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STATE OF ILLINOIS)
COUNTY OF COOK) SS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DIVISION
EASTERN DIVISION

FRANK BROWN

vs

JOHNS-MANVILLE CORPORATION
A CORPORATION

NO. 43633

BRIEF IN ANSWER TO DEFENDANT'S
BRIEF IN SUPPORT OF MOTION TO
DISMISS PLAINTIFF'S ACTION

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Hell & Lister

ATTORNEYS FOR DEFENDANT

STATE OF ILLINOIS)
COUNTY OF COOK) SS

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

FRANK BROWN

vs.

JOHNS MANVILLE COMPANY

a corporation

NO. 43633

BRIEF IN ANSWER TO DEFENDANT'S
BRIEF IN SUPPORT OF MOTION TO
DISMISS PLAINTIFF'S ACTION

I.

CONSTRUCTION OF SECTION 2
OF THE OCCUPATIONAL DISEASE
ACT PRIOR TO THE DECISION IN
BURNS vs INDUSTRIAL COMMISSION
356. Ill. 602

Kelley v. St. Louis Smelting Co., 397 Ill. 367,
speaks for itself and it is quite in accord with the
1st National Bank v. Wedron Silica Co., in the 350 Ill.
page 560. Arnell v. Superior Mirror Co., 210 Ill. App.
486 seems to be contra to the Burns decision, and apparent-
ly, even though not mentioned in the Burns decision has
extended by the latter which is repeated in 356, Ill. 602.
While it is true that the subject matter of the Arnell
case would fall apparently within the scope of the
Burns case, the rule of law laid down in the Arnell Case
has not been overruled so much as it has been extended.

First National Bank v. Wedron Silica Co., 351
Ill. page 560 was decided while the Burns case was pending
on appeal before the Supreme Court of Illinois, and
in that case the Supreme Court expressly read Section 2
of the Occupational Disease Act, so that three classes
of cases were created in exactly the same way, that they
described the same in the Burns case; yet the Supreme
Court of Illinois went on in the 1st National Bank

case and expressly stated that silicosis came under Section I of the Occupational Disease Act.

The Burns case was not a silicosis case, but one where the proof tended to bring out a nitric Acid and muriatic poisoning. If the Burns decision had intended to overrule the Wedron case, it would seem logical that the Court would at least have mentioned the latter in it's opinion in the Burns case. It would also seem logical that before the Wedron case was decided, the Court having also had the Burns case before it for consideration, would have laid down a different rule than it had. Certainly the most logical interpretation of these two cases is one of reconciliation. Plaintiff claims that the two cases are reconcilible in that the Wedron case had to do with silicosis and the Burns case with an Acid poisoning. With respects to defendant's argument that arsenic poisoning brings the plaintiff's declaration under Section 2, we can dismiss that with a gesture, by calling the Court's attention to the fact that arsenic poisoning was not alleged in the declaration; and that that may be a matter of defense to be brought out in evidence, rather than a question of law.

In the Burns decision the court attempted to establish the meaning of approximately thirty-one words of Section 2 of the Act by supplying the word "or" at such a place so as to create a third classification of cases, to wit: poisonous chemicals, minerals or other substances. We have at this point two interpretations to choose from. One, that the word poisonous refers only to the word, chemicals; that minerals or other substances are not modified by the word, poisonous. Or second, that the word poisonous modifies all three words, to wit; chemical, mineral and other substances. Now to follow the logical argument that the intention of the Court in the Burns decision was to give

effect to the law as written in the statute, it would hardly be consistent to make the third classification in Section 2 so broad (by interpreting the word, poisonous to modify only the word, chemical) that it would make inoperative the whole of Section 1 and all of Section 15a, without declaring both Section 1 and all of Section 15a either unconstitutional or unintelligible. We should then be faced with a proposition that one-third or less of one Section is to be saved from being meaningless at the expense of the whole of Section 15a. We can hardly impute such nonsense to our Supreme Court. We are then forced to the conclusion that the word, poisonous, was meant to modify all of the substances mentioned in the third classification of Section 2, or whether it is a non-extra hazardous disease within the purview of Section 1 and 15a, and that, in the plaintiff's opinion is a question of fact. As a matter of construction of the English language, it would be redundant to insert the word poisonous before each of the words which it modifies, and for that reason the statute to be construed properly must refer the word poisonous chemicals, minerals, other substances. It would seem from reading the Act that exposure to the more toxic substances referred to in Section 2 was recognised by the legislature in framing the Occupational Disease Act as requiring immediate attention. We need only to refer to the law of the Supreme Court in the Case of Madison v. Wedron Silica Co., in the 352nd Ill. which stated that silicosis developed over a long period of time and creeps upon its victim unawares. In counsel's brief are arguments that are really questions of facts and not questions of law. What medical authorities agree upon or disagree upon, cannot be argued as matters of law. Counsel cites authority to the effect that silicosis being harmful, then necessarily must be poisonous. Whether or not silica inhaled into the lungs in particles of various sizes is poisonous

is yet only a theory unsubstantiated by any proof; all medical authorities are agreed that silica taken into the alimentary canal is probably harmless and certainly not poisonous,, whereas the mechanical irritation of silica or any dust is a proven fact. In support of the poison theory, defendant quotes Bouviers Law Dictionary to the effect that any substance taken into the living organisms is capable of causing impairment or cessation of function, is a poison. If we were to give as broad a meaning to the term poison as the word implies, we should be faced with the proposition that drowning is a poison since it is common knowledge that water when taken in to the (living Organisms) lungs causes a cessation of function resulting in death. Or, perhaps did the expression "when taken into the living organisms" refer to introduction of substances into the alimentary canal. The very word poison comes from the latin word, meaning "to drink" or "potion" and to the ordinary layman means something taken into the system through the alimentary canal or injected into the blood system. Since pneumoconiosis or silicosis is not contracted through injections or through the alimentary canal, we are forced to the conclusion that it is not a poison and does not cause a poisoning of the human body and with apologies to the Court, plaintiff again submits, is this not a question of fact rather than a question of law. We must, in view of the persistency of the defendant's counsel to confound the word "injurious" with the word "poisonous", call once more to the attention of the Court that injurious is not a synonym for poisonous.

In view of the foregoing, plaintiff submits that the defendant's motion to dismiss should be denied and that the defendant be required to plead further.

Respectively submitted,

Joe Anderson

STATE OF ILLINOIS }
COUNTY OF COOK } ss

IN THE CIRCUIT COURT OF COOK COUNTY

FRANK BROWN

VS

JOHN MANVILLE CORPORATION,
A CORPORATION

NO. 340 8265

Convery

COMPLAINT AT LAW

COUNT I

The plaintiff, FRANK BROWN, by his attorney, SOL ANDREWS, complains of the defendant, JOHN MANVILLE CORPORATION, a corporation, and says:

1. That on or about the 20th day of June, A. D. 1932, the defendant, JOHN MANVILLE CORPORATION, a corporation, was a duly organized and authorized corporation, doing business in the State of Illinois, County of Lake, and City of Waukegan, at which time and place, it owned, operated, and maintained a factory, mill, or establishment for the purpose of manufacturing asbestos in its various forms.

2. That the said defendant, in its factory, owned and operated a certain department known as the construction gang in which sand was shoveled into piles and cement was dumped out of trucks; that the said defendant also owned and operated another department known as the receiving gang, in which asbestos, fibre, and cement were shoveled into trucks; that during the course of work in both the aforesaid departments, a great deal of sand dust, cement dust, asbestos dust, and fibre dust were caused to and did impregnate the air in such great quantities as to

COMPARED

be greatly deleterious to the health of human beings.

3. That on the aforesaid day and at the time and place aforesaid, he was in the employ of the said defendant and worked in the construction gang, shoveling sand into piles and dumping cement out of trucks; that he also worked in the receiving gang, shoveling asbestos, fibre, and cement into trucks; that during the course of his employment by said defendant, he was exposed and subjected to a great deal of the aforesaid dusts circulating in and about the said departments.

4. That in the carrying on of the said business by the defendant as the same was being conducted and for many years prior thereto had been carried on, 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 asbestos dust, fibre dust, sand dust, and cement dust through his nose and mouth and said dusts became lodged in his throat and lungs, causing the illnesses hereinafter complained of, while 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 causing 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 has been prevented from attending to his usual occupation and business, and he has suffered great mental and physical pain and anguish and will continue so to suffer for the rest of his life; 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 diverse great gains and profits and will continue to lose diverse 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 and 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 about 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 pro-

vided 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.

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

Ed Andrews
ATTORNEY FOR PLAINTIFF