasonable care to protect himself against the alleged dangers of his employment by using the mask and other appliances provided by the defendant for that purpose.

FIFTH SEPARATE DEFENSE

The injury or disease, if any, as alleged in the complaint was due to negligence on the part of one or more fellow servants of the plaintiff in failing to warn and instruct the plaintiff to use the mask and other appliances provided by the defendant for the purpose of protecting the plaintiff against the alleged dangers of his employment.

CRMC-Motley1000-Subj-004058

SIXTH SEPARATE DEFENSE

The injury or disease, if any, as alleged in the complaint was not due to any acts of negligence of the defendant.

SEVENTH SEPARATE DEFENSE.

The alleged injury or disease, if any suffered by the plaintiff was a trespass done to the person of the plaintiff for which no action was commenced and instituted by the plaintiff within two years next after the alleged cause of action accrued, and by reason of the premises this cause of action is barred by virtue of the provisions of the Revised Statutes of New Jersey, Section 2:24-2; Compiled Statutes page 3164, paragraph 3.

EIGHTH SEPARATE DEFENSE

If any injury, sickness, disease, or affliction or aggravation or complication thereof was caused to the plaintiff by, or resulting from his employment with defendant (which, however, is denied), it was due to and resulting from an ordinary risk of his employment, which was apparent and obvious, and the existence, nature and danger of which were understood and appreciated by him.

NINTH SEPARATE DEFENSE

If any injury, sickness, disease, or affliction or aggravation or complication thereof was caused to said plaintiff by or resulted from his employment with defendant (which, however, is denied), his own negligence contributed proximately thereto in failing to follow and obey instructions which were given to him for the performance

CRMC-Motley1000-Subj-004059

of his work, and in failing to exercise that degree of care for his own safety, which he should reasonably have exercised, and in failing to take those precautions, which he reasonably should have taken to avoid such injury, sickness, disease, or affliction, or aggravation or complication thereof.

HOBART, MINARD & COOPER

BY Ralph E. Cooper
Ralph E. Cooper

Attorneys for Defendant.

CRMC-Motley1000-Subj-004060

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GENERAL SERVICES ADMINISTRATION
National Archives and Records Service

To all to whom these presents shall come, Greeting:

By virtue of the authority vested in me by the Administrator of General Services, I certify on his behalf, under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in his custody.

(seal)

SIGNATURE

NAME: Anthony J Fantozzi | DATE: 11/3/80

TITLE: Archivist, Archives Branch

NAME AND ADDRESS OF DEPOSITORY

Federal Archives and Records Center
Building 22 - MOT - Bayonne
Bayonne, N.J. 07002

GSA FORM APR 68 679

CRMC-Motley1000-Subj-004061

New Jersey Supreme Court

HUNTERDON COUNTY

FRANK SMUTKO,

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION, a corporation,

Defendant.

COPY OF PROCEEDINGS

HENRY GOTTFRIED,
Attorney for Plaintiff.

JUL 6 1940

CLERK'S OFFICE, TRENTON

CRMC-Motley1000-Subj-004062

THE STATE OF NEW JERSEY:

(SEAL)

TO: JOHNS-MANVILLE CORPORATION
a corporation.

YOU ARE SUMMONED, to answer the annexed complaint of Frank Smutko, in an action at law in the New Jersey Supreme Court, Hunterdon County.

AND TAKE NOTICE, that unless you file your answer to said complaint, with the Clerk of the said Court, at Trenton, New Jersey, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment will be entered against you.

WITNESS, THOMAS J. BROGAN, Chief Justice of the New Jersey Supreme Court, at Trenton, New Jersey, this 10th day of June, 1940.

FRED L. BLOODGOOD
Fred L. Bloodgood, Clerk.

HENRY GOTTFRIED
Henry Gottfried, Attorney
for Plaintiff.

CRMC-Motley1000-Subj-004063

NEW JERSEY SUPREME COURT.

HUNTERDON COUNTY.

FRANK SMUTKO,

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION, a corporation,

Defendant.

Action at Law.

COMPLAINT.

Plaintiff residing in the Township of Glen Gardner, County of Hunterdon and State of New Jersey, complaining of the defendant, says that:

1. On or about the month of July, 1938, and for some time prior thereto, the plaintiff was employed by the defendant corporation at its plant and factory located at Manville, Somerset County, New Jersey.

2. At the time and place aforesaid, the defendant corporation was engaged in the business, among other things, of manufacturing, assembling, finishing and selling of asbestos products.

3. In connection with the activities, operations and business conducted by the defendant at its aforesaid plant and factory, this defendant used and employed various materials and substances, particularly asbestos, which constituted an important ingredient of the products manufactured and/or assembled by the said defendant at its plant.

4. That in the manufacturing and other processes employed by the said defendant at its factory, which required and necessitated the use of asbestos in its various forms, certain minute particles, dusts, dirts, and substances

CRMC-Motley1000-Subj-004064

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were expelled, thrown off, emitted and deposited in and about the building, departments and rooms where the said operations were conducted.

5. The plaintiff, while in the course of his work and duties at the defendant's plant as aforesaid, on or about the month of July 1938, and for some time prior thereto, engaged in such activities and work that involved his handling, coming in contact with, and being frequently exposed to the said minute particles, dusts, dirts, and substances, portions of which the plaintiff was obliged to and did inhale and ingest.

6. The said defendant employed the plaintiff in its business as aforesaid, and the defendant not only knew, but should have known, that the operations which it maintained and conducted in its plant, created certain hazards to the health and well being of its said employees, including this plaintiff, by reason of the use and employment in its said plant of the aforesaid substances, particularly asbestos, which gave off, emitted and deposited certain minute particles, dusts, dirts, and substances, and with which the plaintiff worked, and to which he was exposed, and that the said minute particles, dusts, dirts, and substances contained certain dangerous, insidious and harmful agencies.

7. The said defendant not only knew, but should have known that the said minute particles, dusts, dirts, and substances were destructive to life and health of the human body when they penetrated [illegible] the same, but wholly failed and omitted to keep [illegible] control and negligently permitted and allowed [illegible] particles, dusts, dirts, and substances to [illegible] permeate and remain in the air within said build[illegible] come

CRMC-Motley1000-Subj-004065

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into close proximity to the plaintiff's person, and exposed the plaintiff in the course of his work, so that he came into contact with and did inhale and ingest the said minute particles, dusts, dirts, and substances, to the extent that his bronchial tubes, lungs, internal organs and his body became affected by the same.

8. The plaintiff was not informed nor warned by the said defendant, of the fact, nor had he any knowledge of the nature of said dangerous dusts, dirts, substances, and other minute particles, that he was obliged and compelled to inhale and ingest during the course of his work in the employ of said defendant.

9. The defendant corporation by its servants, agents and employees, carelessly and negligently:

(a) Failed and omitted to use proper and reasonable means of eliminating the dusts, dirts, substances, and other minute particles from the air in and about its plant and factory where the plaintiff was employed;

(b) Failed and omitted to provide and maintain proper and adequate ventilation in and about the said plant and factory where the plaintiff was employed;

(c) Failed and omitted to provide the plaintiff with sufficient proper apparatus and appliances, and other devices to protect him from the said minute particles, dusts, dirts, and substances;

(d) Maintained and operated certain alleged safety devices that were defective, inadequate and improperly operated so that they wholly failed to provide or accomplish the purposes for which they were installed in said plant;

(e) Violated the Labor Laws of the State of New Jersey, as set forth in P.L. 1912, Chapter 5, in that the defendant failed to provide and maintain proper and sufficient means of ventilation in its said plant, and failed, so far as practicable, to ventilate its said plant in such a manner as to render the said minute particles, dusts, dirts, and substances, and other impurities of the plant harmless;

(f) Failed and omitted to provide a reasonable and safe place in which this plaintiff could perform his work while in the employ of the said defendant.

(g) Violated the Labor Laws of the State of

CRMC-Motley1000-Subj-004066

New Jersey, more particularly set forth in P.L. 1914, Chapter 162 (R.S. 34:6-48) in that the defendant failed to provide reasonably effective devices, means and methods, to prevent the contraction, by its employees, particularly this plaintiff, of any illness or disease incident to the work or process in which they were engaged;

10. As a direct and proximate result of the negligence and carelessness of the defendant, by its servants, agents and employees the said minute particles, dusts, dirts, and substances were introduced into the plaintiff's body and physical system, at and during the time and place aforesaid, and as a result of which this plaintiff became sick and disordered and suffered permanent pulmonary injuries, particularly to his lungs and breathing organs, and he became susceptible to and contracted, and is now suffering from, an active pulmonary tuberculosis, by reason of which his general health has been and in the future will be seriously affected, and he has been caused and in the future will be caused to undergo great pain, discomfort and suffering; and furthermore, his earning capacity has been permanently impaired and he has, and in the future will, lose large sums of money which he otherwise would have been able to derive from his occupation, as earnings; and he has been obliged to incur expenses and obligations for medical treatment, medicines, aids, and the like, in an endeavor to cure himself of his said disability and illness, and in the future will be obliged to expend moneys and incur obligations for a like purpose.

11. This plaintiff alleges that the disease, illness or ailment contracted as aforesaid, is not one of the scheduled compensable occupational diseases and therefore, there is no remedy available to him under and by virtue of the terms and provisions of the Workmen's Compensation Act of New Jersey.

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WHEREFORE, plaintiff, Frank Smutko, demands of the defendant herein, as damages, the sum of Twenty-Five Thousand ($25,000.00) Dollars, together with costs of suit to be taxed.

Henry Gottfried

HENRY GOTTFRIED, ATTORNEY
FOR PLAINTIFF.

CRMC-Motley1000-Subj-004068

NEW JERSEY SUPREME COURT.
HUNTERDON COUNTY.

FRANK SMUTKO,

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION,
a corporation,

Defendant.

Action at Law.

SUMMONS AND COMPLAINT.

HARRY COHN,
Attorney for Plt'f.,
17 Academy St.
Newark, N. J.

FILED

JUN 20 1940

Fred L. Bloodgood
Clerk

June 17, 1940, Duly served the within summons and complaint upon Johns Manville Corporation, by leaving copies thereof, at their usual place of business, Manville, N.J. with C. W. Hite, personale Plant Manager, of said corporation.

Louis D. Case
Sheriff of Somerset County

By James J. Del Monte
Under Sheriff.

Fee $6.02

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NEW JERSEY SUPREME COURT
HUNTERDON COUNTY

FRANK SMUTKO, :

Plaintiff, :

vs. : Action at Law

JOHNS-MANVILLE CORPORATION, a corporation, : NOTICE OF REMOVAL

Defendant. :

TO HENRY GOTTFRIED, ESQ., and HARRY COHN, ESQ.,
Attorneys for plaintiff,
17 Academy St., Newark, N. J.

SIRS:

PLEASE TAKE NOTICE that on July 5th, 1940, at 10:30 A.M., (EDST) or as soon thereafter as the same can be attended to, we shall file with the Clerk of the New Jersey Supreme Court, at his office, State House Annex, Trenton, N.J. the petition of Johns-Manville Corporation, for the removal of the above entitled case from the New Jersey Supreme Court to the United States District Court for the District of New Jersey, and shall also then and there file the bond made mention of in said petition.

AND TAKE FURTHER NOTICE that on Monday, July 15, 1940, at 10 A.M. (EDST) or as soon thereafter as counsel can be heard, we shall apply to the Honorable Thomas J. Brogan, Chief Justice of the New Jersey Supreme Court, at his chambers, 15 Exchange Place, Jersey City, N. J., for an order for the removal of the above case to the United States District Court for the District of New Jersey.

HOBART, MINARD & COOPER
Hobart, Minard & Cooper,
Attorneys for defendant,
appearing specially &c.

CRMC-Motley1000-Subj-004070

NEW JERSEY SUPREME COURT
HUNTERDON COUNTY

FRANK SMUTKO,

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION, a corporation,

Defendant.

Action at Law

PETITION FOR REMOVAL

TO THE HONORABLE NEW JERSEY SUPREME COURT:

The petition of Johns-Manville Corporation, the above named defendant, appearing specially, and for the sole purpose of presenting its petition to this Honorable Court, for the removal of this suit to the District Court of the United States for the District of New Jersey, respectfully shows that:

1. Plaintiff is the only plaintiff in the above entitled suit, and at the time of the commencement of said suit was and still is a resident and citizen of the State of New Jersey.

2. Your petitioner is the defendant in said suit, and was at the time of the commencement of said suit and still is a resident and citizen of the State of New York, and there is a controversy in said suit wholly between citizens of different states, presenting complete diversity of citizenship.

3. Said suit is of a civil nature, at law, and the matter in controversy in said suit exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

4. No special bail was originally or is requisite in said suit.

5. Said suit was commenced by the service of summons and complaint on your petitioner, on June 17, 1940.

CRMC-Motley1000-Subj-004071

The time within which your petitioner is required to answer said complaint has not expired but will expire on July 7th, 1940 unless further time to answer is allowed. Your petitioner has not filed its answer to said complaint.

6. Your petitioner has made and files herewith a bond with good and sufficient surety for its entering in the District Court of the United States for the District of New Jersey, within thirty days from the filing of this petition, a certified copy of the record in said suit, and for paying all costs that may be awarded by said District Court, if said District Court shall hold that said suit was wrongfully or improperly removed thereto, said bond being in the penal sum of $500.00 conditioned as required by the Act of Congress in such case made and provided.

Your petitioner prays this Honorable Court to proceed no further in said suit, except to accept this petition and bond and cause the record in said suit to be removed into said District Court of the United States for the District of New Jersey, pursuant to the Act of Congress in such case made and provided.

And your petitioner will ever pray, &c.

JOHNS-MANVILLE CORPORATION

By L. A. Williams
Vice - President

ATTEST:

Vaudine Brown
Secretary

(SEAL)

HOBART, MINARD & COOPER
Hobart, Minard & Cooper,
Attorneys of petitioner,
appearing specially, etc.

-2-

CRMC-Motley1000-Subj-004072

STATE OF NEW YORK :
: ss
COUNTY OF New York :

S. A. Williams of full age, being duly sworn according to law on his oath, says that he is his President of JOHNS-MANVILLE CORPORATION, a corporation of the State of New York, the defendant named in the within mentioned suit, and the petitioner named in the foregoing petition; that he has read said petition and knows the contents thereof and that the matters stated therein are true; that the matter in controversy in said suit exceeds, exclusive of interest on the amount demanded and costs, the sum or value of $3,000.; said suit is of a civil nature, at law, and contains a controversy between citizens of different states, as appears from the complaint of the plaintiff therein, and he is informed and believes that the District Court of the United States has original jurisdiction thereof and that the controversy can be fully determined as between the plaintiff and this petitioner.

Sworn and subscribed to)
before me this 1st) S. A. Williams
day July, 1940.)

Vincil Harmon
VINCIL HARMON

(SEAL)

Notary Public, N.Y. County
N.Y. Co. Clks No. 61 Reg. No. 1H15
Commission expires Mar. 30, 1941

-3-

CRMC-Motley1000-Subj-004073

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FRANK SMUTKO,

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION,
a corporation,

Defendant.

Action at Law
PETITION FOR REMOVAL

Hobart, Minard & Cooper,
Attorneys for Defendant,
Appearing specially &c.
1180 Raymond Blvd.,
Newark, N. J.

FILED

JUL 5 1940

Fred L. Bloodgood

Clerk

NEW JERSEY SUPREME COURT

CRMC-Motley1000-Subj-004074

NEW JERSEY SUPREME COURT
HUNTERDON COUNTY

FRANK SMUTKO, :

Plaintiff, :

vs. : Action at Law

JOHNS-MANVILLE CORPORATION, a corporation, : BOND ON REMOVAL

Defendant. :

KNOW ALL MEN BY THESE PRESENTS, That we, JOHNS-MANVILLE CORPORATION, a corporation of the State of New York, as principal, and UNITED STATES GUARANTEE CO., a corporation of the State of New York, as surety, are held and firmly bound unto FRANK SMUTKO, of the Township of Glen Garnder, County of Hunterdon and State of New Jersey, in the penal sum of($500.) Five Hundred Dollars, lawful money of the United States, to be paid to the said Frank Smutko, his heirs, executors, administrators and assigns, to 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 1st day of July 1940.

WHEREAS, the above named FRANK SMUTKO has heretofore brought suit of a civil nature, at law, in the New Jersey Supreme Court, against said Johns-Manville Corporation; and

WHEREAS said Johns-Manville Corporation, simultaneously with the filing of this bond, intends to file its petition in said suit in said New Jersey Supreme Court to remove said suit into the District Court of the United States in the District where said suit is pending, to wit, the District Court of the United States in and for the District of New

CRMC-Motley1000-Subj-004075

Jersey, according to the provisions of the Act of Congress in such case made and provided;

NOW THEREFORE, THE CONDITION of this obligation is such that if the petitioner, Johns-Manville Corporation, shall enter in the District Court of the United States for the District of New Jersey, within thirty days from the date of filing said petition in said New Jersey Supreme Court, a certified copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said District Court, if said District Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise to remain in full force and effect.

JOHNS-MANVILLE CORPORATION

By S. A. WILLIAMS
Vice-President

ATTEST:

VANDIVER BROWN
Secretary

(Seal)

UNITED STATES GUARANTEE CO.

BY IRVING L. EYERSON
Attorney-in-Fact

ATTEST:

FRANK I. MITCHELL
Attorney-in-fact

(Seal)

CRMC-Motley1000-Subj-004076

STATE OF NEW YORK :
:
COUNTY OF NEW YORK :

BE IT REMEMBERED, that on this 1st day of July, 1940, before me, the subscriber, personally appeared Vandiver Brown who being by me duly sworn does depose and make proof to my satisfaction that he well knows the corporate seal of JOHNS-MANVILLE CORPORATION, the obligor mentioned in the within bond; that the seal thereto affixed is the proper corporate seal of the said corporation; that the same was so affixed thereto and the said bond signed and delivered by J. A. Williams who was at the date and execution thereof, the Vice-President of said corporation, in the presence of the said deponent, as the voluntary act and deed of the said corporation, and that the said deponent thereupon signed the same as subscribing witness.

Sworn and subscribed) Vandiver Brown
before me on the day)
and year aforesaid.)

Vincil Hermon

(SEAL) A Notary Public of New York

Vincil Hermon
Notary Public, N.Y. County
N.Y.Co.Clks. No. 61 Reg. No.1H15
Commission expires March 30, 1941

CRMC-Motley1000-Subj-004077

STATE OF NEW YORK }
County of New York } ss.

On this 3rd day of October 1939 before me personally came Ward E. Flaxington, to me known and by me known to be Assistant Secretary of the UNITED STATES GUARANTEE COMPANY, the corporation described in and which executed the foregoing Power of Attorney to [illegible], Irene L. Mitchell, L. Verne Drew, Irving L. Ayerson and Hayer Young - - - - - - - - - - - - - - - -

and the said Ward E. Flaxington being by me duly sworn, did depose and say that he resides in the City of New York, in the State of New York; that he is Assistant Secretary of the UNITED STATES GUARANTEE COMPANY and knows the corporate seal thereof; that the seal affixed to the foregoing Power of Attorney is such corporate seal and was thereto affixed by authority of the By-Laws of said Company, and that he signed said Power of Attorney as Assistant Secretary of said Company by like authority; that he is acquainted with John T. Jones and knows him to be Vice-President of said Company and that the signature of said John T. Jones subscribed to said Power of Attorney is in the genuine handwriting of said John T. Jones and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Subscribed, Acknowledged and Sworn to before me on the date above written.

WARD E. FLAXINGTON

DAVID OSEMAN
NOTARY PUBLIC, Queens Co. No. 8421
Certificate Filed in New York Co. No. [illegible]
Commission expires March 30, 1941

[NOTARIAL SEAL]

CITY AND COUNTY OF NEW YORK: ss.

I, Lewis S. Musgrove, Assistant Secretary of the UNITED STATES GUARANTEE COMPANY, do hereby certify that the following is a true excerpt from the By-Laws of said Company as adopted by the Board of Directors on February 6, 1929, and that the same has not since been amended or rescinded, to-wit:

"ARTICLE VII. EXECUTION OF BONDS, ETC.

Sec. 1. All bonds, undertakings, contracts, powers of attorney and other instruments for and on behalf of the Company which it is authorized by law or its charter to execute, may and shall be executed in the name and on behalf of the Company by its President, or a Vice-President, jointly with its Secretary, or an Assistant Secretary, under their respective designations, except that:

(a) any officer or officers, agent or agents, attorney-in-fact or attorneys-in-fact designated in any resolution of the Board of Directors or Executive Committee adopted either before or after the making of this By-Law, or in any power of attorney executed as provided for in this section, may execute in the manner prescribed in such resolution or power of attorney any such bond, undertaking or other obligation which he or they shall be empowered to execute by such resolution or power of attorney:"

And I further certify that I have compared the foregoing copy of the POWER OF ATTORNEY with the original thereof executed by said UNITED STATES GUARANTEE COMPANY to T. D. O'Gorman, et al dated October 3, 1939 and the same is a correct and true copy of the whole of said original Power of Attorney and that said Power of Attorney has not been revoked.

And I further certify that said UNITED STATES GUARANTEE COMPANY is duly licensed to transact fidelity and surety business in the State of and is also duly licensed to become sole surety on bonds, undertakings, etc., permitted or required by the laws of the United States.

Given under my hand and seal of said Company at New York City, N. Y., this 27th day of June, 1940.

Lewis S. Musgrove
Assistant Secretary

90 JOHN STREET, NEW YORK, N. Y.
as of December 31, 1939

CRMC-Motley1000-Subj-004078

to me known and by me known to be an Attorney-in-Fact of the UNITED STATES GUARANTEE COMPANY, the corporation described in and which executed the annexed bond on behalf of Johns-Manville Corporation and the said Frank L. Mitchell being by me duly sworn, did depose and say that he resides in the City of East Orange in the State of New Jersey; that he is an Attorney-in-Fact of said UNITED STATES GUARANTEE COMPANY, and knows the corporate seal thereof; that the seal affixed to said annexed instrument is such corporate seal, and was thereto affixed by authority of the Power of Attorney of said Company, of which a certified copy is hereto attached, and that he signed said annexed instrument as an Attorney-in-Fact of said Company by like authority; and that he is aquainted with Irving L. Ryerson and knows him to be also an Attorney-in-Fact of said Company and that the signature of said Irving L. Ryerson subscribed to said annexed instrument is in the genuine handwriting of said Irving L. Ryerson and was thereto subscribed by like authority and in deponent's presence; that the assets of said Company, unencumbered and liable to execution, exceed its debts, claims and liabilities of every nature by more than the sum of three million dollars, and that he believes the attached statement of said Company's assets and liabilities, signed by deponent, is true and correct.

Subscribed, Acknowledged and Sworn to before me on the date above written.

Frank L. Mitchell
Deponent's Signature

Earl Lundmon
(Officer's Signature, Description and Seal)

My Commission Expires Mar. 29, 1943

(Certified Copy POWER OF ATTORNEY authorizing execution of Bonds.)

POWER OF ATTORNEY

Known All Men by these Presents, that the UNITED STATES GUARANTEE COMPANY of [redacted] City, New York, a corporation of the State of New York, has constituted and appointed, and does hereby constitute and appoint P. D. O'Gorman, Frank L. Mitchell, L. Verne Drew, Irving L. [redacted] and Roger Young of Newark, New Jersey - each its true and lawful Attorney-in-Fact to execute [redacted] with either of the others, under such designation in this Company's name and to affix its corporate seal to [redacted] for and on its behalf, as surety thereon or otherwise, bonds or obligations of either of the following [redacted], to wit:

1. Bonds or obligations required on bids or proposals made by any bidder, or to secure the performance of contracts made by any contractor, for furnishing labor and materials and performing any work for, the United States, any State, City, Town, Village, Board, or others;
2. Bonds to the United States of America [redacted] or permitted under laws or regulations relating to the Customs or Internal Revenue;
3. Bonds for Notaries Public within the [redacted] and bonds required by the laws, ordinances or regulations of any State, City, Town, [redacted] or other body or organization, public or private, for obtaining a License or Permit for [redacted] doing or carrying on any work, business or occupation;
4. Bonds to Transportation Companies to [redacted] transportation charges, or for delivery of freight prior to surrender of Bill of Lading;
5. Bonds and undertakings (except bonds [redacted]) required or permitted by law to be given or filed in any suit, matter or proceeding [redacted] of the United States, or in any State or other Court, or given to or filed with any Sheriff or [redacted] in any State, for the doing or not doing of anything specified in such Bond or Undertaking, in which the penalty of the bond or liability incurred under such undertaking does not exceed twenty-five thousand dollars ($25,000);
6. Any other bond or undertaking the execution of which shall be authorized by letter addressed to either of said Attorneys-in-Fact, signed by George M. Reasey, President, or John T. Jones or William E. Schenck or James G. Cannon or Nathan Murray or Edward E. Starling, Vice-Presidents of this Company, and sealed with this Company's corporate seal, attested by its Secretary or one of its Assistant Secretaries;

—and the execution of any and all such bonds and undertakings by any two of such Attorneys-in-Fact, in this Company's name and on its behalf as surety thereon or otherwise, under its corporate seal, in pursuance of the authority hereby conferred shall, upon delivery thereof, be valid and binding upon this Company.

IN WITNESS WHEREOF, the said UNITED STATES GUARANTEE COMPANY has, pursuant to its By-Laws, caused these presents to be signed by its Vice-President and Assistant Secretary and its corporate seal to be hereto affixed this 3rd day of October 1939.

UNITED STATES GUARANTEE COMPANY,

By

JOHN T. JONES
Vice-President

WARD E. FLAHERTY
Assistant Secretary [CORP. SEAL]

Form 193

CRMC-Motley1000-Subj-004079

UNITED STATES GUARANTEE COMPANY

90 JOHN STREET, NEW YORK, N. Y.

as of *December 31, 1939*

ASSETS

United States Government Bonds		$ 5,504,372.69
State and Municipal Bonds		768,788.11
Railroad Bonds and Stocks		577,734.23
Public Utility Bonds and Stocks		1,275,525.70
Industrial, etc. Bonds and Stocks		5,929,899.00
TOTAL BONDS AND STOCKS		$14,056,319.73
Cash in Banks	$2,723,957.43	
Cash in Office	7,750.00	2,731,707.43
Premiums, not over three months due		490,416.57
Reinsurance Receivable		76,412.43
Accrued Interest		43,778.32
Other Assets		27,276.19
TOTAL ADMITTED ASSETS		$17,425,910.67

LIABILITIES

Reserve for Unearned Premiums		$ 3,003,556.96
Reserve for Losses and Claims		2,873,811.73
Reserve for Loss Adjustment Expenses		62,257.40
Reinsurance Reserves		1,191,249.81
Commissions and Brokerage		136,485.44
Federal, State and Other Taxes		372,695.38
Accounts Payable		11,116.99
Voluntary Special Reserve		47,418.07
Voluntary Contingency Reserve		1,250,000.00
		$ 8,948,591.78
Capital Paid In	$2,000,000.00	
Surplus	6,477,318.89	
Surplus to Policyholders		8,477,318.89
TOTAL LIABILITIES		$17,425,910.67

Bonds and Stocks are valued in accordance with requirements of State of New York Insurance Department.

On the basis of December 31, 1939, market quotations for all bonds and stocks owned, this company's Total Admitted Assets and its Surplus would be increased by $270,393.86.

Securities carried at $1,049,620.27 in the above statement are deposited as required by law.

A CORRECT STATEMENT:

Irving L. Ryerson

Attorney-in-fact

CRMC-Motley1000-Subj-004080

FRANK SMUTKO,

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION,
a corporation,

Defendant.

Action at Law
BOND ON REMOVAL

Hobart, Minard & Cooper,
Attorneys for Defendant,
Appearing specially &c.
1180 Raymond Blvd.,
Newark, N. J.

FILED

JUL 5 1940

Fred L. Bloodgood

Clerk

CRMC-Motley1000-Subj-004081

NEW JERSEY SUPREME COURT
HUNTERDON COUNTY

FRANK SMUTKO,

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION, a corporation,

Defendant.

Action at Law

ORDER

Due notice of this application having been given to the attorneys for the plaintiff, it is on this 15th day of July, 1940, on motion of Hobart, Minard & Cooper, Attorneys for the defendant, appearing specially,

ORDERED, that the above entitled cause be and the same is hereby removed to the United States District Court for the District of New Jersey.

Let this rule be entered.

Thomas S. Brogan
C.J.S.C.

Entered: July 16, 1940.
On motion of:
Hobart, Minard & Cooper
Hobart, Minard & Cooper,
Attorneys for defendant,
appearing specially, etc.

CRMC-Motley1000-Subj-004082

NEW JERSEY SUPREME COURT
HUNTERDON COUNTY

FRANK SMUTKO,

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION,
a corporation,

Defendant.

Action at law
ORDER

Hobart, Minerd & Cooper,
Attorneys for defendant, appearing
specially, &c.
1180 Raymond Blvd.,
Newark, N.J.

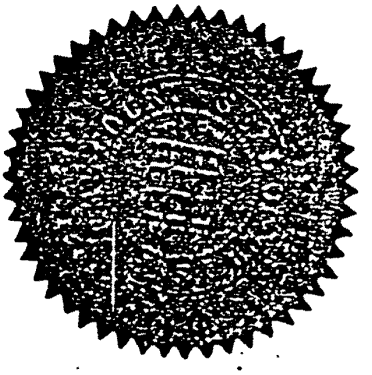
FILED
JUL 16 1940

Fred L. Bloodgood,
Clerk.

CRMC-Motley1000-Subj-004083

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I, the undersigned, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the entire proceedings in the above stated cause as the same remain on file and of record in my office.



In testimony whereof I have set my hand and the seal of said Court at Trenton, this sixteenth day of July A. D. nineteen hundred and forty.

Fred A. Woodgood
Clerk.

CRMC-Motley1000-Subj-004084

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