

FILE NAME: Early Asbestos Damage Suits (EADS)

DATE: 1935

DOC#: EADS033

DOCUMENT DESCRIPTION: Documents from Case of Andy Belcher

692

STATE OF ILLINOIS }
COUNTY OF LAKE } vs.

IN THE CIRCUIT COURT OF LAKE COUNTY

ANDY BELCHER

vs.

JOHNS MANVILLE CORPORATION

No. 34857

COMPLAINT AT LAW

Plaintiff, for cause of action
against the defendant, states:

I. That on and prior to the 15th day of April, 1933, the defendant owned, operated, controlled and managed a certain asbestos and roofing manufacturing business in the City of Waukegan, County of Lake, State of Illinois, and in the prosecution of its business, the defendant did maintain and operate divers mixing, packing, moulding, and various other and sundry devices for the handling and manufacturing of the aforesaid products, then and there in the course of manufacture by the said defendant, and in this behalf, the said defendant did employ a large number of employees.

II. That at the said time and place referred to as aforesaid, and for a long time prior thereto, to-wit: since 1929, the plaintiff was employed by the defendant in and about handling various forms of asbestos, silica, finely powdered rock and stone and various and sundry other dusty substances, and was required to and did operate various power driven machines in and about manufacturing the aforesaid products into

Plaintiff's Attorney

roofing and asbestos products, and then and there manufactured by the said defendant.

III. That plaintiff was engaged in the aforesaid work in various rooms then and there maintained by the defendant where a large number of employees were employed in furtherance of the defendant's processes of manufacture, and that in the said operation of the aforesaid machines, divers large quantities of dust, asbestos, finely powdered rock, sand, silica, and other substances, were caused to be thrown into the air in and about the room or rooms in which the plaintiff was required to work, and that as a result of the aforesaid, plaintiff was exposed to the action of the divers forms of dust and did inhale into his lungs and bronchial track, the aforesaid dust, etc., as aforesaid.

IV. That said work and processes referred to were work and processes which might produce illness and disease peculiar to the work and processes so carried on, and the said work and processes subjected the employees of the defendant to the danger of illness and disease incident to such work and process to which employees in other lines of employment are not ordinarily exposed, namely, to-wit: that said work and processes carried on, in said factory, were work and processes which were likely to produce illness and disease peculiar to the work or processes so carried on, and the said work and processes so carried subjected the employees of the the defendant, including the plaintiff, to the danger of illness and disease incident to such work and processes to which employees in other lines of employment are not

Plaintiff's Attorney

- 5 -

ordinarily exposed, to-wit: illness and disease caused by the action of the aforesaid dusts, small particles of asbestos, rock, mica, and other dusty products, and the said diseases are known as pneumoconiosis, asbestosis, silicosis, siderosis, pulmonary tuberculosis, and various other pulmonary and bronchial complications.

V. That at said time and place, there was in full force and effect in the State of Illinois, a certain statute, reading in words and figures as follows:

"Be it enacted by the People of the State of Illinois, represented in the General Assembly, that every employer of labor in this state, engaged in carrying on any work or process which may produce any illness or disease peculiar to the work or process carried on or which subjects the employees to the danger of illness and disease, incident to such work or process, to which employees are not ordinarily exposed, in other lines of employment, shall, for the protection of all employees engaged in such work or process, adopt and provide reasonable and approved devices, means, or methods, for the prevention of such Industrial or Occupational diseases, as are incident to such work or process."

and that it became and was the duty of the defendant, to adopt and provide reasonable and approved devices, means or methods for the prevention of such Industrial or Occupational diseases as were incident to the work or processes carried on, in defendant's factory, to-wit: siderosis, silicosis, asbestosis, pneumoconiosis, pulmonary tuberculosis, and various other pulmonary and bronchial complications, yet, notwithstanding its duty in said regard, the defendant wrongfully, wilfully, and unlawfully failed and neglected to adopt and provide and maintain adequate, reasonable or approved devices, means, or methods, for the prevention of such In-

Plaintiff's Attorney

-4-

dustrial or Occupational diseases as were incident to such work or processes so carried on in said factory, and that the defendant wilfully, violated and wilfully failed to comply with the provisions of the statute referred to as aforesaid, namely, defendant wrongfully, wilfully and in violation of the statute, failed to adopt and provide or maintain any adequate reasonable and approved devices, means, or methods for removing the dust, etc., occasioned and caused by the said processes referred to aforesaid, and through suction blowers, methods of ventilations, masks, or by means of water to keep down the dust, etc., and for the prevention of such Industrial or Occupational diseases incident to the work and processes, carried on in said factory, to-wit: siderosis, pneumoconiosis, silicosis, asbestosis, pulmonary tuberculosis, and various other pulmonary and bronchial complications.

VI. Plaintiff further states that during his employment and while he was engaged in the capacity heretofore alleged, he was required to work in various mixing, moulding machines, and there was present in the said manufacturing apparatus, conducted by the defendant, various power driven devices, means, which caused the aforesaid dusts to permeate the air and atmosphere and that the said dusts were well calculated to injure the plaintiff's respiratory system, and that the defendant knew or in the exercise of ordinary care and caution would have known that the said process so carried on where the plaintiff was required to work, were charged with the diverse dusts, etc., and that the said process, was not conducted wholly in the open air, but by reason of the foregoing, did

Plaintiff's Attorney

became and was the duty of the defendant under the
aforesaid statute, to furnish the plaintiff with a ser-
viceable mask, to keep down the dust, and keep the prem-
ises free and clear of all noxious dusts caused to arise
from the aforesaid processes of manufacture, and that in
consequence of the aforesaid, the plaintiff did contin-
uously inhale into his respiratory system, the aforesaid
dusts, small particles of asbestos, and other noxious
materials then and there thrown out and into the air, and
that by reason of plaintiff's exposure thereto, plaintiff
contracted and developed a pulmonary condition known
as tuberculosis, asbestosis, silicosis, siderosis, pneu-
moconiosis, pulmonary tuberculosis, and various other pul-
monary and bronchial complications.

VII. That as a direct consequence of the
foregoing, plaintiff became sick, sore, lame, and disordered
and will so remain during his life, and has become greatly
emaciated, ill, and suffers great pain and anguish and
will in the future so suffer; that he is stricken with an
incurable disease, to-wit: siderosis, pneumoconiosis, sili-
cosis, asbestosis, pulmonary tuberculosis, and various other
pulmonary and bronchial complications, and will so remain during
his life; that he has paid out and incurred divers large sums
of money in and about endeavoring to become cured of said
disease, and has lost, and will in the future lose divers
great gains and profits which he would have other-wise made
because of said injury to his health, and on account of said
disease, wherefore plaintiff demands judgment against the
defendant, in the sum of \$25,000.00, and costs of this suit.

Leo H. Tarpey
Drake H. Berg
Attorneys for Plaintiff
Six North Clark

Endorsed:

"Filed 11/11/35"

L. J. Whitcomb, Clerk

Plaintiff's Attorney

STATE OF ILLINOIS)
COUNTY OF LAKE) SS

IN THE CIRCUIT COURT OF LAKE COUNTY

ANTY BELCHER)

Vs.)

JOHNS-KANVILLE)
PRODUCTS CORPORATION,)
a corporation)

No. 34857

AMENDED COMPLAINT AT LAW

COMPLAINT AT LAW

Plaintiff, for cause of action against the defendant, states:

I. That on and prior to the 15th day of April, 1933, the defendant was a corporation and was, on and prior to the aforesaid date, carrying on its business in the City of Waukegan, County of Lake, and State of Illinois and did maintain, operate and control a plant or factory, in the aforesaid city, county, and state; and in the prosecution and carrying on of its business, the defendant did use and employ and operate, divers machines, tools, and implements in the manufacture of divers of its products and in the course of said manufacture, the defendant did employ a large number of employees.

II. That at the said time and place referred to aforesaid, and for a long time prior thereto, to-wit: since 1929, the plaintiff was employed by the defendant as a laborer, and did handle and assist in the handling of various forms of asbestos, sand, silica and manganese, and the plaintiff, in the

~~Notaral Seal~~

Notaral Seal

performance of his duties was required to operate and assist in the operation of various power driven machines then and there used by the defendant in the manufacture of its aforesaid products, and was required to work in and about the room in which the aforesaid machines, apparatuses, and devices were in operation.

III. That the plaintiff was engaged in the aforesaid work in various rooms then and there maintained by the defendant where a large number of employees were engaged in the furtherance of the defendant's processes of manufacture and that in the said operation of the aforesaid machines and the handling of the aforesaid materials, then and there in the process of manufacture, divers large quantities of dust of a deleterious nature were caused to be thrown out and to permeate the air in and about the said room or rooms where the plaintiff was required to work; that said dusts were of a nature well calculated to cause injury to the plaintiff by the inhalation thereof.

IV. That the plaintiff was at all times herein-after mentioned in the exercise of ordinary care and caution for his own personal safety and did not know, nor by the exercise of said degree of care, by one of his experience and intelligence engaged in the same or similar line of work could have known, nor could he be reasonably expected to know of, or appreciate or anticipate, that said dusts were injurious to the health.

V. Plaintiff further says that the defendant knew, or in the exercise of ordinary care and caution

- 1 -
suction fans were then and there available and were then and there being used by employers engaged in the same or similar line of manufacture of which the defendant had knowledge, or in the exercise of the ordinary care and caution would have had knowledge and that the aforesaid devices were practicable and designed for the purpose of collecting and ridding the air of injurious dusts.

Count Three

Plaintiff hereby adopts Paragraph I, II, III, IV, and V, of his first count as paragraphs I, II, III, IV, and V, of this, his third count and proceeds as follows:

VI. That it then and there became and was the duty of the defendant in the exercise of ordinary care and caution to furnish the plaintiff with proper and efficient masks or respirators to be used or worn by the said plaintiff which would effectively prevent the plaintiff from inhaling the said dust caused to impregnate the air in the room or rooms in which the plaintiff was then and there employed.

That the aforesaid masks and respirators were then and there available and were being used by employers engaged in the same or similar line of manufacture of which the defendant had knowledge or in the exercise of ordinary care and caution would have had knowledge and that the aforesaid masks and respirators were practicable and designed for the purpose of preventing the inhalation of said dusts; that the defendant negligently failed to furnish or provide the plaintiff with proper

Wm. C. Meyer
Notarial Seal

would have known that the aforesaid dust was of an injurious character and that the continued inhalation of the same by the plaintiff would then and there cause injury to the plaintiff.

VI. That it became and was the duty of the defendant to warn the plaintiff of the nature of the said dust then and there given off as a result of the said processes of manufacture but that the defendant, regardless of his duties in the premises, negligently and carelessly failed to notify, inform, or warn, the plaintiff thereof.

VII. That the plaintiff continued to work in and about said noxious dusts and was exposed thereto, for a long period of time, to-wit: 4 years, in consequence of which he contracted an injury and disease hereinafter set forth.

Count Two

Plaintiff hereby adopts Paragraph I, II, III, IV, V, and VII, of his first count as paragraphs I, II, III, IV, V, and VII of this, his second count, and proceeds as follows:

VI. That it then and there became and was the duty of the defendant to exercise ordinary care and caution to furnish the plaintiff with a reasonably safe place to work; that the defendant negligently failed to observe its duty in the premises in that it failed to furnish:

- a. adequate and efficient blowers
- b. adequate and efficient ventilating devices
- c. adequate and efficient suction fans to collect the injurious dusts as aforesaid

That the aforesaid blowers, ventilating devices, and

~~XXXXXX~~

Notarial Seal

masks or respirators.

Count Four

Plaintiff hereby adopts Paragraph I, II, III, IV, and V, of his first count as paragraphs I, II, III, IV, and V, of this, his fourth count, and proceeds as follows:

VI. That it became and was the duty of the defendant in the exercise of ordinary care and caution to moisten and wet down, by means of water, the aforesaid dusty materials; that it was feasible and practicable to keep said dust down in the room or rooms in which the plaintiff was required to work, by means of water as aforesaid, and that the defendant had knowledge, or in the exercise of ordinary care and caution, would have had knowledge that said method of keeping down the dust was regularly and commonly used by employers engaged in the same or similar line of manufacture, but that the defendant did not observe his duty in the premises, but to the contrary, negligently and carelessly failed to moisten or wet down, by means of water, the aforesaid dusty materials or dusts arising from the processes employed by the defendant.

Count Five

Plaintiff hereby adopts Paragraphs I, II, III, of his first count as paragraphs I, II, III, of this, his fifth count, and proceeds as follows:

IV. Plaintiff further states that the defendant well knowing the danger of the continued inhalation of dusts by the plaintiff and the consequent injury to his

~~XXXXXX~~

Notaral Seal

health, wilfully and wantonly and with conscious indifference to the life and health and safety of the plaintiff failed to furnish a reasonably safe place for the plaintiff to work in, and wilfully and wantonly instructed, ordered, and required the plaintiff to continue with his work without protection by means of blowers, ventilating devices or suction fans.

Count Six

Plaintiff hereby adopts Paragraphs I, II, III, of his first count as paragraphs I, II, III of this, his sixth count, and proceeds as follows:

IV. Plaintiff further states that the defendant knew that the aforesaid dusts did then and there imperil, and endanger the life of the plaintiff from the continued inhalation thereof, and wilfully and wantonly and with conscious indifference to the life and health and safety of the plaintiff, ordered, required and instructed the plaintiff to proceed with his work and wilfully and wantonly refused to provide the plaintiff with masks or respirators or other reasonable apparatus to prevent the plaintiff from inhaling the injurious dusts.

The plaintiff concludes each and every one of the foregoing six counts as follows:

That as a direct consequence of the foregoing, plaintiff became sick, sore, lame, and disordered and will so remain during his life, and has become greatly emaciated, ill, and suffers great pain and anguish and will in the future so suffer; that he is stricken with an incurable disease,

Wm. C. Meyer
Notarial Seal

to-wit: siderosis, pneumoconiosis, silicosis, pulmonary tuberculosis, and various other pulmonary and bronchial complications, and will so remain during his life; that he has paid out and incurred divers large sums of money in and about endeavoring to become cured of said disease, and has lost and will in the future continue to lose divers great gains and profits which he would have otherwise made because of said injury to his health, and on account of said diseases, wherefore, plaintiff demands judgment against the defendant in the sum of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), and costs of this suit.

Lloyd T. Bailey
Leo M. Parry & Drake H. Berg
Attorneys for Plaintiff.

Endorsed: -

• Filed May 4-'35 -
• L. J. Wilmut
• Clerk.

Thompson C. Meyer
Notarial Seal