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September 6, 1983



Babcock & Wilcox, Inc.
P. O. Box 1713
Highway 421 South
Wilmington, N. C. 28402

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Holland v. Johns-Manville
Sales Corp., et al.
80 CVS 2893

Dear Sirs:

Pursuant to North Carolina General Statutes §97-10.2(e), we are serving on you, as employer of the plaintiff, the "Defenses and Answer of the Defendant, Garlock Inc," alleging actionable negligence on your part while Joseph W. Holland was in your employ.

Very truly yours,

SPEARS, BARNES, BAKER & HOOF

By:

Robert F. Baker
Robert F. Baker

RFB:ktj

FILED

File No.: 80 CVS 2893
Film No.: _____

NORTH CAROLINA
NEW HANOVER COUNTY

177 MAY 20 1982 17
NEW HANOVER COUNTY C.C.C.
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

JOSEPH W. HOLLAND,

Plaintiff

vs.

JOHNS-MANVILLE CORPORATION, ET AL.,

Defendants

ANSWER TO AMENDED COMPLAINT

The Defendant, Garlock Inc, answering the Complaint filed herein
alleges and says:

FIRST DEFENSE

The Complaint fails to state a claim against this Defendant for either
compensatory or punitive damages upon which relief can be granted and Defendant
moves to be dismissed from this action pursuant to Rule 12(b)(6).

ANSWER TO JURISDICTIONAL ALLEGATIONS

1. This Defendant lacks sufficient knowledge or information upon
which to form a belief as to the allegations of Paragraph 1 and the same are
denied.
2. Admitted that this Defendant has its principal place of business
in a state other than North Carolina and is subject to jurisdiction in North
Carolina. All other allegations are denied for lack of sufficient information
and knowledge upon which to form a belief.
3. Denied as to this Defendant.

A TRUE COPY
CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY

ccp

ANSWER TO FIRST CLAIM FOR RELIEF

4. This Defendant lacks the knowledge or information upon which to form a belief as to the allegations of Paragraph 4 and the same are denied.

5. The Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 5 and the same are therefore denied.

6. Denied as to this Defendant.

7. Denied for lack of knowledge or information sufficient to form a belief in so far as the allegations of Paragraph 7 may relate to this Defendant.

8. Denied.

9. Denied as to this Defendant.

10. Denied.

11. Denied, including each subparagraph thereof, as to this Defendant.

ANSWER TO SECOND CLAIM FOR RELIEF

12. This Defendant repeats and incorporates herein by reference its responses set forth in Paragraphs 1-12.

13. Denied.

14. Denied.

15. Denied as to this Defendant.

16. Denied as to this Defendant.

ANSWER TO THIRD CLAIM FOR RELIEF

17. This Defendant repeats and incorporates herein by reference its responses set forth in Paragraphs 1-16.

18. Denied as to this Defendant.

19. Denied.
20. Denied as to this Defendant.
21. Denied.

ANSWER TO FOURTH CLAIM FOR RELIEF

22. This Defendant repeats and incorporates herein by reference its responses set forth in Paragraphs 1-21.

23. Denied as to this Defendant.

24. Denied.

ANSWER TO FIFTH CLAIM FOR RELIEF

25. This Defendant repeats and incorporates herein by reference its responses set forth in Paragraphs 1-24.

26. Denied as to this Defendant.

27. Denied as to this Defendant.

ANSWER TO DAMAGE ALLEGATIONS

28. Denied.

29. Denied.

SECOND DEFENSE

The Plaintiff has not been injured or damaged by any product manufactured by this Defendant. None of this Defendant's products cause any health hazard. Any asbestos in any product manufactured by this Defendant is locked in, encapsulated, and firmly bound in the manufacturing process. This Defendant's products do not release dangerous amounts of asbestos dust or fibers into the air.

THIRD DEFENSE

There was no warranty expressed or implied and no privity of contract between this Defendant and the Plaintiff and by reason thereof, Plaintiff is not entitled to recover against this Defendant for any alleged breach of warranty, expressed or implied. This Defendant further asserts that if there was any implied warranty (which is denied), the Plaintiff did not notify this Defendant of any breach thereof as required by NCGS 25-2-607, which is further pleaded in bar of the Plaintiff's possible claims against this Defendant.

FOURTH DEFENSE

If the Plaintiff sustained any injuries or illness from use of this Defendant's products as alleged in the Complaint, which is again denied, then such injuries and/or illness were caused in whole or in part by the negligence of the Plaintiff in that:

1. He failed to exercise ordinary care for his own safety when he knew or should have known of the hazards incident to his work;
2. He failed to use proper clothing, protective devices, and safety equipment when he knew or should have known that the materials he was working with or around could or might be harmful;
3. He failed to properly use this Defendant's products and subjected such products to abnormal use, and the provisions of Chapter 99B are pled in bar of the Plaintiff's claim;
4. He failed to advise, request or demand his employer or employers to provide proper safety equipment, clothing and protective devices for his use as an employee;
5. He failed to heed advice and warnings given about proper and safe working conditions and safe use of the products with and around

which he worked and failed to use the equipment provided to him by his employers and others.

6. He failed to protest acts or omissions by his fellow servants when they failed to follow safety instructions or failed to keep their work areas clean.

FIFTH DEFENSE

The Plaintiff assumed any risks incident to his employment, including exposure to asbestos, and such an assumption of risk is hereby pleaded in bar to any recovery by the Plaintiff against this Defendant.

SIXTH DEFENSE

There was no concert of action between this Defendant and any of the other Defendants herein and, therefore, the Defendants are not joint tortfeasors and this Defendant may not be held jointly and severally liable with the other Defendants.

SEVENTH DEFENSE

If it should be determined that this Defendant was in any respect negligent as alleged in the Plaintiff's Complaint, which is again denied, this Defendant alleges that such negligence in no way caused any damage or injury, and that the alleged but denied negligence of this Defendant was secondary and passive, whereas the negligence of other persons or entities including the negligence of Plaintiff's employers as set forth below, was the active, positive, sole producing cause of any injury or damage sustained by the Plaintiff, thereby insulating the alleged but denied negligence of this Defendant, and the doctrines of insulated and intervening negligence are hereby pleaded in bar of any rights of the Plaintiff to recover from this Defendant.

EIGHTH DEFENSE

On information and belief, it is alleged that the employers of the Plaintiff at the time of his alleged exposure to asbestos were negligent in that they failed to properly and safely equip Plaintiff with the necessary safety equipment for his protection; that they provided the orders and directions under which Plaintiff worked involving any asbestos that may have been in his work area; that they allowed asbestos products to be used by the Plaintiff and others on their premises in an amount so as to create a condition of danger for the Plaintiff; that although they knew or should have known in the exercise of ordinary care of both general and specific warnings pertaining to use of asbestos products, they nevertheless failed to pass on these warnings to the Plaintiff and his supervisors; that they failed to provide a safe place for the Plaintiff to work; that they failed to provide suitable training and education for the Plaintiff or they failed to enforce such safety training; and they failed to require the Plaintiff and other employees to keep the premises reasonably clean and free of dust. Such negligence on the part of the employers of Plaintiff was a proximate and superseding cause of any injury done to the Plaintiff by asbestos and constitutes insulating or intervening negligence.

NINTH DEFENSE

This Defendant is not presently aware of the identity of the past employers of Plaintiff during the periods of time when he was allegedly exposed to asbestos, or whether or not any workers' compensation benefits were paid by or in behalf of any one or more of such employers as a result of any injury, illness or disease related to exposure to asbestos; however, as to any such employers identified during the course of discovery in the lawsuit, Defendant

expressly pleads the provisions of NCGS 97-10.2. Pursuant to the provisions of G.S. 97-10.2(c) and/or the common law doctrine of equitable estoppel, this Defendant is entitled to have submitted to the jury an issue as to whether the negligence of the employers of Plaintiff as hereinbefore alleged joined and concurred with the negligence of this Defendant, if any, in producing any injuries to the Plaintiff; and if such issue should be answered in the affirmative, this Defendant is entitled to have any verdict reduced by the amount of any Worker's Compensation payments or like payments made to the Plaintiff, his heirs, executors, administrators or assigns.

TENTH DEFENSE

The Plaintiff did not notify this Defendant within a reasonable period of time after he discovered or should have discovered any alleged defects in this Defendant's products; the Complaint in this action was filed so long after the date of the events which the Plaintiff alleges constitutes these causes of action that the Plaintiff is barred from recovery by reason of laches.

ELEVENTH DEFENSE

This action is barred by the applicable statutes of limitations, including but not limited to N. C. G. S. 1-15, 1-50, 1-52, 1-56 and all applicable sections of Chapter 25 of the General Statutes of North Carolina, as well as any and all other applicable statutes of this and other jurisdictions providing for specific time periods in which a claim must be asserted or an action filed involving the matters at issue herein.

TWELFTH DEFENSE

In addition to the other statutes of limitations pleaded herein, this Defendant alleges that if any cause of action in admiralty existed in favor of

the Plaintiff, which is denied, the Plaintiff is barred by the provisions of 46 USCA §763(a).

THIRTEENTH DEFENSE

Plaintiff's exclusive remedy and right to recover is under the applicable State or Federal Workman's Compensation laws since the alleged injuries of Plaintiff occurred during the course and scope of his employment, and Plaintiff has no right to prosecute or maintain this action, and this action should be dismissed.

FOURTEENTH DEFENSE

This Defendant did not participate in any of the activities for which Plaintiff asserts that punitive damages may be assessed. The allowance of punitive damages in this case would deny Garlock Inc its rights to equal protection and due process of law as guaranteed by the Constitution of the United States and the "law of the land" clause of the Constitution of North Carolina.

FIFTEENTH DEFENSE

Insofar as the Complaint is based on alleged misrepresentation, fraud or concealment by this Defendant, the Complaint fails to state with particularity the circumstances constituting the alleged fraud, misrepresentation or concealment as required by Rule 9(b). This Defendant has never engaged in any concealment, misrepresentation or fraud.

SIXTEENTH DEFENSE

This Defendant did not know and had no reasonable grounds for knowing at the time that the Plaintiff was allegedly exposed to its products, or at any time, that any of its products containing asbestos might be potentially

hazardous or that its products posed a risk sufficient to give rise to a duty to warn.

SEVENTEENTH DEFENSE

Plaintiff has failed to mitigate damages.

EIGHTEENTH DEFENSE

Any and all acts of this Defendant in the manufacture and distribution of its products were in conformity with the recognized state of the art at all relevant times.

NINETEENTH DEFENSE

Should it be determined that the rules of comparative negligence apply in this case rather than the rule of contributory negligence, this Defendant says that the culpable conduct of the Plaintiff, including his own negligence and assumption of risk as set forth in the allegations contained in the FIFTH and SIXTH DEFENSES herein, which are realleged and adopted by reference, caused in whole or in part the damages alleged in the Complaint and therefore the alleged damages should be diminished in the proportion which the culpable conduct attributable to the Plaintiff bears to any culpable conduct by this or other Defendants that allegedly caused damage to the Plaintiff.

TWENTIETH DEFENSE

At the time of the alleged exposure to Garlock products, there was no known substitute for asbestos in its products. The unavoidable composition of the products is a bar to recovery in strict liability against Garlock.

TWENTY-FIRST DEFENSE

At all relevant times all Garlock asbestos-containing products complied with industry standards and with federal standards. Accordingly, such products were not inherently dangerous to human safety.

TWENTY-SECOND DEFENSE

Any asbestos containing products manufactured and sold by this defendant which gives rise to Plaintiff's claims herein were designed and manufactured pursuant to and in accordance with specifications mandated by the United States Government or its agencies. The knowledge of the United States Government and its agencies of any possible health hazards from use of such products was equal or superior to that of this defendant, and by reason thereof this defendant is entitled to assume any immunity from liability which exists in favor of the United States Government or its agencies.

TWENTY-THIRD DEFENSE

Plaintiff's Complaint fails to join all necessary and proper parties and there is a misjoinder of parties. Proper, necessary, and indispensable parties to this action cannot be made parties, and this action should be dismissed pursuant to Rules 12(b)(7) and 19 of the Rules of Civil Procedure.

TWENTY-FOURTH DEFENSE

On July 29, 1982, Unarco Industries, Inc. (hereinafter referred to as "Unarco"), filed a reorganization petition in bankruptcy. On August 26, 1982, Johns-Manville Corporation, Johns-Manville Sales Corporation, and Johns-Manville Amiante Canada, Inc. (hereinafter referred to as "Johns-Manville"), filed a similar petition. On November 1, 1982 Amatex Corporation (hereinafter referred to as "Amatex"), filed a similar petition. Prior to the filing of those bankruptcy petitions, Unarco and Amatex were defendants in virtually every asbestos-related

lawsuit pending in this state and Johns-Manville was a defendant in every asbestos-related lawsuit pending in this state. Because of its position as the largest producer of asbestos products in the western world, Johns-Manville has continually been the most predominant defendant in terms of both alleged claims and amounts paid in settlement in similar asbestos-related litigation throughout the country and in this state. In the absence of Johns-Manville, Unarco and Amatex, complete relief cannot be accorded to either the Plaintiff or this defendant and there is a substantial risk of inconsistent liabilities for the Defendants in this action because of the absence of those entities. Further, because of the bankruptcy petitions filed by those entities, this defendant is precluded from filing third party actions against them. Therefore, Johns-Manville, Unarco and Amatex are indispensable parties, pursuant to the provisions of Rule 19, and this action should be dismissed or stayed until such time as Johns-Manville, Unarco and Amatex are no longer within the protection of the bankruptcy courts. This defendant requests that this defense be treated as a motion and such other defendants as may subsequently file such bankruptcy petitions be included herein.

TWENTY-FIFTH DEFENSE

This defendant is informed and believes that any injuries sustained by Plaintiff resulting from exposure to asbestos products were attributable in whole or in part to products manufactured by Johns-Manville, Unarco and Amatex.

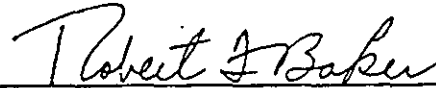
WHEREFORE, this Defendant prays:

1. That this action as to it be dismissed.
2. That the costs be taxed against the Plaintiff.
3. That the Plaintiff have and recover nothing of this Defendant.

4. That any Judgment against this Defendant be reduced by any amount which the employer or employers of the Plaintiff, their successors or assigns, would be entitled to receive therefrom by way of subrogation, pursuant to N. C. G. S. 97-10.2(e) or the common law principles of equitable estoppel.

5. That a jury be duly impaneled to try the issues arising herein.

6. For such other and further relief as to which it may be entitled.



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