UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRED C. WENHAM by BESSIE VINA, Administratrix ad Prosequendum,

Plaintiff,

-vs-

JOHNS MANVILLE PRODUCTS CORPORATION, a corporation of the State of Delaware,

Defendant.

Civil No. 125-61
ANSWER

FILED

MAY 2 - 1961

MICHAEL KEHLER, JR.
CLERK

The defendant, Johns Manville Products Corporation, a corporation of the State of Delaware, duly licensed to transact business in the State of New Jersey, having an office therein in the Borough of Manville, County of Somerset, answering the complaint filed herein says that:

FIRST DEFENSE TO FIRST COUNT

1. It has no knowledge sufficient to form a belief as to the allegations of paragraph 1.

2. It admits paragraph 2.

3. It has no knowledge sufficient to form a belief as to the allegations of paragraphs 3, 4, 5 and 6.

4. It denies paragraphs 7 and 8.

5. It denies paragraph 9.

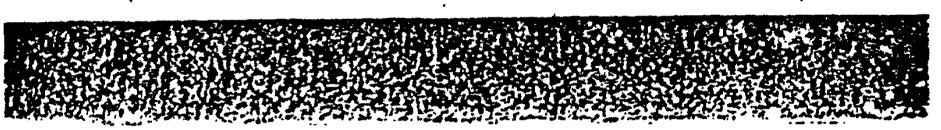
6. It denies paragraph 10.

SECOND DEFENSE TO FIRST COUNT

7. It alleges that any danger to which Fred C. Wenham was exposed in the use of the products manufactured by the defendant was as open, obvious and apparent to him as to the defendant, and he assumed any and all risk incident to the use thereof.

THIRD DEFENSE TO FIRST COUNT

8. It alleges that Fred C. Wenham was guilty of contributory negligence in that he failed to exercise that



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SECOND DEFENSE TO THIRD COUNT

19. It repeats paragraph 7 hereof.

THIRD DEFENSE TO THIRD COUNT

20. It repeats paragraph 8 hereof.

STRYKER, TAMS & DILL

By John J. Monigan, Jr.
John J. Monigan, Jr.
Attorneys for Defendant
744 Broad Street
Newark 2, New Jersey

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degree of care and caution which a reasonably prudent person would have exercised in his use of the products which the defendant manufactured.

FOURTH DEFENSE TO FIRST COUNT

9. It alleges that any claim for personal injuries resulting from the alleged negligence of the defendant is barred by the applicable provisions of the New Jersey Statute of Limitations (N.J.S. 2A:14-2).

FIRST DEFENSE TO SECOND COUNT

10. Answering paragraph 1, it repeats paragraphs 1, 2, 3 and 4 hereof.

11. Answering paragraph 2, it admits that in the sale of its products it made such implied warranties as it was obliged by law to make, but it alleges that no warranties, express or implied, were made to Fred C. Wenham.

12. It denies paragraphs 3 and 4.

13. Answering paragraph 5, it repeats paragraph 6 hereof.

SECOND DEFENSE TO SECOND COUNT

14. It alleges that the Second Count fails to state facts upon which a claim for relief can be based.

FIRST DEFENSE TO THIRD COUNT

15. It has no knowledge sufficient to form a belief as to the allegations of paragraphs 1 and 2.

16. Answering paragraph 3, it repeats paragraphs 1, 2, 3, 4, 5, 6, 10, 11, 12 and 13 hereof.

17. It denies paragraph 4.

18. It has no knowledge sufficient to form a belief as to the allegations of paragraphs 5 and 6.



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ervice of a copy of the
thin answer is hereby
knowledged this 28th day
April, 1961.

Franklin Swersky
Attorney for Plaintiff

DISTRICT OF NEW JERSEY

FRED C. WENHAM by BESSIE VINA, Administratrix ad Prosequendum,

Plaintiff,

-vs-

JOHNS MANVILLE PRODUCTS CORPORATION, a corporation of the State of Delaware,

Defendant.

Civil No. 125-61

ANSWER

STRYKER, TAMS & DILL
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Wenham v. Johns-Manville Products, Complaint, Answer and Dismissal (1961)
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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

FILED

FEB 6 1962

MICHAEL KELLER, JR.
CLERK

red C. Wenham, etc., Plaintiff

vs

ohns Manville Products Corp., Defendant

Civil 125-61

ORDER OF DISMISSAL

It appearing that it has been reported to the Court that the above action has been settled;

It is, on this 6th day of February 1962

ORDERED, that this action is hereby dismissed, without costs, and without prejudice to the right to reopen the action if the settlement is not consummated.

Judge

Copies to:

Franklin Swersky, Esq.
Stryker, Tams & Dill, Esqs.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL NO. 125-61

FILED
FEB 23 1961
AT 8:30 M
MICHAEL KELLER, JR.
CLERK

FRED C. WENHAM, by BESSIE VINA, Administratrix Ad Prosequendum,

Plaintiff,

vs.

JOHNS MANVILLE PRODUCTS CORPORATION, A Corporation of the State of Delaware,

Defendant.

COMPLAINT AND

DEMAND FOR JURY TRIAL

Plaintiff, residing at 10 Eric Road, London, England by way of complaint says:

FIRST COUNT

1. Plaintiff, FRED C. WENHAM, was a resident and citizen of New Jersey.

2. Defendant, JOHNS MANVILLE PRODUCTS CORPORATION, is a corporation of the State of Delaware.

3. The amount in controversy exceeds the sum of $3,000.00, exclusive of interest and costs.

4. This Court has jurisdiction under Title 28, U.S. Code, §1332.

5. Plaintiff, FRED C. WENHAM, had been employed for some time and until February 24, 1959, as an insulation materials applicator and mechanic.

6. By reason of plaintiff's employment as aforesaid, plaintiff was required to handle, work with and utilize various and sundry products manufactured by the defendant, such products containing asbestos and other fibers, dust and particles.

7. The said products of the defendant were of a dangerous character by reason of their composition and particularly but not limited to the asbestos and other fibers, dust and particles in that continued contact with the said materials and products and handling of them would and did expose plaintiff and other persons similarly situated to the likelihood of contract-

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ing serious and crippling diseases, including but not limited to pulmonary asbestosis, fibrosis and pneumoconiosis.

8. Defendant knew or should have known of the dangerous and toxic qualities of its products and of the likelihood of said serious diseases resulting from prolonged exposure to and handling of the said products.

9. Defendant was negligent in failing to conduct or properly to conduct research concerning the contents, make-up and toxic effect of its products, and was further negligent in the manufacture, make-up, packaging and labeling of such dangerous and toxic products and was further negligent in failing to provide any or adequate warnings or instructions as to the use and handling of same. By reason of the defendant's negligence as aforesaid, plaintiff and others have been exposed to and have contracted the aforesaid serious and crippling diseases.

10. By reason of the foregoing, plaintiff contracted a serious and crippling disease effecting his lungs and other parts of his body, and by reason of the same incurred considerable medical and hospital expenses, and expended large sums of money on drugs and medicines, was subjected to great pain and suffering, and was compelled to terminate his employment and became permanently incapacitated for the rest of his life, until May 31st, 1960, on which date plaintiff died as a result of the occupational disease contracted in his employment.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of $100,000.00 and costs of suit upon the First Count.

SECOND COUNT

1. Plaintiff repeats the allegations of Paragraphs 1 to 8 inclusive of the First Count.

2. Defendant in manufacturing and selling said products warranted that same were reasonably fit and safe for the uses to which they were to be put.

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3. Plaintiff as one of the class of persons whom the defendant intended to, and knew or should have known, would use said products was entitled to the benefits of the aforesaid warranty.

4. The said products were not in fact reasonably fit and safe for the uses to which they were to be put in the respects set forth in Paragraphs 7 and 8 above and further in that they contained no, nor adequate warnings or instructions as to their use and handling.

5. Plaintiff repeats the allegations of Paragraph 10 above.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of $100,000.00, and costs of suit, upon the Second Count.

THIRD COUNT

1. Fred C. Wenham died on May 31st, 1960.

2. On June 30th, 1960, Bessie Vina, the daughter of Fred C. Wenham, was appointed Administratrix Ad Prosequendum, by the Essex County Surrogate's Court on behalf of Fred C. Wenham, who died intestate, authorizing and empowering her to prosecute an action for damages by reason of the wrongful death of FRED C. WENHAM.

3. Plaintiff repeats the allegations of the First and Second Counts and makes the same a part hereof.

4. Defendant, JOHNS MANVILLE PRODUCTS CORPORATION, by its wrongful act, default or neglect, as set forth in the First and Second Counts of this complaint, caused the wrongful death of FRED C. WENHAM.

5. FRED C. WENHAM left him surviving his wife, Annie Florence Wenham, and this action is instituted for her pecuniary injuries suffered by the wrongful death of FRED C. WENHAM.

6. This action for wrongful death is commenced

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within two years of the date of death of FRED C. WENHAM.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of $100,000.00, and costs of suit, upon the Third Count.

Franklin Swersky, Esq.
Attorney for Plaintiff

Plaintiff hereby demands a trial by jury of all issues in the within action.

Franklin Swersky, Esq.
Attorney for Plaintiff

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DISTRICT OF NEW JERSEY
CIVIL NO.

FRED C. WENHAM, by
BESSIE VINA, Administratrix
Ad Prosequendum,

Plaintiff,

vs.

JOHNS MANVILL PRODUCTS
CORPORATION, A Corporation
of the State of Delaware,

Defendant.

COMPLAINT AND
DEMAND FOR JURY TRIAL

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FILED

FEB 23 1961

2:50 P. M.

MICHAEL KELLER, JR.
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Fred C. Wenham, by Bessie Vina, Administratrix Ad Prosequendum,
Plaintiff

vs

Johns Manville Products Corporation,
Defendant

Civil No. 125-61

NOTICE OF ALLOCATION
and
ASSIGNMENT

Pursuant to Rule 8 of the General Rules of this Court, I have allocated the above-entitled matter to Newark, N. J.

Please file pleadings and make all motions returnable there.

THIS ACTION HAS BEEN ASSIGNED TO

JUDGE Reynier J. Wortendyke, Jr.

MICHAEL KELLER, JR., CLERK
By Vera A. Alexander
Vera A. Alexander
Deputy Clerk

DATED: February 23, 1961

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