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UNITED STATES OF AMERICA)
STATE OF ILLINOIS) ss.

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

TONY YAKOBICH

VS. No. 43364

JOHNS-MANVILLE CORPORATION,
a corporation.

MOTION TO DISMISS

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 amended complaint is substantially insufficient in law in the following particulars:

1. The amended complaint purports to state cause or causes of action by setting forth duties alleged to be imposed by the common law on the defendant, as employer of the plaintiff; violations of such alleged duties by the defendant; and injury to the plaintiff by alleged occupational disease or diseases arising out of the employment.

(a) In the absence of valid statutory provisions there are, and during the times in plaintiff's amended complaint stated were, no duty or duties imposed by law in the State of Illinois on the defendant, as employer of the plaintiff, regarding alleged occupational diseases contracted by plaintiff.

1.

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(b) In the absence of valid statutory provisions there was and is, in the State of Illinois, no right of action at law by an employee against his employer for injury due to occupational disease or diseases arising out of the employment.

2. That had there been, prior to the effective date of the Workmen's Compensation Act, a right of action under the Common Law for the matters and grievances alleged in said amended complaint, such right of action was and is barred by Sections 6 and 11 of the Workmen's Compensation Act. (Pars. 143 and 148, Chapter 48, Smith Hurd Revised Statute.)

3. That it appears from the face of said amended complaint that the alleged action of plaintiff is barred by the Statute of Limitations.

4. That the original complaint purported to state cause or causes of action under the provisions of Section 1 of the Occupational Diseases Act and Sections 12 and 13 of the Health, Safety and Comfort Act; that said statutory provisions were and are unconstitutional and void and said complaint stated no cause or causes of action; that the amended complaint filed herein is based upon other and different alleged causes of action, and that said amended complaint is filed more than two years from the time of the accrual of said alleged causes of action.

WHEREFORE, defendant, JOHNS-MANVILLE CORPORATION, a corporation, moves that plaintiff's action may be dismissed as to it; that plaintiff take nothing by his suit,

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and that the defendant go hence without day.

Heth & Lister

Attorneys for defendant,
JOHNS-MANVILLE CORPORATION,
A Corporation.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

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 7th day of June, 1935.

Fraseline Altmaier
Notary Public.

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

TONY YAKOBICH	)	
	)	
VS	)	GENERAL NO. 43364
	)	
JOHNS MANVILLE CORPORATION, a corporation	)	AT LAW

AMENDED COMPLAINT

Now comes the plaintiff, TONY YAKOBICH, 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 appratus to be used or worn by said plaintiff, which would effectively prevent the plaintiff 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, refused to warn plaintiff of the dangers.

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

Sol Andrews
Attorney for Plaintiff.

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

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

TONY YAKOBICH

vs. No. 43364.

JOHNS MANVILLE CORPORATION,
a corporation.

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

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which plaintiff is alleged to have been exposed was apt to 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 magnesium, fibre, or asbestos dusts or gases 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 so that he cannot perform any work for which he is fitted or

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that plaintiff has suffered mental or physical pain or anguish 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

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sum of Fifty Thousand ($50,000) Dollars, or any sum whatsoever.

JOHNS MANVILLE CORPORATION,
a corporation.

BY Keck & Lister
Its attorneys.

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DEC 6 19

United States District Court, Northern District of Illinois

Cause No. 43569 (Date) November 193

Title of Cause Tony Yakobich

and

Johns Manville Corporation

Brief Statement of Motion } Dismiss

Name of moving Counsel }

Representing

Name of opposing Counsel (if any) }

JFH

Motion heard & concluded

Hand this memorandum to the Clerk.

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

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

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

TONY YAKOBICH)
)
vs.) No. 43364
)
JOHNS-MANVILLE CORPORATION,)
a corporation.)

MOTION

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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May 26, 1911, in force July 1, 1911," as amended, being Paragraph 186 of Chapter 48, Callaghan's Illinois Statutes Annotated, and that under the provisions of Section 15 of said Act (Paragraph 199 of said Chapter 48) no common law or statutory right of action accrues to the plaintiff by reason of the injuries in plaintiff's complaint alleged.

Therefore, defendant, JOHNS-MANVILLE CORPORATION, a corporation, moves that plaintiff's action may be dismissed as to it; that plaintiff take nothing by his suit; and that this defendant go hence without day.

Attorneys for Defendant, JOHNS-MANVILLE CORPORATION, a corporation.

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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 3rd day of October, 1934.

Notary Public.

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

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

TONY YAKOBICH

vs. No. 43364

JOHNS-MANVILLE CORPORATION,
a corporation.

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:

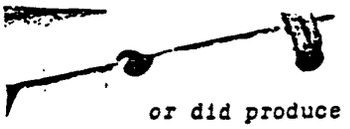
1. Denies that on the dates and occasions in plaintiff's complaint set forth, defendant did business in Waukegan, Lake County, Illinois, or owned or operated the factory, mill, or establishment alleged, or that plaintiff was employed by or worked for defendant.

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 magnesium, fibre, or asbestos dusts or gases 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 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

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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 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

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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 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 diseases 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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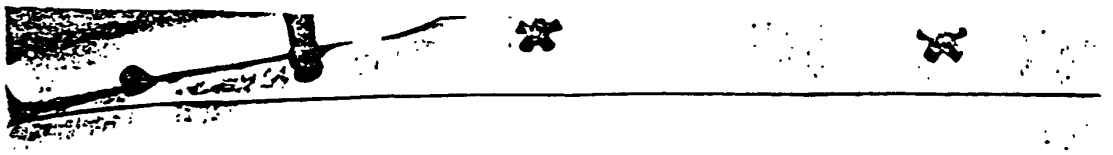
so that an employer may know with reasonable certainty what are approved devices, means, or methods, or what is necessary to be done to avoid the criminal and civil penalties provided; that said section places obligations on an employer in terms so vague that men of common intelligence must necessarily 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 Heath & Lister
Its Attorneys

CRMC-Motley1000-Subj-005064



43364

Record From

Superior Court of Cook County

To

U. S. District Court

Gen. No. 34 L 2843

Tony Yukobich

VS.

Johns Manville Corporation, a Coy

370 DM 9-32 FORM 297

CRMC-Motley1000-Subj-005065

United States of America

STATE OF ILLINOIS, } ss.
County of Cook, }

PLEAS before the Honorable ... George W. Bristow ...

one of the Judges of the ..... Fifth ..... Judicial Circuit of the State of Illinois, holding a branch Court of the Superior Court of Cook County, in the State of Illinois, by the request of the Judges of said Superior 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 2nd day of April, 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 Eight

Present: The Honorable George W. Bristow

Judge of the 5th Judicial Circuit of the State of Illinois.

Thomas J. Courtney State's Attorney.

William P. Mysing, Sheriff of Cook County.

Attest: Frank J. Zeman Clerk.

Be it remembered that heretofore, to-wit: On the ..... day of ..... in the year of our Lord one thousand nine hundred and ....., the same being one of the days of the ..... Term of the Superior Court of Cook County, the following, among other proceedings, were had in said Court and entered of record, to-wit:

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28th February 1934

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

IN THE SUPERIOR COURT OF COOK COUNTY

TONY YAKOBICH)
)
VS)No. 34S 2843 P. P.
)
JOHNS MANVILLE CORPORATION)
A CORPORATION)

COMPLAINT AT LAW

C O U N T I

The plaintiff, TONY YAKOBICH, complains of the defendant, JOHNS MANVILLE CORPORATION, a corporation, and says:

1. That on or about the 15th day of October, 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 certain departments in which various labors were performed, to-wit: the mixing room, in which magnesium was mixed, and magnesium and fibre were mixed; the drying room, in which asbestos and magnesium were dried; and other departments in which asbestos paper was cut, pipe covering made, magnesium heated and pumped out of vats while hot, and roofing putty made, and in the course of these various labors, a great deal of dust from magnesium, fibre, and asbestos, and a great deal of gas were caused to and did impregnate the air in said departments in such great quantities as to be greatly deleterious 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

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the employ of said defendant, was employed as a laborer, in various aforementioned departments, mixing magnesium, mixing magnesium and fibre, drying asbestos and magnesium, cutting asbestos paper, making pipe coverings, heating and pumping hot magnesium out of the vats, and making roofing putty, during which processes, he was exposed and subjected to a great deal of the aforesaid dusts and gas circulating in and about the said premises.

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 of carrying on 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 dust from magnesium, fibre, and asbestos, and also gas 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 dangerous 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 other of the following acts, thereby cau-

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sing the plaintiff to contract and succumb to the occupational diseases known as pneumoconiosis and tuberculosis, 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 be cured of his illnesses 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 I of an Act entitled, "An 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 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 him 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 12 of an Act concerning the health and safety of employees in factories, mercantile establishments, mills, and workshops in the State of Illinois.

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(c) negligently caused and permitted the premises to be swept so as to raise asbestos dust, magnesium dust, and fibre 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).

Sol Andrews
ATTORNEY FOR PLAINTIFF

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Thereupon on the 28th day of February A. D. 1934 a certain Summons issued out of the Office of the Clerk and under the Seal thereof directed to the Sheriff of the County which writ together with the return of the Sheriff is in words and figures following to-wit.

Clerk Circuit Court

CRMC-Motley1000-Subj-005072

ANTHONY YAKOBICH

Plaintiff,
vs.

No.

JOHNS MANVILLE CORPORATION
A Corporation

Defendants

To the above named defendants:

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 third)~~ Monday in the month of April, 19 34, 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 first)~~ Monday in the month of April, 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 Feb 28 1934 day of ~~XXX~~.

(seal)

Frank V. Zintak
Clerk

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

Sol Andrews

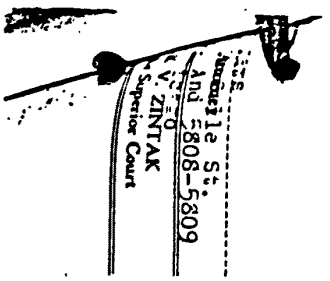
Address 160 N. La Salle St.

Tel. And. Sdg. 2209 Phone

Chicago

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urt of Cook County

EIGH

vs.

ILLE CORPORATION

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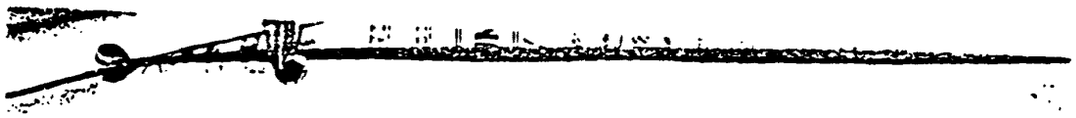
4, 31, 1934
k of Pritable Clerk
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k of Pritable, Clerk
[illegible]
[illegible] Peoria Ave.

Manville
And 5808-5809
S.
v. ZINTAK
Superior Court

I certify that I served the within writ on the within named defendant Johns Manville Corporation, a corpo by leaving a copy thereof with W.H. Fogarty an Agent of said corporation this 26th day of March 1934

William D. Meyering Sheriff by Oliver V. McCormick Depty

CRMC-Motley1000-Subj-005074



6th

April A. D. 1934

Appearance

CRMC-Motley1000-Subj-005075

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STATE OF ILLINOIS, } ss
COOK COUNTY. }

Superior Court thereof to the April Term, A. D. 19 34

TONY YAKOBICH

vs.

JOHNS MANVILLE CORPORATION,
a corporation.

ACTION

Special

We hereby enter the/ appearance for of JOHNS MANVILLE CORPORATION, a corporation, and ourselves as its attorneys, for the sole purpose of having the above entitled cause transferred and removed from the Superior Court of Cook County to the United States District Court for the Northern District of Illinois, Eastern Division.

~~Defendant's petition for removal of the above entitled cause.~~

Attorneys for JOHNS MANVILLE CORPORATION, a corporation.

Chicago, Ill. April 19 34

CRMC-Motley1000-Subj-005076

...348...2643.

ARANCE

.....Term, A. D. 19..34

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vs.

LLE CORPORATION

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.....day of

....., A. D. 19.....

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Clerk.

...ert and Collins.....

...nville Corporation

...h to Sell a Sp...

...nce fee paid by

...er & Collins.....

...a. 3800 M. Kelly & Co.

Filed
1934 Apr 6 P.M. 2:16
Frank P. Pintuff Clerk

Yor. C., ...
Frank P. Pintuff, Clerk

CRMC-Motley1000-Subj-005077

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And afterwards, [illegible] the 14th

day of April A. D. 1934

a certain Notice

was filed [illegible] the Clerk of said C

[illegible] to-wit.

CRMC-Motley1000-Subj-005078

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

IN THE SUPERIOR COURT OF COOK COUNTY

TONY YAKOBICH

vs.

JOHNS MANVILLE CORPORATION, a corporation.

No. 348 2843

NOTICE

To: Sol Andrews
160 N. La Salle St.
Chicago, Illinois

PLEASE TAKE NOTICE That on Saturday the 14th day of April, 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 George W. Bristow, 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 13th day of April, 1934.

Heth Lister & Collins
Attorneys for defendant

Received copy of the above notice, together with a copy of petition, bond, and order therein referred, this 13th day of April, 1934

Sol Andrews
Attorney for plaintiff.

Motion #_____ Page _____

CRMC-Motley1000-Subj-005079

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And afterwards, to-wit, on the 14th day of April A. D. 1934 a certain Petition was filed in the Clerk of said C

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

IN THE SUPERIOR COURT OF COOK COUNTY

TONY YAKOBICH

vs.

JOHNS MANVILLE CORPORATION, a corporation.

No. 34B 2643

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, TONY YAKOBICH, 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 made 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,

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created, and organized under and by virtue of the laws of the State of New York, and was then and still is a citizen of the State of New York; that TONY YAKOBICH, 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

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Division, as provided by law.

JOHNS MANVILLE CORPORATION,
a corporation.

BY John J. Ilynn

3.

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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 & Collins, and is 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 i t s 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 13th day of April, 1934.

Evangeline Milivoly
Notary Public.

seal

CRMC-Motley1000-Subj-005084

And afterwards [illegible] on this 14th
day of April A. D. 1934
a certain Bond
was filed in the office of the Clerk of said Cou[illegible]
in [illegible] to-wit.

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

IN THE SUPERIOR COURT OF COOK COUNTY

TONY YAKOBICH

vs.

JOHNS MANVILLE CORPORATION, a corporation.

No. 348 2843

B O N D

KNOW ALL MEN BY THESE PRESENTS, That we, JOHNS MANVILLE CORPORATION, a corporation, as principal, and Royal Indemnity Company, a Corporation of the State of New York as surety, are held and firmly bound unto TONY YAKOBICH, 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 9th day of April, A. D. 1934.

WHEREAS, the said JOHNS MANVILLE CORPORATION, a corporation, has applied by petition to the Superior Court of Cook

1.

CRMC-Motley1000-Subj-005086

County, Illinois, for the removal of a certain cause therein pending, wherein [illegible] is plaintiff, and the said JOHNS MANVILLE CORPORATION, a corporation, is defendant, to the District Court of the United States for the Northern District of Illinois, Eastern Division, for further proceedings on grounds in said petition set forth, and that all further proceedings in said action in said Superior Court of Cook County be stayed.

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

(Seal)

BY Vandiver Brown

Royal Indemnity Company

By John F. Daley,
Attorney-in-fact. (SEAL)

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STATE OF New York }
COUNTY OF New York } ss.

Before me, Poulita Andrews, a Notary Public in and for the county and state aforesaid, personally appeared Vandiver Brown to me known to be the Assistant Secretary of JOHNS MANVILLE CORPORATION, a corporation, and then and there acknowledged that he executed the foregoing instrument as his free and voluntary act as such officer of said corporation, and as the free and voluntary act of said corporation.

GIVEN under my hand and notarial seal this 9th day of April, A. D. 1934.

Poulita Andrews
Notary Public.

(Seal)
New York County Clerk's No. 143
New York County Register's No. 3A181
Commission Expires March 30, 1935

CRMC-Motley1000-Subj-005088

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

On this 9th day of April 1934, before me personally appeared John 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 the 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.

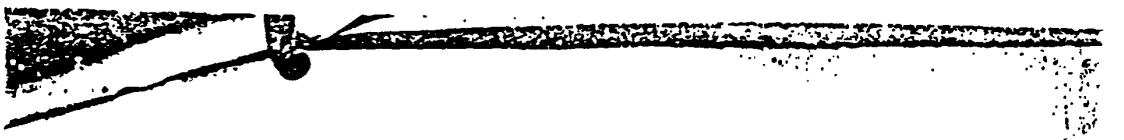
John A. Reilly

(Notary Seal)

Com Exp. 6/6/36

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And afterwards, to-wit: on the 14th day of April A. D. 1934 the following proceedings were had and entered of record in said cause, to-wit:

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

IN THE SUPERIOR COURT OF COOK COUNTY

In a certain cause...

TONY YAKOBICH

vs.

No. 345 2843

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 George W. Bristow
Judge.

CRMC-Motley1000-Subj-005091

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

in a certain cause Latida pending in said Court on the Law side thereof, wherein Tony Yakobich was Plaintiff and John Manville Corporation etc defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the seal of said Court, at Chicago, this 30th day of April A. D. 1934

Frank V Zintak Clerk

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