

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION
OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.
MARCH TERM, 1936.

L. C. KELSEY,

Plaintiff,

No. 11322

vs.

ETERNIT, INC., ETERNIT MILLS,
THE RUBEROID COMPANY, corporations,
and PAUL BEESON,

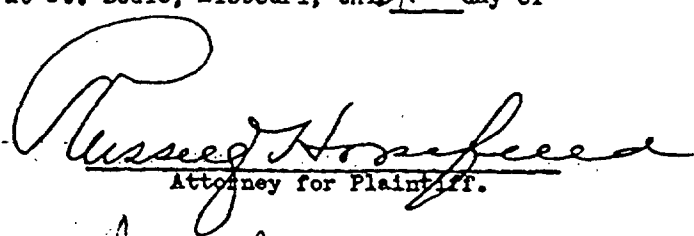
Div. No. 2

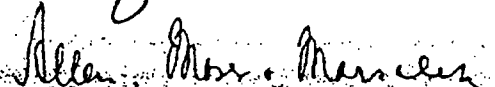
Defendants.

STIPULATION FOR DISMISSAL.

All of the matters and things in controversy in the above
entitled cause having been adjusted, compromised and finally settled,
it is hereby stipulated and agreed, by and between the above named
plaintiff and defendants Eternit, Inc., The Ruberoid Company and Paul
Beeson, that this cause shall be dismissed with prejudice to any
other or future action on account of the matters and things contained
and set forth in plaintiff's petition, and that Court costs shall be
paid by defendants Eternit, Inc., and The Ruberoid Company.

Witness our hands, at St. Louis, Missouri, this 24 day of
June, 1935.


Attorney for Plaintiff.


Attorneys for Defendants Eternit,
Inc., The Ruberoid Company and
Paul Beeson.

Div. No. 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DIVISION OF THE
EASTERN JUDICIAL DISTRICT OF MO. -
MARCH TERM, 1935.

Plaintiffs,

• 84 •

ETERNIT, INC., ETERNIT MILLS,
THE RUBEROID COMPANY, corporations,
and PAUL BESSON,

Defendants:

STIPULATION FOR DISMISSAL.

JUN 27 1935

GAF 22377

L.C. Kelsby

210061

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17	PER
Russell J. Forefield PVE, Asst.	
178	1987
680	H. SAM PRIEST
Copies for Clerk	
\$1.00 Paid by Attorney.	
Deposited for Costs	
Case Applied	
Case Paid by <u>1987</u> JUL 5 - 1985	
Att's Refunded	
Exemption No. Term, 193	
Exemption No. Term, 193	
Exemption No. Term, 193	
Fee Bill No.	

MINUTES OF PROCEEDINGS

FEB 15 1935

Notical petition aged bond of defendant
to return bond and the Richard Company
for removal filed

FEB - 4 1935

Notice Petition Bonds of \$1000 (Term 100)
 and Petition Bonds of \$1000 (Term 100)
 said Bonds for Removal, presented
 said Bonds for Removal, \$1000; with National
 Council, to be first approved by Court
 said Bonds for Removal, presented by
 removed to District Court of the Eastern
 District of Southern Indiana District 3

44-38861-1932

Deport for left Paul Beeson filed

AR 1935

Motion for seiz for costs filed

STATE OF MISSOURI }
CITY OF ST. LOUIS } SS

IN THE CIRCUIT COURT WITHIN AND FOR THE CITY OF
ST. LOUIS, STATE OF MISSOURI
FEBRUARY TERM - 1936

L. C. KELSEY,

Plaintiff,

vs.

ETERNIT, INC., a corporation,
ETERNIT MILLS, a corporation,
THE RUBEROID COMPANY, a corporation,
9215 Riverview Drive, and
PAUL SEASON, an individual,
5332 Goodfellow Avenue,

Defendants.

P E T I T I O N

Plaintiff states that the defendants, Eternit, Inc., Eternit Mills, and The Ruberoid Company are now and were at all the times hereinafter mentioned corporations, doing business in the City of St. Louis, State of Missouri and licensed to do business as corporations in the State of Missouri, and liable to sue under the laws of said state, and to be sued under the laws of said state; that the defendant Paul Season, was at all the times herein mentioned, an individual, charged by the defendant corporations, particularly the Ruberoid Company, with the following duties as their employee, and that he entered into the performance of said duties in obedience to the orders of said corporate defendants, (1) of determining under what conditions plaintiff should be provided with an adequate and approved respirator, in order to protect him from the dust herein mentioned, (2) of determining equipping, and placing in operation dust ventilating equipment, dust removers, and other dust removal equipment in said plant for the purpose of removing the dust from the atmosphere, which plaintiff was required to breathe in the performance of his duties for said defendant corporations, (3) of warning plaintiff of the danger of working in an atmosphere charged with dust containing the aforementioned

GAF 22380

in said plant, machinery, and other equipment, with fibers and dusts generated and produced by said machinery. Plaintiff was employed by all of the said defendants from the 1st day of February 1928 to the 20th day of June, 1932.

Plaintiff further states that said defendants at all the times hereinafter mentioned engaged in a trade or process which subjected their employees and plaintiff to the danger and likelihood of contracting an illness or disease incident and resulting to said work or process to-wit: the manufacture, crushing, sawing, trimming, edging and loading into box cars of asbestos, vermiculite, magnesian silicate, aluminum, silica and other asbestos products; that the aforementioned operations generated and produced great quantities of injurious, poisonous and noxious dust, and that in said plant and mill and in and about the places where plaintiff was required to work, the atmosphere was charged with a minute, hot, dry dust, capable of being breathed into the air sacs of the lungs through the nose, throat and respiratory system, and that said dust caused chemical reaction and mechanical irritation of the respiratory tract and lungs and produced the diseases peculiar to the inhalation of said dust, namely dust bronchitis, peribronchitis, pneumoconiosis, asbestosis, pulmonary fibrosis and other forms of respiratory diseases, all of which were peculiar to the inhalation of dust generated and produced in the aforementioned operations, and that said trade or process was especially dangerous to the health of plaintiff as provided by Section 13253 of the Revised Statutes of Missouri, 1929.

Plaintiff for his cause of action states that during all of his employment by the defendants he was ordered and directed to work in its plant and mill in the loading of box cars and in around crushers, saws, edgers, trimmers, and other machines which generated and produced great quantities of the aforementioned dust; that he was required to clean the mill with a house broom and to sweep said dust, was required to sweep piles of shingles with a broom, which required great quantities

of said dust, and that plaintiff was
about its position with
the aforementioned asbestos, silica, and
silicate, and other substances. Plaintiff
experienced, frequent and continuous; that plaintiff inhaled
quantities of said dust which irritated the lining of the
mouth of the nose and throat, entered the lungs, and gradually
produced a pulmonary fibrosis, causing the formation of
lesions in the lungs, destroying the elastic quality of
the lungs, rendering plaintiff short in breath, and making him
subject to pains in the chest due to irritation, formation of
pleuritic adhesions and diaphragmatic adhesions, rendering plaintiff
subject to the development of tuberculosis and other forms of
respiratory diseases; that plaintiff has lost weight, lost his physical
vitality, has difficulty in breathing, and that said conditions are
permanent, progressive, incurable and fatal; that plaintiff has
suffered from physical weakness in the chest, diagnosis and observation
of his condition to the date of this petition, and plaintiff and fifty
dollars, and will be required in the future to expend additional
sums of money in order to properly treat and care for his said illness
and disease; that plaintiff as a direct result of the inhalation of
said dust as aforesaid, is suffering from asbestosis, bronchitis, and
pulmonary fibrosis, all of which plaintiff says was peculiar to and
incident to the inhalation of said dust, and directly due to and
caused by the joint, concurrent negligence of the defendants, in this
to-wit:

1. That the defendants in said trade or process, operated
various machines, saws, edgers, trimmers, crushers, shredders, which,
while being operated, caused vast quantities of fine, dry, hot dust,
to be emitted into the atmosphere and negligently and carelessly
failed and omitted to provide each and every machine with a hood,
flap, or suction fan of sufficient power to carry off said dust, and
prevent its inhalation by the plaintiff, and other employees, all of

violation of the law of the State of Missouri then and there in full force and effect being Revised Statutes of Missouri, 1929, Section 13234 being as follows:

"PREVENTION OF SMOKE, DUST AND GAS -- Every person, firm or corporation using any polishing wheel or machine of any character which generates dust, smoke or poisonous gases in its operation, shall provide each and every such wheel or machine with a hood which shall be connected with a blower or suction fan of sufficient power to carry off said dust, smoke and gases and prevent its inhalation by those employed about said wheel or machine ***."

2. That the defendants in the conduct of their said trade or process operated various hoppers, saws, and sanders, which, while being operated, caused vast quantities of dust to be emitted into the atmosphere and did negligently and carelessly fail and omit to provide each and every said machine with a hood or covering, and an adequate and efficient apparatus or other proper devices for the purpose of drawing away from the employees noxious, poisonous or injurious dusts and preventing the employees from coming into unnecessary contact therewith, and negligently failed to provide covers or dampen said conveyors or receptacles, and negligently did fail to remove from the floor of said plant the dust and refuse of a dangerous character, all in violation of the law of the State of Missouri, then and there in full force and effect, being Revised Statutes of Missouri, 1929, Section 13252 which is as follows:

"HOPPERS, CHUTES, ETC. TO BE PROVIDED WITH COVERING. All hoppers or chutes or similar devices used in the course of any process or manufacture referred to in Section 13252 shall be provided with a hood or covering and an adequate and efficient apparatus or other proper device for the purpose of drawing away from the employees noxious, poisonous or injurious dusts, and preventing the employees from coming into unnecessary contact therewith; and all conveyances or receptacles used for the transportation about or the storage in any place where any such process or manufacture or labor referred to in Section 13252 is carried on, shall be properly covered or dampened in such a way as to protect the health of the employes, and no refuse of a dangerous character incident to the work or process carried on in any such place shall be allowed to remain accumulated on the floors thereof."

3. That the said work and manufacture which defendants were engaged in was a work which would produce illness or disease peculiar to the work or process carried on there, and that at the time of plaintiff's employment and for a long time prior thereto, there had been manufactured and in use approved and effective devices, means, and methods which when in use, would prevent the diseases aforesaid; that said approved and effective devices are as follows, to-wit:

(1) respirators, masks and muzzles to be worn by the said employees, (2) dust preventing, dust collecting, dust removing and dust dampening machinery, appliances and apparatus, (3) wet saws and water attachments to be placed upon dry saws, (4) natural ventilation, ventilating systems, air purifying and cooling apparatus, heat and humidity reducing appliances. Plaintiff further states that during the time of his employment the defendants failed and omitted to furnish all or any of the above described approved and effective devices, means or methods for the prevention of the disease aforesaid, all in violation of the law of the State of Missouri, then and therein full force and effect being Section 13252 of the Revised Statutes of the State of Missouri, 1929, which is as follows:

"EMPLOYER TO PROVIDE PROTECTION FROM DISEASES. That every employer of labor in this state engaged in carrying on any work, trade or process which may produce any illness or disease peculiar to the work or process carried on, or which subjects the employee to the danger of illness or disease incident to such work, trade or process, to which employees are exposed, shall, for the protection of all employees engaged in such work, trade or process, adopt and provide approved and effective devices, means and methods for the prevention of such industrial or occupational diseases as are incident to such work, trade or process."

4. That the defendants negligently ordered and directed plaintiff to work in and about its plant where the atmosphere was fully charged with fine, minute, dry, hot particles of dust, capable of entering the air sacs of the lungs and negligently failed to provide for and place at the disposal of its employees, adequate and approved respirators, without cost to the employees, when said dust in which plaintiff was required to work was noxious, poisonous and injurious to

the health, when breathed into the body, ~~fill in violation of~~ of the State of Missouri, then and there in full force and effect, being Section 13254 of the Revised Statutes of the State of Missouri, 1929, which is as follows:

"EMPLOYEES TO BE FURNISHED WITH CLOTHING - RESPIRATORS TO BE USED WHILE AT WORK -- Every employer in this state to which this article applies shall provide for and place at the disposal of the employee so engaged, and shall maintain in good condition and without cost to the employee, working clothes to be kept and used exclusively by such employee while at work, and all employees therein shall be required at all times while they are at work to use and wear such clothing; and in all processes of manufacture or labor referred to in this section which are productive of noxious or poisonous dusts, adequate and approved respirators shall be furnished and maintained by the employer in good condition and without cost to the employee, and such employees shall use such respirators at all times while engaged in any work productive of noxious or poisonous dusts."

5. That the said work and process which defendants were engaged in was a trade or process which was especially dangerous to the health of plaintiff as provided by Section 13253 of the Revised Statutes of Missouri, and defendants negligently failed during plaintiff's employment to require him to be examined by a competent, licensed, reputable physician as often as once every calendar month for the purpose of ascertaining if there existed in plaintiff any industrial or occupational disease or illness peculiar or incident to the character of the work in which plaintiff was engaged, all in violation of the law of the State of Missouri, being Revised Statutes of Missouri, 1929, Section 13255 which is in words and figures as follows:

"EMPLOYEES TO BE EXAMINED MONTHLY BY PHYSICIAN. Every employer engaged in carrying on any process or manufacture referred to in section 13253 shall, as often as once every calendar month, cause all employees who come into direct contact with the poisonous agencies or injurious processes referred to in section 13253 to be examined by a competent, licensed and reputable physician for the purpose of ascertaining if there exists in any employee any industrial or occupational disease or illness or any disease or illness due or incident to the character of the work in which employee is engaged."

6. That the said work and process in which defendants were engaged was a work or process which was especially dangerous to the

health of plaintiff, in that there was generated and produced great quantities of injurious, obnoxious and poisonous dust consisting of asbestos, magnesium silicate, silica and other substances and defendants negligently failed to post in conspicuous places in its said plant where such work and process was carried on, appropriate notices of the known danger to the health of said employees, arising from the said work or process, and simple instructions as to the known means of avoiding the injurious consequences thereof, all in violation of the law of the State of Missouri then and there in full force and effect being Section 13254 of the Revised Statutes of Missouri, 1929.

7. That the defendants negligently and carelessly assured plaintiff that he could with reasonable safety, work in its said plant where great quantities of obnoxious, poisonous asbestos dust was generated and produced, and which was breathed into his lungs and capable of entering the air sacs thereof, without danger to his health under the circumstances aforesaid, when the defendants knew, or by the exercise of ordinary care, could have known that the inhalation of silica dust was dangerous to the health of plaintiff, and if breathed into his lungs would cause and permit the development of diseases peculiar to the inhalation of said dust. All of which plaintiff says was directly due to and caused by the concurrent negligence of the defendants, directly and proximately producing and causing the development of plaintiff's illness and disease aforesaid.

8. That the defendants negligently ordered and directed plaintiff to clean said mill and the floor thereof, and piles of shingles therein with a house broom, and to sweep said dust and to create said dust in the air, which he was required to breathe, and negligently failed to dampen said dust when the defendants knew, or by the exercise of ordinary care on their part, could have known that the sweeping of said dust, with a house broom, would create dust in the air where plaintiff was required to breathe, in such quantities as to be harmful, injurious and obnoxious, and knew, or by the exercise of ordinary care, could have known that it was practicable and feasible to dampen said dust with water

or other means, and thus and thereby prevent the generation of said dust, thereby directly causing plaintiff's illness and disease.

WHEREFORE, plaintiff says he has been damaged in the sum of Thirty Thousand Dollars (\$30,000) for which sum he prays judgment against the defendants, together with his costs.

Richard H. Thompson
Attorney for Plaintiff

FILED
CLERK OF DISTRICT COURT
CITY OF ST. LOUIS

210061

RECEIVED FEB 13 3:34

Series B
FEBRUARY TERM 1935

Wm. Priest
CLERK

\$1.00 Paid by Attorney

GAF 22388

The State of Missouri,

We command you to appear

before the Court

at the Court House

at St. Louis

to appear before the Judge of our Circuit Court, on the first day of January, 1904, at the Court House, 12th and Market Streets, in the City of St. Louis, and there to answer the complaint of

I. O. Delaney

as set forth in the annexed petition, and bring you there and there abide with

Witness JOHN COLEMAN, Clerk of our said Court, with the seal thereof, at St. Louis, in the City of St. Louis, this 12th day of January,

1904, at the Court House, 12th and Market Streets, in the City of St. Louis, Missouri.

H. B. Priest, Jr.

I, the undersigned, myself, touch for all costs that have accrued or may accrue in the case of

against

Witness my hand and seal at St. Louis, this

1904.

1904.

Clerk

SERIES B.

No. 210061

Division

Circuit Court, City of St. Louis

FEB. TERM 1931

SUBMONS

Pl.

Pl's. Atty.

D'f's. Atty.

Isaac

of M. SAM POWER

1931

Substitution Clerk

Copies due Clerk

\$1.50 Paid by Attorney.

GAF 22390

Served this writ in the City of St. Louis, Mo., on the
within named defendant the Robert B. Campbell 35
(a Corporation), this 18 day of January
by delivering a copy of the writ to the Clerk
to C. Campbell (Sick)
being in said defendant's name and in charge thereof.
The President or other Chief Officer of said corporation could not be
found in the City of St. Louis at the time of service.

Thos. R. Wadden Sheriff,
By Carl Glass Deputy

I further served this writ in the City of St. Louis, Mo., on the
within named defendant the Eternit, Inc.
(a Corporation), this 18 day of January 35
by delivering a copy of the writ to the Clerk
to C. Campbell (Sick) of the said corporation, he
being in said defendant's name and in charge thereof.
The President or other Chief Officer of said corporation could not be
found in the City of St. Louis at the time of service.

Thos. R. Wadden Sheriff,
By Carl Glass Deputy

I further presented this writ in the City of St. Louis,
Missouri, to the 18 day of January 35 for delivery a copy
of the writ to the Clerk to Paul Benson
reference herein.

Thos. R. Wadden Sheriff,
By Carl Glass Deputy

STATE OF MISSOURI)
) ss
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT - FEBRUARY TERM - 1938.

L. C. FELSEY,

Plaintiff,

vs.

vs.

STEWART, Inc., a corporation,
STEWART KILLS, a corporation,
THE HETZROD COMPANY, a corporation,
and PAUL REESCH, an individual,

Defendants.

NOTICE OF REMOVAL PETITION.

TO THE ABOVE NAMED PLAINTIFF, L. C. FELSEY, OR RUSSELL N. CORNFELDER, ESQ.,
HIS ATTORNEY:

You are hereby notified that defendants Stewart, Inc., and The Hetzrod Company will file in the Circuit Court, City of St. Louis, Missouri, the removal petition and removal bond hereto attached, for the purpose of removing the said cause to the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. And you are further notified that the said defendants will, on Monday, February 4, 1938, at 9:30 o'clock A.M., or as soon thereafter as they may be heard, pray said Circuit Court, City of St. Louis, Missouri, to approve said bond and to accept the surety thereof and to order removal as prayed in said petition to said District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

STEWART, Inc., and THE HETZROD COMPANY,

By Russell N. Cornfelder
Their Attorneys.

The undersigned plaintiff in the above cause hereby acknowledges that copy of the above notice, with copy of petition and bond for removal therein mentioned, was duly served upon him this 1 day of February, 1938.

L. C. FELSEY

Plaintiff.

Russell N. Cornfelder
His Attorney.

GAF 22392

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss

IN THE CIRCUIT COURT - FEBRUARY TERM - 1935.

L. C. KELSEY,

Plaintiff,

No. 210031

vs.

ETERNIT, INC., a corporation,
ETERNIT MILLS, a corporation,
THE RUBEROID COMPANY, a corporation,
and PAUL ERSSON, an individual,

Div. No. 1

Defendants.

PETITION OF ETERNIT, INC., AND THE RUBEROID COMPANY,
CORPORATIONS, FOR REMOVAL OF CAUSE TO UNITED STATES
DISTRICT COURT.

Now come Eternit, Inc., and The Ruberoid Company, defendants above named, and file their petition for the removal of the above entitled cause to the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri and respectfully show to the Court that this is a civil action at law, being a suit brought by the above named plaintiff against the above named defendants to recover for alleged injuries which plaintiff claims in said petition to have been caused by alleged negligence on the part of the above named defendants; that the plaintiff in said cause was at the time of the commencement of said suit and ever since has been and still is a citizen and resident of the State of Missouri; that Eternit, Inc., was at the time of the commencement of said suit and ever since has been and still is a corporation organized under the laws of the State of Delaware, a citizen and resident of said state; that The Ruberoid Company was at the time of the commencement of said suit and ever since has been and still is a corporation organized under the laws of the State of New Jersey, a citizen and resident of said state; that Eternit Mills, alleged in plaintiff's petition to be a corporation, is not now and never has been a corporation and is not and never has been a legal entity capable of suing or being sued and is merely the (name

of a manufacturing plant of The Rubberoid Company used to distinguish it from other manufacturing plants of said company; and that the latter amount in dispute in said cause exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars (\$3,000.00).

Your petitioners further show to the Court that the defendant Paul Beeson, who is a citizen and resident of the State of Missouri, was not joined in good faith as a party defendant in said cause, but was fraudulently joined by the plaintiff as a defendant in said cause for the purpose of fraudulently defeating the jurisdiction of the District Court of the United States in said cause and for the fraudulent purpose of preventing a removal of this cause to the District Court of the United States; that the allegations contained in paragraphs numbered 1 to 6, inclusive, in plaintiff's petition fail to state facts constituting a cause of action against defendant Paul Beeson, because said Paul Beeson was not at any time the employer of the plaintiff and such allegations can be directed only against plaintiff's employer and master and the negligence attempted to be alleged under said allegations against said Paul Beeson is such as only plaintiff's master and employer could be liable for; your petitioners further state that the allegations contained in paragraphs numbered 7 and 8 in plaintiff's petition charging that said Paul Beeson, as one of the defendants herein, negligently assured plaintiff that he could with reasonable safety work under the conditions described and he negligently ordered and directed plaintiff to keep clean the mill and the floor thereof with a horse broom, under the conditions described, are false and fraudulent and plaintiff is without credible evidence to support such allegations and they are made solely for the purpose of attempting to state a cause of action against said Paul Beeson in an attempt to fraudulently prevent a removal of this case to the District Court of the United States.

Your petitioners further state that the allegations in plaintiff's petition to the effect that he was employed by all the defendants are false and fraudulent; they state that plaintiff at no time was employed by defendant

Paul Beeson and your petitioners state that defendant The Ruberoid Company acquired the plant and property of defendant Eternit, Inc., after July 14, 1932, when plaintiff ceased employment, he having theretofore been employed by defendant Eternit, Inc.; your petitioners respectfully state and show to the Court that prior to January, 1933, the plant and factory where plaintiff worked was owned and operated by Eternit, Inc., and in January, 1933, The Ruberoid Company acquired said plant and factory, since which time it has operated the same; that even if plaintiff had been employed by defendant The Ruberoid Company, which petitioners deny, it and defendant Eternit, Inc., would not be jointly liable to plaintiff; that joint liability cannot arise in favor of plaintiff against successive employers under the allegations in plaintiff's petition and there is a misjoinder of causes of action and of parties defendant in this case and there exists in this suit a separate and severable cause of action on which a separate and distinct suit might properly have been brought by plaintiff against defendant Eternit, Inc., and complete relief afforded as to such cause of action with all the parties on one side of the controversy citizens of different states from those on the other side, the plaintiff in such suit being a citizen and resident of the State of Missouri and the defendant Eternit, Inc., being a corporation organized under the laws of the State of Delaware.

And your petitioners further show that the time within which they are required by the laws of the State of Missouri and by the rules of this Court to answer or plead in said cause has not yet expired.

And your petitioners offer herewith a bond of good and sufficient surety for their entering in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri within thirty days from the date of filing 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 said Court shall hold that this cause was wrongfully or improperly removed thereto.

WHEREFORE, your petitioners pray this Honorable Court to proceed
no further herein except to make the order of removal required by law,
and to accept said surety and bond, and to cause the record herein to be
removed into said District Court of the United States.

ETERNIT, INC.,

By *W. E. Koser*
Its Agent.

THE RUBEROID COMPANY,

By *W. E. Koser*
Its Agent.

Allen M. French
Attorneys for Petitioners.

STATE OF MISSOURI }
CITY OF ST. LOUIS } SS

W. E. Koser, being duly sworn, on his oath says he is agent and
attorney for defendants Eternit, Inc., and The Ruberoid Company in this
behalf; that he has read the foregoing petition and knows the contents
thereof and the statements therein contained are true, as he verily believes.

Subscribed and sworn to before me, this 17 day of February, 1935.
My commission expires Nov. 30, 1935

Julian C. Spencer
Notary Public.

Handwritten signature

GAF 22398

SECTION 441 X
JANUARY TERM, 1934.
REMOVAL U S COURT

L. C. Kelsay,

Plaintiff,

vs.

Sternit, Inc., a corporation,
et al.,

Defendants.

Russell J. Horsefield,

Atty for Plff.

Allen, Moser & Karsalek,

Attys for Defts.

Sternit, Inc., a corporation and
The Ruboroid Company, a corporation
Program

Hon. Clyde C. Beck, Judge

No. 210061 Room 1

Copyist S.C.

Compared by H.W.H.

Notice sent

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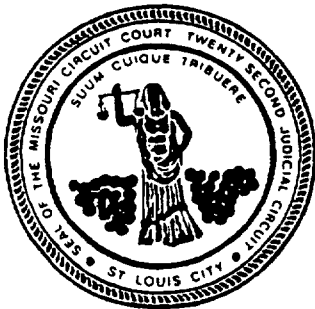
STATE OF MISSOURI }
CITY OF ST. LOUIS }

I, FREEMAN R. BOSLEY, JR., CLERK OF THE CIRCUIT COURT, CITY OF ST. LOUIS, within and for the City and State aforesaid (said Court being a Court of Record, having a Clerk and official Seal), do hereby certify that the annexed and foregoing is a full, true and complete copy of the original. Entire File.

in the cause aforesaid, as fully as the same remains among the records and files of said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis,

this 15th day of October, 19 92



FREEMAN R. BOSLEY, JR.
CLERK, CIRCUIT COURT

By *James Howard*
Deputy

GAF 22401

FORM 86

MISSOURI CIRCUIT COURT
TWENTY SECOND JUDICIAL CIRCUIT
(ST. LOUIS CITY)

L. C. Kelsey

VS. No. 210061-B Room

Eternit, Inc., a corp.,
et al

ENTIRE FILE

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in his custody.

SIGNATURE <i>Mark Corrison</i>	
NAME Mark Corrison	DATE 12/8/93
TITLE Assistant Director	
NAME AND ADDRESS OF DEPOSITORY National Archives-Central Plains Region 2312 East Bannister Road Kansas City, Missouri 64131	

NA FORM 14007 (10-86)

GAF 22402

11322

L. C. Kelsey, Plaintiff,

vs.

L. A. W.

Eternit, Inc., a corp.,
Eternit Mills, a corporation,
The Ruberoid Company, a corp.,
and Paul Beeson, an individual,
Defendants.

Feb. 18, 1935. Transcript of record on removal from Circuit Court, City of
St. Louis, Mo., filed by Kelsey, Eternit, Inc., and The Ruberoid

Marshal claims to
against Clerk's deposit

1/25/35 Kennedy

44/05/61
Box 3475

GAF 22403

11322

I N D E X

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GAF 22404

STATE OF MISSOURI)
 : SS
CITY OF ST. LOUIS)

BE IT REMEMBERED, that heretofore, to-wit: on the
sixteenth day of January, Nineteen Hundred and Thirty-five, there
was filed in the office of the Clerk of the Circuit Court, of the
City of St. Louis, within and for the City and State aforesaid,
a petition in cause No. 210061, Series "B" of the causes in said
Court, wherein L. C. Kelsey is plaintiff, and Eternit, Inc., a
corporation, Eternit Mills, a corporation, The Ruberoid Company,
a corporation, and Paul Beeson, an individual, are defendants.

The said petition is in words and figures, as follows,
to-wit:

STATE OF MISSOURI)
 : SS
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT WITHIN AND FOR THE CITY OF
ST. LOUIS, STATE OF MISSOURI
FEBRUARY TERM - 1935

L. C. KELSEY,	)
Plaintiff	)
vs.	)
ETERNIT, INC., a corporation,	)
ETERNIT MILLS, a corporation,	)
THE RUBEROID COMPANY, a corporation,	)
9215 Riverview Drive, and	)
PAUL BEESON, an individual,	)
5332 Goodfellow Avenue,	)
Defendants	)

P E T I T I O N

Plaintiff states that the defendants, Eternit, Inc., Eternit
Mills, and The Ruberoid Company are now and were at all the times
hereinafter mentioned corporations, doing business in the City of
St. Louis, State of Missouri and licensed to do business as corpora-
tions in the State of Missouri, and liable to sue under the laws of
said state, and to be sued under the laws of said state; that the

defendant Paul Beeson, was at all the times herein mentioned, an individual, charged by the defendant corporations, particularly the Ruberoid Company, with the following duties as their employee, and that he entered into the performance of said duties in obedience to the orders of said corporate defendants, (1) of determining under what conditions plaintiff should be provided with an adequate and approved respirator, in order to protect him from the dust herein mentioned, (2) of determining equipping, and placing in operation dust ventilating equipment, dust removers, and other dust removal equipment in said plant for the purpose of removing the dust from the atmosphere, which plaintiff was required to breathe in the performance of his duties for said defendant corporations, (3) of warning plaintiff of the danger of working in an atmosphere charged with dust containing the aforementioned poisonous and injurious qualities (4) of determining when equipment in said plant, machines, saws, edgers, trimmers, should be equipped with blowers and hoods and suction fans for the removal of dust, generated and produced by said machines. Plaintiff states that he was employed by all of the said defendants from the 13th day of February 1928 to the 29th day of June, 1932.

Plaintiff further states that said defendants were at all the times hereinafter mentioned engaged in a trade or process which subjected their employees and plaintiff to the danger and likelihood of contracting an illness or disease incident and peculiar to said work or process to-wit: the manufacture, crushing, sawing, trimming, edging and loading into box cars of asbestos, vermiculite, magnesium silicate, aluminum, silica and other asbestos products; that the aforementioned operations generated and produced great quantities of injurious, poisonous and noxious dust, and that in said plant and mill and in and about the places where plaintiff was required to work, the atmosphere was charged with a minute, hot, dry dust, capable of being breathed into the air sacs of the lungs through the nose, throat and respiratory system, and that said dust caused chemical reaction and mechanical irritation of the respiratory tract

and lungs and produced the diseases peculiar to the inhalation of said dust, namely dust bronchitis, peribronchitis, pneumoconiosis, asbestosis, pulmonary fibrosis and other forms of respiratory diseases, all of which were peculiar to the inhalation of dust generated and produced in the aforementioned operations, and that said trade or process was especially dangerous to the health of plaintiff as provided by Section 13253 of the Revised Statutes of Missouri, 1929.

Plaintiff for his cause of action states that during all of his employment by the defendants he was ordered and directed to work in its plant and mill in the loading of box cars and in around crushers, saws, edgers, trimmers, and other machines which generated and produced great quantities of the aforementioned dust; that he was required to clean the mill with a house broom and to sweep said dust, was required to sweep piles of shingles with a broom, which required great quantities of said dust to be thrown into the atmosphere, and to work in and about its plant and mill where the atmosphere was fully charged with the aforementioned minute, dry, hot, dust containing magnesium silicate, sericite, and other relatively insoluble dust, which was poisonous, injurious and obnoxious; that plaintiff inhaled great quantities of said dust which irritated and destroyed the mucous membrane of the nose and throat, entered the air sacs of the lungs and gradually produced a pulmonary fibrosis, causing the development of lesions in the lungs, destroying the vital capacity and elasticity of the lungs, rendering plaintiff short of breath, subject to coughing, subject to pains in the chest due to inflammation, productive of pleuretic adhesions and diaphragmatic adhesions, rendering plaintiff subject to the development of tuberculosis and other forms of respiratory diseases; that plaintiff has lost weight, lost his physical vitality, has difficulty in breathing, and that said conditions are permanent, progressive, incurable and fatal; that plaintiff has expended for medical treatment in the X-ray, diagnosis and observation of his condition to the date of this petition, One Hundred and Fifty Dollars, and will be required in the

future to expend additional sums of money in order to properly treat and care for his said illness and disease; that plaintiff as a direct result of the inhalation of said dust aforesaid, is suffering from asbestosis, bronchitis, and pulmonary fibrosis. All of which plaintiff says was peculiar to and incident to the inhalation of said dust, and directly due to and caused by the joint, concurrent negligence of the defendants, in this, to-wit:

1. That the defendants in said trade or process, operated various machines, saws, edgers, trimmers, crushers, sanders, which, while being operated, caused vast quantities of fine, dry, hot dust, to be emitted into the atmosphere and negligently and carelessly failed and omitted to provide each and every machine with a hood, blower, or suction fan of sufficient power to carry off said dust and prevent its inhalation by the plaintiff, and other employees, all in violation of the law of the State of Missouri then and there in full force and effect being Revised Statutes of Missouri, 1929, Section 13234 being as follows:

"PREVENTION OF SMOKE, DUST AND GAS -- Every person, firm or corporation using any polishing wheel or machine of any character which generates dust, smoke or poisonous gases in its operation, shall provide each and every such wheel or machine with a hood which shall be connected with a blower or suction fan of sufficient power to carry off said dust, smoke and gases and prevent its inhalation by those employed about said wheel or machine ***."

2. That the defendants in the conduct of their said trade or process operated various hoppers, saws, and sanders, which, while being operated, caused vast quantities of dust to be emitted into the atmosphere and did negligently and carelessly fail and omit to provide each and every said machine with a hood or covering, and an adequate and efficient apparatus or other proper devices for the purpose of drawing away from the employees noxious, poisonous or injurious dusts and preventing the employees from coming into unnecessary contact therewith, and negligently failed to provide covers or dampen said conveyors or receptacles, and negligently did fail to remove from the floor of said plant the dust and refuse of a dangerous character, all

in violation of the law of the State of Missouri, then and there in full force and effect, being Revised Statutes of Missouri, 1929, Section 13262 which is as follows:

"HOPPERS, CHUTES, ETC. TO BE PROVIDED WITH COVERING. All hoppers or chutes or similar devices used in the course of any process or manufacture referred to in Section 13253 shall be provided with a hood or covering and an adequate and efficient apparatus or other proper device for the purpose of drawing away from the employees noxious, poisonous or injurious dusts, and preventing the employees from coming into unnecessary contact therewith; and all conveyances or receptacles used for the transportation about or the storage in any place where any such process or manufacture or labor referred to in Section 13253 is carried on shall be properly covered or dampened in such a way as to protect the health of the employees, and no refuse of a dangerous character incident to the work or process carried on in any such place shall be allowed to remain accumulated on the floors thereof."

3. That the said work and manufacture which defendants were engaged in was a work which would produce illness or disease peculiar to the work or process carried on there, and that at the time of plaintiff's employment and for a long time prior thereto, there had been manufactured and in use approved and effective devices, means, and methods which when in use, would prevent the diseases aforesaid; that said approved and effective devices are as follows, to-wit:

- (1) respirators, masks and muzzles to be worn by the said employees,
- (2) dust preventing, dust collecting, dust removing and dust dampening machinery, appliances and apparatus, (3) wet saws and water attachments to be placed upon dry saws, (4) natural ventilation, ventilating systems, air purifying and cooling apparatus, heat and humidity reducing appliances. Plaintiff further states that during the time of his employment the defendants failed and omitted to furnish all or any of the above described approved and effective devices, means or methods for the prevention of the disease aforesaid, all in violation of the law of the State of Missouri, then and therein full force and effect being Section 13252 of the Revised Statutes of the State of Missouri, 1929, which is as follows:

"EMPLOYER TO PROVIDE PROTECTION FROM DISEASES. That every employer of labor in this state engaged in carrying on any work, trade or process which may produce any illness or disease peculiar to the work or process carried on, or which subjects the employee to the danger of illness or disease incident to such work, trade or process, to which employees are exposed, shall, for the protection of all employees engaged in such work, trade or process, adopt and provide approved and effective devices, means and methods for the prevention of such industrial or occupational diseases as are incident to such work, trade or process."

4. That the defendants negligently ordered and directed plaintiff to work in and about its plant where the atmosphere was fully charged with fine, minute, dry, hot particles of dust, capable of entering the air sacs of the lungs and negligently failed to provide for and place at the disposal of its employees, adequate and approved respirators, without cost to the employees, when said dust in which plaintiff was required to work was noxious, poisonous and injurious to the health, when breathed into the body, all in violation of the law of the State of Missouri, then and there in full force and effect, being Section 13254 of the Revised Statutes of the State of Missouri, 1929, which is as follows:

"EMPLOYEES TO BE FURNISHED WITH CLOTHING - RESPIRATORS TO BE USED WHILE AT WORK -- Every employer in this state to which this article applies shall provide for and place at the disposal of the employees so engaged, and shall maintain in good condition and without cost to the employees, working clothes to be kept and used exclusively by such employees while at work, and all employees therein shall be required at all times while they are at work to use and wear such clothing; and in all processes of manufacture or labor referred to in this section which are productive of noxious or poisonous dusts, adequate and approved respirators shall be furnished and maintained by the employer in good condition and without cost to the employees, and such employees shall use such respirators at all times while engaged in any work productive of noxious or poisonous dusts."

5. That the said work and process which defendants were engaged in was a trade or process which was especially dangerous to the health of plaintiff as provided by Section 13253 of the Revised Statutes of Missouri, and defendants negligently failed during plaintiff's employment to require him to be examined by a competent, licensed, reputable physician as often as once every calendar month for the purpose of ascertaining if there existed in plaintiff any industrial or occupational disease or illness peculiar or incident to

the character of the work in which plaintiff was engaged, all in violation of the law of the State of Missouri, being Revised Statutes of Missouri, 1929, Section 13255 which is in words and figures as follows:

"EMPLOYEES TO BE EXAMINED MONTHLY BY PHYSICIAN. Every employer engaged in carrying on any process or manufacture referred to in section 13253 shall, as often as once every calendar month, cause all employees who come into direct contact with the poisonous agencies or injurious processes referred to in section 13253 to be examined by a competent, licensed and reputable physician for the purpose of ascertaining if there exists in any employee any industrial or occupational disease or illness or any disease or illness due or incident to the character of the work in which employee is engaged."

6. That the said work and process in which defendants were engaged was a work or process which was especially dangerous to the health of plaintiff, in that there was generated and produced great quantities of injurious, obnoxious and poisonous dust containing asbestos, magnesium silicate, silica, and other substances and defendants negligently failed to post in conspicuous places in its said plant where such work and process was carried on, appropriate notices of the known danger to the health of said employees, arising from the said work or process, and simple instructions as to the known means of avoiding the injurious consequences thereof, all in violation of the law of the State of Missouri then and there in full force and effect being Section 13254 of the Revised Statutes of Missouri, 1929.

7. That the defendants negligently and carelessly assured plaintiff that he could with reasonable safety, work in its said plant where great quantities of obnoxious, poisonous asbestos dust was generated and produced, and which was breathed into his lungs and capable of entering the air sacs thereof, without danger to his health under the circumstances aforesaid, when the defendants knew, or by the exercise of ordinary care, could have known that the inhalation of silica dust was dangerous to the health of plaintiff, and if breathed into his lungs would cause and permit the development of diseases peculiar to the inhalation of said dust. All of which plaintiff says was directly due to and caused by the concurrent negligence of the defendants, directly and proximately producing and causing the development of plaintiff's

illness and disease aforementioned.

8. That the defendants negligently ordered and directed plaintiff to clean said mill and the floor thereof, and piles of shingles therein with a house broom, and to sweep said dust and to create said dust in the air, which he was required to breathe, and negligently failed to dampen said dust when the defendants knew, or by the exercise of ordinary care on their part, could have known that the sweeping of said dust dry, with a house broom, would create dust in the air where plaintiff was required to breathe, in such quantities as to be harmful, injurious and obnoxious, and knew, or by the exercise of ordinary care, could have known that it was practicable and feasible to dampen said dust with water or other means, and thus and thereby prevent the generation of said dust, thereby directly causing plaintiff's illness and disease.

WHEREFORE, plaintiff says he has been damaged in the sum of Thirty Thousand Dollars (\$30,000) for which sum he prays judgment against the defendants, together with his costs.

RUSSELL J. HORSEFIELD
Attorney for Plaintiff.

Upon the filing of said petition writ of summons for service upon the defendants was issued by the Clerk of said Court, directed to the Sheriff of the City of St. Louis, which writ of summons and Sheriff's returns thereon are respectively in words and figures, as follows, to-wit:

STATE OF MISSOURI)
 : SS
CITY OF ST. LOUIS)

THE STATE OF MISSOURI,

To the Sheriff of the City of St. Louis, Greeting:-

We command you to summon:- Eternit Inc., a corporation, Eternit Mills, a corporation, The Ruberoid Company, a corporation, and Paul Beeson, an individual, to appear before the Judges of our Circuit Court on the first day of the next term thereof, to be held in the City of St. Louis, at the Civil Courts Building, 12th and Market Streets, on the First Monday of FEB. next, then and there to answer the complaint of L. C. Kelsey as set forth in the annexed petition; and have you then and there this writ:

Witness H. SAM PRIEST, Clerk of our said Court, with
the seal thereof hereto affixed, at office in
S E A L the City of St. Louis, this 17th day of January,
in the year of our Lord, nineteen hundred and
thirty-five

H. SAM PRIEST Clerk

- - -
Served this writ in the City of St. Louis, Missouri, on the within named defendant the Ruberoid Company (a corporation), this 18 day of January 1935 by delivering a copy of the writ and petition as furnished by the Clerk to E. Frampe (Sect) of the said defendant Corporation, he being in said defendants usual business office and in charge thereof. The President or other Chief Officer of said Defendant could not be found in the City of St. Louis at the time of service.

THOS R. MADDEN Sheriff

By CARL GLASS Deputy

I further served this writ in the City of St. Louis, Missouri, on the within named defendant the Eternit Inc., (a corporation), this 18 day of January 1935 by delivering a copy of the writ as furnished by the Clerk to E. Frampe (Sect) of the said defendant Corporation, he being in said defendants usual business office and in charge thereof. The President or other Chief Officer of said Defendant could not be found in the City of St. Louis at the time of service.

THOS R. MADDEN, Sheriff

By CARL GLASS, Deputy

I further executed this writ in the City of St. Louis, Missouri, this 18 day of January 1935 by delivering a copy of the writ as furnished by the Clerk to Paul Beeson, defendant herein.

THOS R. MADDEN, Sheriff

By CARL GLASS, Deputy

And at the December Term, 1934, the following further proceedings were had in said cause, to-wit:

Friday, February 1st, 1935

L. C. Kelsey)
-vs-210061-B)
Eternit, Inc., et al)

Notice, petition and bond of defendants Eternit, Inc.,
and The Ruberoid Company, for removal, filed.

The said notice, petition and bond of defendants Eternit
Inc., a corporation and The Ruberoid Company, a corporation for removal
of this cause to the District Court of the United States for the Eastern
Division of the Eastern Judicial District of Missouri are respectively
in words and figures, as follows, to -wit:

STATE OF MISSOURI)
; SS
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT - FEBRUARY TERM - 1935.

L. C. KELSEY,

Plaintiff,

vs.

ETERNIT, INC., a corporation,
ETERNIT MILLS, a corporation,
THE RUBEROID COMPANY, a corporation,
and PAUL BEESON, an individual,

Defendants.

No. 210061

Div. No. 1.

NOTICE OF REMOVAL PETITION

TO THE ABOVE NAMED PLAINTIFF, L. C. KELSEY, OR RUSSELL J. HORSEFIELD,
ESQ., HIS ATTORNEY:

You are hereby notified that defendants Eternit, Inc., and The
Ruberoid Company will file in the Circuit Court, City of St. Louis,
Missouri, the removal petition and removal bond hereto attached, for

the purpose of removing the said cause to the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. And you are further notified that the said defendants will, on Monday, February 4, 1935, at 9:30 o'clock A. M., or as soon thereafter as they may be heard, pray said Circuit Court, City of St. Louis, Missouri to approve said bond and to accept the surety thereof and to order removal as prayed in said petition to said District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

STERNIT, INC., and THE RUBEROID COMPANY,

By ALLEN, MOSER & MARSALEK
Their Attorneys.

The undersigned plaintiff in the above cause hereby acknowledges that copy of the above notice, with copy of petition and bond for removal therein mentioned, was duly served upon him this 1 day of February, 1935.

L. C. KRISKY
Plaintiff.

By Russell J. Horsefield
His Attorney.

STATE OF MISSOURI)
; SS
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT - FEBRUARY TERM - 1935.

L. C. KELSEY,

Plaintiff,

No. 210061

vs.

ETERNIT, INC., a corporation,
Eternit Mills, a corporation,
THE RUBEROID COMPANY, a corporation,
and PAUL BEESON, an individual,

Div. No. 1.

Defendant.

PETITION OF ETERNIT, INC., AND THE RUBEROID COMPANY,
CORPORATIONS, FOR REMOVAL OF CAUSE TO UNITED STATES
DISTRICT COURT.

Now come Eternit, Inc., and The Ruberoid Company, defendants above named, and file their petition for the removal of the above entitled cause to the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri and respectfully show to the Court that this is a civil action at law, being a suit brought by the above named plaintiff against the above named defendants to recover for alleged injuries which plaintiff claims in said petition to have been caused by alleged negligence on the part of the above named defendants; that the plaintiff in said cause was at the time of the commencement of said suit and ever since has been and still is a citizen and resident of the State of Missouri; that Eternit, Inc., was at the time of the commencement of said suit and ever since had been and still is a corporation organized under the laws of the State of Delaware, a citizen and resident of said state; that The Ruberoid Company was at the time of the commencement of said suit and ever since has been and still is a corporation organized under the laws of the State of New Jersey, a citizen and resident of said state; that Eternit Mills, alleged in plaintiff's petition to be a corporation, is not now and never has been a corporation and is not and never has been a legal entity capable of suing or being sued and is merely the

name of a manufacturing plant of The Ruberoid Company used to distinguish it from other manufacturing plants of said company; and that the matter and amount in dispute in said cause exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars (\$3,000.00).

Your petitioners further show to the Court that the defendant Paul Beeson, who is a citizen and resident of the State of Missouri, was not joined in good faith as a party defendant in said cause, but was fraudulently joined by the plaintiff as a defendant in said cause for the purpose of fraudulently defeating the jurisdiction of the District Court of the United States in said cause and for the fraudulent purpose of preventing a removal of this cause to the District Court of the United States; that the allegations contained in paragraphs numbered 1 to 6, inclusive, in plaintiff's petition fail to state facts constituting a cause of action against defendant Paul Beeson, because said Paul Beeson was not at any time the employer of the plaintiff and such allegations can be directed only against plaintiff's employer and master and the negligence attempted to be alleged under said allegations against said Paul Beeson is such as only plaintiff's master and employer could be liable for; your petitioners further state that the allegations contained in paragraphs numbered 7 and 8 in plaintiff's petition charging that said Paul Beeson, as one of the defendants herein negligently assured plaintiff that he could with reasonable safety work under the conditions described and he negligently ordered and directed plaintiff to keep clean the mill and the floor thereof with a house broom, under the conditions described, are false and fraudulent and plaintiff is without credible evidence to support such allegations and they are made solely for the purpose of attempting to state a cause of action against said Paul Beeson in an attempt to fraudulently prevent a removal of this case to the District Court of the United States.

Your petitioners further state that the allegations in plaintiff's petition to the effect that he was employed by all the defendants are false and fraudulent; they state that plaintiff at no time was employed by defendant Paul Beeson and your petitioners state that

defendant The Ruberoid Company acquired the plant and property of defendant Eternit, Inc., after July 14, 1932, when plaintiff ceased employment, he having theretofore been employed by defendant Eternit, Inc., your petitioners respectfully state and show to the Court that prior to January 1933, the plant and factory where plaintiff worked was owned and operated by Eternit Inc., and in January, 1933, The Ruberoid Company acquired said plant and factory, since which time it has operated the same; that even if plaintiff had been employed by defendant The Ruberoid Company, which petitioners deny, it and defendant Eternit, Inc., would not be jointly liable to plaintiff; that joint liability cannot arise in favor of plaintiff against successive employers under the allegations in plaintiff's petition and there is a misjoinder of causes of action and of parties defendant in this case and there exists in this suit a separate and severable cause of action on which a separate and distinct suit might properly have been brought by plaintiff against defendant Eternit, Inc., and complete relief afforded as to such cause of action with all the parties on one side of the controversy citizens of different states from those on the other side, the plaintiff in such suit being a citizen and resident of the State of Missouri and the defendant Eternit, Inc., being a corporation organized under the laws of the State of Delaware.

And your petitioners further show that the time within which they are required by the laws of the State of Missouri and by the rules of this Court to answer or plead in said cause has not yet expired.

And your petitioners offer herewith a bond of good and sufficient surety for their entering in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri within thirty days from the date of filing 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 said Court shall hold that this cause was wrongfully or improperly removed thereto.

WHEREFORE, your petitioners pray this Honorable Court to proceed no further herein except to make the order of removal required by law, and to accept said surety and bond, and to cause the

record herein to be removed into said District Court of the United States.

ETERNIT, INC.,

By W. E. MOSER
Its Agent

THE RUBEROID COMPANY,

By W. E. MOSER
Its Agent

ALLEN, MOSER & MARSALKE
Attorneys for Petitioners.

State of Missouri)
 : ss
City of St. Louis)

W. E. Moser, being duly sworn, on his oath says he is agent and attorney for defendants Eternit, Inc., and The Ruberoid Company in this behalf; that he has read the foregoing petition and knows the contents thereof and the statements therein contained are true, as he verily believes.

W. E. MOSER

Subscribed and sworn to before me, this 1st day of February, 1935.

My commission expires Nov. 30, 1935.

JULIAN C. JAECKEL
Notary Public

S E A L

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

IN THE CIRCUIT - FEBRUARY TERM - 1935.

L. C. KELSEY,

Plaintiff,

No. 210061

vs.

ETERNIT, INC., a corporation,
ETERNIT MILLS, a corporation,
THE RUBEROID COMPANY, a corporation,
and PAUL BEESON, an individual,

Div. No. 1.

Defendants.

REMOVAL BOND

KNOW ALL MEN BY THESE PRESENTS: That the undersigned Eternit, Inc., and The Ruberoid Company, as principal, and National Casualty Company, as surety, are held and firmly bound unto L. C. Kelsey in the sum of Five Hundred Dollars (\$500.00), for the payment of which well and truly to be made we do jointly and severally bind ourselves, our heirs, legal representatives and assigns firmly by these presents.

The condition of the above bond is as follows:

That WHEREAS, the above bounden Eternit, Inc., and The Ruberoid Company have filed their petition in the Circuit Court, City of St. Louis, Missouri, for removal to the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, of a certain cause pending in said state court wherein said L. C. Kelsey is plaintiff and said Eternit, Inc., a corporation, and said The Ruberoid Company, a corporation, are named as two of the defendants.

NOW, if said Eternit, Inc., and said The Ruberoid Company shall enter in the said District Court of the United States 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 all costs that may be awarded 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 to remain in full force and virtue.

WITNESS our hands and seals this 1st day of February, 1935.

ETERNIT, INC.,

By ALLEN, MOSER & MARSALEK
Its Agents and Attorneys.

THE RUBEROID COMPANY,

By ALLEN, MOSER & MARSALEK
Its Agents and Attorneys.

NATIONAL CASUALTY COMPANY.

By K. M. HICKEY
Attorney-in-fact.

(S E A L)

Approved by Court this
4th day of Feb., 1935

Attest:

H. SAM PRIEST, Clerk

(S E A L)

STATE OF MISSOURI)
 ; SS
CITY OF ST. LOUIS)

On this 1st day of February 1935, before me appeared
K. M. Hickey to me personally known, who, being by me first duly
sworn, did say that he is Attorney-in-Fact of the NATIONAL CASUALTY
COMPANY, a corporation, organized under the laws of the State of
Michigan, and that the seal affixed to the foregoing instrument is
the corporate seal of said corporation; and that said instrument was
signed and sealed on behalf of said corporation by authority of its
Board of Directors and the said K. M. Hickey acknowledged said in-
strument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and
notarial seal, the day and year first above written.

(S E A L)

WESLEY H. BECKER
Notary Public, City of St. Louis, Mo.

My commission expires March 17th, 1936.

And at the February Term, 1935, the following further proceedings were had in said cause, to-wit:

Monday, February 4, 1935

L. C. Kelsey,

-vs-210061-B

Eternit, Inc., a corporation,
Eternit Mills, a corporation,
The Ruberoid Company, a corporation,
and Paul Beeson, an individual.

Now at this day come Eternit, Inc., a corporation and The Ruberoid Company, a corporation, by their attorneys and submit to the Court a notice and verified petition heretofore filed, praying for an order removing this cause to the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, and also present to the Court their bond heretofore filed, conditioned according to law in the penal sum of Five Hundred Dollars (\$500.00) with National Casualty Company as surety; and the Court having seen and examined said petition and bond, and being satisfied that written notice of said petition and bond for removal has been given the adverse party to this suit, prior to filing the same, doth accept said petition and bond and doth order that said bond be approved and filed which is done, that the prayer of said petition be granted, and that the Clerk of this Court forthwith certify for entering in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, a copy of the record in the above entitled cause, as fully as the same remains on file and of record in this Court; that no further proceedings be had in this suit in this Court.

STATE OF MISSOURI)
 : SS
CITY OF ST. LOUIS)

I, H. SAM PRIEST, Clerk of the Circuit Court, City of St. Louis, within and for the City and State aforesaid, certify the above and foregoing to be a full, true and complete transcript of the record and proceedings in the above entitled cause, including the notice, petition and bond for removal, acceptance of said petition and bond and the order of removal, as fully as the same remain on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the seal
of said Court, at office, in the
City of St. Louis, this 14th day
of February, 1935.

H. Sam Priest
Clerk, Circuit Court.

210061

Page No. 28

ITEMIZED LIST OF CLERK'S FEES		ITEMIZED LIST OF SHERIFF'S FEES		WITNESS FEES		TOTAL DOLLARS
Plaintiff	Defendant	Plaintiff	Defendant	Plaintiff	Defendant	
Amended Petition.		Sheriff Strodtman.		Clark John Schmoll.		
Agreed Statement.		Serving Summons.		Sheriff Strodtman.	1st Yr.	
Appearance.		" Rules of Court, Notices, etc.		" Strodtman.	2nd "	
Answers.		" Subps. & Calling Witnesses.		" Mohrtstadt.	1st Yr.	
Affidavits.		" Attachments.		" Mohrtstadt.	2nd "	
Abstracting.		Summoning and Calling Jury.		" Mohrtstadt.	3rd "	
Acknowledgment.		Calling Action and Parties.		" Mohrtstadt.	4th "	
Bond and Approval.				" Weibrenner.	1st Yr.	
Bill of Exceptions.		Sheriff Mohrtstadt.		" Weibrenner.	2nd "	
Continuances.		Serving Summons.		" Weibrenner.	3rd "	
Copies.		" Rules of Court, Notices, etc.		" Weibrenner.	4th "	
Deedimus.		" Subps. & Calling Witnesses.		" Schuler.		
Demurrer.		" Attachments.				
Depositions.		Summoning and Calling Jury.				
Docketing.		Calling Action and Parties.				
Entering and Filing.						
Exhibits.		Sheriff Weibrenner.				
Ex-awarded.		Sheriff Schuler.				
Execution.		Serving Summons.				
Fee Bill.		" Rules of Court, Notices, etc.				
Filing.		" Subps. & Calling Witnesses.				
Instructions.		" Attachments.				
Jury waived.		Summoning and Calling Jury.				
Jury called-sworn & Certificate.		Calling Action and Parties.				
Judgment.						
Special on Record.						
Motions.						
Orders.						
Oaths.						
Replies.						
Report: Sheriff's.						
" Commissioner's.						
" Referee's.						
Subpoena: Attachments.						
Submissions.						
Stipulations.						
Taxing Costs and Certificates.						
Venue.						
Verdict Entered.						
Writs.						
Mandate and Opinion.						

STATE OF MISSOURI.

City of St. Louis.

I, JOHN SCHMOLL, Clerk of the Circuit Court, City of St. Louis, certify the foregoing to be a true statement of each and every item of all taxable costs in the case of

L. E. Kelly

vs.

Gertrude M. Dal

Witness my hand and the seal of said Court at office in the City of St. Louis, this *14th* day of *February* in the year of our Lord nineteen hundred and thirty *four*

John Schmoll Clerk

L. E. Kelly
vs.
Gertrude M. Dal
Plf.

Plf.

Case No. *210061*

BILL OF COSTS

in the
this, certify the foregoing

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION
OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.
SEPTEMBER TERM, 1934.

L. C. KELSEY,

Plaintiff,

No. 11322

vs.

ETERNIT, INC., a corporation,
ETERNIT MILLS, a corporation,
THE RUBEROID COMPANY, a corporation,
and PAUL REESON, an individual,

Div. No.

Defendants.)

MOTION OF DEFENDANTS ETERNIT, INC., AND THE RUBEROID
COMPANY TO REQUIRE PLAINTIFF TO GIVE SECURITY FOR
COURT COSTS.

Now come defendants Eternit, Inc., and The Ruberoid Company and respectfully show to the Court that this is an action for damages brought by plaintiff against defendants on account of alleged injuries, illness and disease which he claims to have sustained through alleged negligence of defendants.

These defendants further respectfully show to the Court that plaintiff has failed to give security for Court costs which will accrue in this action.

WHEREFORE, the premises considered, these defendants move that the Court require plaintiff to give ample security for costs which may accrue in this action.

Allen, Gray & Maines
Attorneys for Defendants Eternit, Inc.,
and The Ruberoid Company.

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

W. E. Moser, of lawful age, being duly sworn on his oath, states that he is one of the attorneys for defendants Eternit, Inc., and The Ruberoid Company and authorized to make this affidavit in their behalf; that he has read the foregoing motion, knows the contents thereof and that the facts and averments therein contained are true, as he verily believes.

Subscribed and sworn to before me, this 34 day of February, 1935.
My commission expires Oct. 30, 1935.

William C. Deane
Notary Public.

Copy of the above motion mailed to Russell J. Horsfield, attorney for plaintiff, this day of February, 1935.

GAF 22428

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION
OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.
SEPTEMBER TERM, 1934.

L. C. KELSEY,

Plaintiff,

No. 11322

vs.

ETERNIT, INC., a corporation,
ETERNIT MILLS, a corporation,
THE RUBEROID COMPANY, a corporation,
and PAUL BEESON, an individual,

Div. No.

Defendants.)

MOTION OF DEFENDANTS ETERNIT, INC., AND THE RUBEROID
COMPANY TO REQUIRE PLAINTIFF TO GIVE SECURITY FOR
COURT COSTS.

FILED
FEB 18 1935

Joe W. Brown
CLERK

GAF 22429

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION
OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.
SEPTEMBER TERM, 1934.

L. C. KELSEY,

Plaintiff,

No. 11322

vs.

ETERNIT, INC., a corporation,
ETERNIT MILLS, a corporation,
THE RUBEROID COMPANY, a corporation,
and PAUL BEESON, an individual,

Div. No.

Defendants.

SEPARATE ANSWER OF DEFENDANT ETERNIT, INC.

FILED
FEB 18 1935

for C. C. Cannon,
CLERK

GAF 22430

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION
OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.
SEPTEMBER TERM, 1934.

L. C. KELSEY,

Plaintiff,

No. 11322

vs.

ETERNIT, INC., a corporation,
ETERNIT MILLS, a corporation,
THE RUBEROID COMPANY, a corporation,
and PAUL BEESON, an individual,

Div. No.

Defendants.)

SEPARATE ANSWER OF DEFENDANT THE RUBEROID
COMPANY.

FILED
FEB 18 1935
for J. O'Connor,
CLERK

GAF 22431

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION
OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.
SEPTEMBER TERM, 1934.

L. C. KELSEY,

Plaintiff,

No. 11322

vs.

ETERNIT, INC., a corporation,
ETERNIT MILLS, a corporation,
THE RUBEROID COMPANY, a corporation,
and PAUL BEESON, an individual,

Div. No.

Defendants.

SEPARATE ANSWER OF DEFENDANT PAUL BEESON.

FILED
FEB 18 1935
Geo. H. Connor
CLERK

GAF 22432

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION
OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.
SEPTEMBER TERM, 1934.

L. C. KELSEY,

Plaintiff,

No. 11322

vs.

ETERNIT, INC., a corporation,
ETERNIT MILLS, a corporation,
THE RUBEROID COMPANY, a corporation,
and PAUL BEESON, an individual,

Defendants.

Div. No.

SEPARATE ANSWER OF DEFENDANT PAUL BEESON.

Now comes Paul Beeson, one of the above named defendants,
and, for his separate answer to plaintiff's petition filed herein,
denies each and every allegation in said petition contained and set
forth.

WHEREFORE, having fully answered, this defendant prays to
be hence discharged with his costs.

Allen, Moore, Marable
Attorneys for Defendant Paul Beeson.

11322

No. SEPT EMBER Term, 1934

L. C. Kelsey

Plaintiff

vs. TRANSCRIPT

Eternit, Inc., a corporation,
et al., Defendants

REMOVAL FROM

Circuit Court, City of St. Louis
to
United States District Court

Russell J. Hornefield

Att'y for Plaintiff

Allen, Moser & Marsellek

Att'y for Defendants
Eternit, Inc., a corporation and
Filed The Huberold Company, a corporation

Clerk
\$9.30 Transcript Fee Paid FEB 16 1935

By

No. 210 FEB 18 1935

Hon. J. Edgar Hoover, Judge

Notice Mailed

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA
WITHIN AND FOR THE EASTERN DIVISION OF THE
EASTERN JUDICIAL DISTRICT OF MISSOURI

L. C. KELSEY,

Plaintiff,

vs.

ETERNIT, INC., ETERNIT MILLS,
THE RUBEROID COMPANY,
corporations, and
PAUL BEESON,

Defendants.

71322

MOTION TO REMAND

Comes now the plaintiff in the above entitled cause and moves the Court to remand this cause to the Circuit Court within and for the City of St. Louis, State of Missouri, and for grounds for said motion states:

1. That the petition for removal signed by defendants, Eternit, Inc., and the Ruberoid Company, wholly fails to state facts sufficient to warrant the removal of this cause from the Circuit Court of St. Louis, Missouri to this court.
2. That the petition of plaintiff herein, states a joint cause of action against Eternit, Inc., The Ruberoid Company, corporations and Paul Beeson, an individual, and that said Paul Beeson, is and was at all of the times mentioned in said removal petition, a citizen and resident of the State of Missouri.
3. That plaintiff's petition herein charges defendant, Paul Beeson with misfeasance, and thereby pleads a question of action sounding in negligence against said Paul Beeson.
4. That plaintiff denies that Paul Beeson was made a co-defendant in this cause for the purpose of fraudulently depriving defendants of their right to remove this cause to this court, and that

plaintiff states for a number of years, as alleged in his petition, Paul Beeson was the Plant Manager, Superintendent, and in complete charge and control of the plant where plaintiff was employed by the defendants, and that during said time, Paul Beeson had entire control of the question of when and where respirators should be furnished, what kind, if any, dust control equipment should be installed, and governed the manner and method of operation of said plant, and directed plaintiff specifically in his work, and made all the decisions with reference to the condition of the workers, and that plaintiff before said petition was filed, had admissions and depositions of said Paul Beeson, that he did undertake to perform the aforementioned duties for the defendants, and that Paul Beeson was the employer of the plaintiff, and plaintiff was under his direct supervision and control, and that plaintiff has credible evidence to support each and every allegation of his petition with reference to all said defendants; that the defendant, Paul Beeson, testified by deposition before the institution of this suit, that he had charge of this plant where plaintiff was employed, from September, 1930; on and after the Ruberoid Company bought them, and that he managed said plant from 1930 for the Ruberoid Company, which was two years prior to plaintiff's severing his connection with said companies.

Plaintiff further states that during his employment on and after July 30th by said defendants, that Paul Beeson determined when and where goggles should be worn, when and where respirators should be worn, what machines should be equipped with blowers and suction fans, and determined the manner and method of operation of said plant, and gave direct orders to plaintiff in connection with said work.

WHEREFORE, plaintiff prays this Court for an Order remanding this cause to the Circuit Court of St. Louis County, Missouri.

X. L. C. Kelsey.
Russell H. Hargrave
Attorney for Plaintiff

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

L. C. Kelsey, being first duly sworn upon his oath, says
he has read the foregoing motion to remand, and knows the contents
thereof, and that the statements therein contained are true, as he
verily believes.

X. L. Kelsey.

Subscribed and sworn to before me, a Notary Public,
this 18 day of February 1935.
My commission expires October 29 1937.

Harvey Brady
NOTARY PUBLIC

Copy of this motion served on Messrs. Allen,
Moser and Marsalek, counsel of record for
Eternit, Inc., and The Ruberoid Company,
this 18th day of February 1935.

Allen Moser Marsalek
Attorneys for Defendants, Eternit, Inc.
and The Ruberoid Co.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION
OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.
MARCH TERM, 1935.

L. C. KELSEY,

Plaintiff,

No. 11322

vs.

ETERNIT, INC., ETERNIT MILLS,
THE RUBEROID COMPANY, corporations,
and PAUL BEESON,

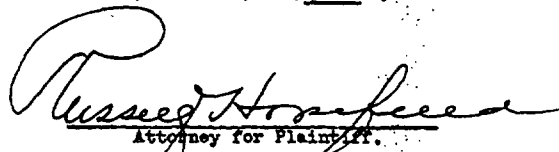
Div. No. 2

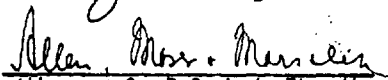
Defendants.

STIPULATION FOR DISMISSAL.

All of the matters and things in controversy in the above
entitled cause having been adjusted, compromised and finally settled,
it is hereby stipulated and agreed, by and between the above named
plaintiff and defendants Eternit, Inc., The Ruberoid Company and Paul
Beeson, that this cause shall be dismissed with prejudice to any
other or future action on account of the matters and things contained
and set forth in plaintiff's petition, and that Court costs shall be
paid by defendants Eternit, Inc., and The Ruberoid Company.

Witness our hands, at St. Louis, Missouri, this 24 day of
June, 1935.


Attorney for Plaintiff.


Attorneys for Defendants Eternit,
Inc., The Ruberoid Company and
Paul Beeson.

NOV. 1935

Div. No. 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DIVISION OF THE
EASTERN JUDICIAL DISTRICT OF NO. -
MARCH TERM, 1935.

L. C. KELSEY,

Plaintiff,

vs.

ETHEMIT, INC., ETHEMIT MILLS,
THE RUBENOID COMPANY, corporations,
and PAUL HERSON,

Defendants.

STIPULATION FOR DISMISSAL.

JUN 27 1935

GAF 22439