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September 29, 1982

Kathy Rogers
Heller, Ehrman, White & Mcauliffe
44 Montgomery Street
San Francisco, CA 94194

Dear Ms. Rogers:

We have reviewed the exhibits both in this office and at Eagle Picher. Both sets appear to lack the pages in which you were interested.

I am reluctant to inquire of plaintiff's counsel concerning the amended complaint. As you will recall, we initially obtained our copies from that firm.

It occurs to me that you may wish to seek to obtain a copy directly from the Louisiana Court. In the event that you wish for us to initiate further inquiry, please advise and we will move forward.

Very truly yours,

PETER C. SCHWARTZ

PCS/mef

Page 10 of Facine v. Travelers amended complaint is missing. (This complaint was distributed in connection with the J-M Knowledge Seminar on 7/14-15/82.) I asked Schwartz if he had the missing page. He does not have it.

Π's Ex. # 240

NOT A J-M DOC.

Filed 3/21 at 10:42 a

MRS. GLADYS FACIANE -

VS.

THE TRAVELERS INSURANCE COMPANY

NO. 77,004

19th Judicial District Court
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

TO Eagle Picher Company, Inc., a corporation domiciled at Cincinnati, Ohio, through Charles E. Dunbar, Jr., Sumter D. Marks, Jr., Louis B. Claverie and Ashton Phelps, agents for service of process.
~~residing in said Parish~~

GREETING:

Original and Supplemental and Amende

You are hereby summoned to comply with the demand contained in the petitions of the plaintiff in the above entitled and numbered cause, a duly certified copies of which are hereto attached and to be herewith served, or file your answer or other pleading in the office of the Clerk of the 19th Judicial District Court, for said Parish, at the City of Baton Rouge, within fifteen (15) days after service hereof. Your failure to comply herewith will subject you to the penalty of entry of default judgment against you.

Witness the Honorable Judges of our said Court, at Baton Rouge, Louisiana, this 20th day of March, 1961.

(sgd) Nenie L. Palmer
Deputy Clerk of Said Court

A TRUE COPY this March 20th, 1961
Nenie L. Palmer
Deputy Clerk of Court

MRS. GLADYS FACIANE

VERSUS

THE TRAVELERS INSURANCE COMPANY

NUMBER 77,004 DIVISION "C"

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

TO THE HONORABLE, THE NINETEENTH JUDICIAL DISTRICT COURT WITHIN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

The petition of MRS. GLADYS FACIANE, a resident of the full age of majority of East Baton Rouge Parish, Louisiana, with respect, represents:

1.

That she is the widow of Clarence A. Faciane, Sr., who died in East Baton Rouge Parish, Louisiana, on or about March 20, 1960, leaving surviving him your petitioner and major children.

2.

That THE TRAVELERS INSURANCE COMPANY is an insurance corporation organized and existing under the laws of the State of Connecticut, domiciled at Hartford therein, authorized to do business in the State of Louisiana, by having filed the proper credentials with the Secretary of State and having appointed the Secretary of State as its agent for service of process.

3.

That for some time prior to September, 1959, petitioner's husband, Clarence A. Faciane, Sr., was employed by Armstrong Contracting & Supply Corporation as an insulator in its general construction work.

4.

Your petitioner now shows that while engaged in the duties of his employment and while installing insulating material, in accordance with the instructions of his employer, the said Clarence A. Faciane, Sr. breathed and inhaled insulation material,

causing damage to his lungs, which resulted in his death.

5.

Petitioner further shows that the said Clarence A. Faciane, Sr. became ill in September of 1959 and on or about November 10, 1959 was hospitalized at which time the lung ailment was discovered and at that time his employer was notified.

6.

Petitioner particularly shows that the said Armstrong Contracting & Supply Corporation, its agents and employees, acting in the course and scope of their employment, failed and refused to supply and furnish safeguards for the use of Clarence A. Faciane, Sr. and failed to warn Clarence A. Faciane, Sr. of the dangers inheren in the work which he was doing; failed to make a full disclosure of the dangers inherent in such operation and were further negligent in assuring Clarence A. Faciane, Sr. that there were no dangers inherent in such operation and by warranting that such operation was a safe one, although the dangers were well known to them.

7.

That as a result of the negligence of defendant company, its agents and employees, acting in the course and scope of their employment, the said Clarence A. Faciane, Sr. received severe and fatal injuries consisting of damage to his lungs which caused abrasions to his lungs, and which resulted in his death.

8.

Petitioner now itemizes her damages as follows, to-wit:

Medical expenses incurred	$ 5,000.00
Funeral expenses incurred	$ 2,000.00
Mental pain and anguish of deceased	$50,000.00
Mental pain and anguish of petitioner	$50,000.00
Loss of support	$50,000.00
[illegible] affection and companionship	$50,000.00

9.

In the alternative and in the event that petitioner is not entitled to damages for the wrongful death of her husband, then and in that event petitioner shows that she is entitled to workmen's compensation benefits under the laws of the State of Louisiana.

10.

That Armstrong Contracting & Supply Corporation, domiciled in East Baton Rouge Parish, Louisiana, is engaged in the construction business, particularly insulating work, a hazardous business within the meaning and intent of the Workmen's Compensation Laws of the State of Louisiana.

11.

That petitioner's husband, Clarence A. Faciane, Sr., was employed by said Armstrong Contracting & Supply Corporation as an insulator as hereinabove alleged, a hazardous occupation at an average weekly wage in excess of $100.00.

12.

Your petitioner further shows that the lung ailment was an occupational disease or accidental injury within the meaning and intent of the Workmen's Compensation Laws of the State of Louisiana and arose out of and in the course and scope of his employment.

13.

Your petitioner further shows that the said employer or its insurer has failed and refused to pay workmen's compensation benefits, necessitating the bringing of this suit.

14.

That on and prior to September _____, 1959, there was in full force and effect by the payment of premiums and otherwise, policies of workmen's compensation insurance and public liability insurance issued by defendant THE TRAVELERS INSURANCE COMPANY in

favor of the said Armstrong Contracting & Supply Corporation, its agents and employees, under the terms of which policies it agreed to insure and indemnify them against any and all liability and under the workmen's compensation laws as a result of their negligence and, accordingly, said insurer is a proper defendand herein.

15.

Petitioner desires and is entitled to a trial by jury on all issues.

WHEREFORE, petitioner prays for service and citation of this petition upon the defendant and that it be duly cited to appear and answer hereto, and after all legal delays and due proceedings had, there be judgment herein in favor of petitioner, MRS. GLADYS FACIANE and against defendant, THE TRAVELERS INSURANCE COMPANY, in the sum of $207,000.00, together with legal interest thereon from judicial demand until paid.

In the alternative, and in the event that petitioner is not entitled to the damages as herein prayed for, then and in that event petitioner prays for judgment herein in her favor and against defendant, for workmen's compensation benefits at the rate of $35.00 per week beginning September ____, 1959, and continuing weekly thereafter, for a period of 400 weeks, together with legal interest on each past due installment from its maturity date until paid, and for funeral expenses in the amount of $600.00, together with legal interest thereon from judicial demand until paid.

Petitioner further prays for all costs, and for all necessary orders and general and equitable relief.

By Attorneys:

5/ H. Alva Brumfield

H. ALVA BRUMFIELD
VELMA P. GERDING
ROBERT E. TURNER
205 American Bank Building

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared:

H. ALVA BRUMFIELD

who, being sworn, ~~did~~ deposed and ~~say~~ SAID:

That he is of counsel for petitioner in the foregoing petition; that he has read the same and all allegations contained therein are true and correct to the best of his knowledge, information and belief.

S/ H. Alva Brumfield

SWORN TO AND SUBSCRIBED before me, August 4, 1960.

S/ Velma P. Gunning
NOTARY PUBLIC

FILED Aug. 8 19 60
SIGNED Leslie L. Palmer DY. CLERK
A TRUE COPY Mar. 17 19 61
Enid A. Cain DY. CLERK

MRS. GLADYS FACIANE

VERSUS

THE TRAVELERS INSURANCE COMPANY

NUMBER 77,004 DIVISION "C"

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

SUPPLEMENTAL AND AMENDED PETITION

NOW INTO COURT comes Mrs. Gladys Faciane, plaintiff in the above entitled and numbered cause and with respect shows that she desires to supplement and amend her original petition filed herein in the following particulars, to-wit:

1.

Your petitioner shows that of the marriage existing between petitioner and decedent, the following children were born, namely:

Clarence A. Faciane, born July 30, 1933;
Tommy Paul Faciane, born September 1, 1938;
Gary Phillip Faciane, born August 9, 1939;
Linda Marie Faciane Weber, born January 10, 1941;
Catherine Jean Faciane, born March 8, 1942; and
Ronald Markel Faciane, born June 16, 1943.

and at the time of the death of the said Clarence A. Faciane, the minors, Catherine Jean Faciane and Ronald Markel Faciane were wholly dependent upon their father for maintenance and support.

2.

That petitioner is the duly qualified and acting natural tutrix of the minors, Catherine Jean Faciane and Ronald Markel Faciane.

3.

That Gary Phillip Faciane, at the time of the death of the said Clarence A. Faciane, was a minor, who is now a major and comes herein to be made a party plaintiff.

4.

Your petitioner now shows that Aber Company, Inc. is a corporation organized and existing under the laws of the State of Louisiana, being domiciled at 5575 Adams Avenue, Baton Rouge,

Louisiana with Charles E. Dunbar, Jr., Sumter D. Marks, Louis E. Claverie and Ashton Phelps, 420 Hibernia Building, New Orleans, Louisiana, as its agents for service of process.

5.

That M. W. Kellogg Company is a corporation organized and existing under the laws of the State of Delaware, domiciled at Dover therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed H. Payne Breazeale, Victor A. Sachse and Maurice J. Wilson as its agents for service of process.

6.

That B & B Engineering & Supply Company is a corporation organized and existing under the laws of the State of Texas, domiciled at Houston therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed the C. T. Corporation System, 420 Hibernia Building, New Orleans, Louisiana, as its agents for service of process.

7.

That Johns-Manville Sales Corporation is a corporation organized and existing under the laws of the State of New York, domiciled in New York City therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed H. M. Robinson of New Orleans, Louisiana, as its agent for service of process.

8.

That Johns-Manville Products Corporation is a corporation organized and existing under the laws of the State of New York, domiciled in New York City therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed H. M. Robinson

of New Orleans, Louisiana, as its agent for service of process.

9.

That Owens Corning Fiberglass Corporation is a corporation organized and existing under the laws of the State of New York, being domiciled at 717 Fifth Avenue in New York City therein, actually doing business in the State of Louisiana but having failed to appoint an agent for service of process.

10.

That The Ruberoid Company is a corporation organized and existing under the laws of the State of New York, being domiciled at 502 Fifth Avenue, New York City therein, actually doing business in the State of Louisiana, but having failed to appoint an agent for service of process.

11.

That U. S. Rubber Company is a corporation organized and existing under the laws of the State of New York, domiciled at New York City therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed H. M. Robinson of New Orleans, Louisiana, as its agent for service of process.

12.

That Philip Carey Manufacturing Company is a corporation organized and existing under the laws of the State of Ohio, domiciled at Cincinnati therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed C. T. Corporation System of New Orleans, Louisiana, as its agent for service of process.

13.

That Mundet Cork Corporation is a corporation organized and existing under the laws of the State of New Jersey, domiciled

at N. Bergen therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed Charles E. Dunbar, Jr., Sumter D. Marks, Louis B. Claverie and Ashton Phelps as its registered agents for service of process.

14.

That Nicolet Industries, Inc. is a corporation organized and existing under the laws of the State of New Jersey, being domiciled at 1 Nicolet Avenue, Florhan Park therein, actually doing business in the State of Louisiana but having failed to appoint an agent for service of process.

15.

That Glass Fibers, Inc. is a corporation organized and existing under the laws of the State of Ohio, domiciled at 1808 Madison Avenue, Toledo therein, actually doing business in the State of Louisiana but having failed to appoint an agent for service of process.

16.

That Keasby & Mattison Company is a corporation organized and existing under the laws of the State of Pennsylvania, domiciled at 1960 Butler Avenue, Ambler, Pennsylvania, actually doing business in the State of Louisiana but having failed to appoint an agent for service of process.

17.

That Baldwin-Ehret-Hill, Inc. is a corporation organized and existing under the laws of the State of New Jersey, domiciled at 1133 Brounig, Trenton, New Jersey, actually doing business in the State of Louisiana but having failed to appoint an agent for service of process.

18.

That Eagle Picher Company, Inc. is a corporation organized and existing under the laws of the State of Ohio, domiciled

at Cincinnati therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed Charles E. Dunbar, Jr., Sumter D. Marks, Jr., Louis B. Claverie and Ashton Phelps as its registered agents for service of process.

19.

That Arrowhead Products, Inc. is a corporation organized and existing under the laws of the State of California, being domiciled at 2348 Curry Street, Long Beach, California, actually doing business in the State of Louisiana but having failed to appoint an agent for service of process.

20.

That H. I. Thompson Fiber Glass Company is a corporation organized and existing under the laws of the State of California, being domiciled at Cardova and Budlong, Los Angeles, California, actually doing business in the State of Louisiana but having failed to appoint an agent for service of process.

21.

That Pittsburg Corning Corporation is a corporation organized and existing under the laws of the State of Pennsylvania, domiciled at Pittsburg therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed C. T. Corporation System as its agent for service of process.

22.

That Armstrong Contracting & Supply Corporation is a foreign corporation organized and existing under the laws of the State of Delaware, domiciled at Wilmington therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed C. T. Corporation System of New Orleans, Louisiana, as its agent for

service of process.

23.

That R. J. Reynolds Tobacco Company is a foreign corporation organized and existing under the laws of the State of New Jersey, domiciled at Jersey City therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed Harry McCall and Leonard Sarpy of New Orleans, Louisiana, as its agents for service of process.

24.

That P. Lorillard Company is a corporation organized and existing under the laws of the State of New Jersey domiciled at Jersey City therein, authorized to do business in the State of Louisiana by having filed the proper credentials with the Secretary of State and having appointed C. T. Corporation System of New Orleans, Louisiana, as its agent for service of process.

25.

Your petitioner now shows that during the years 1954 and 1955, the decedent, Clarence A. Faciane, was employed by defendant, Aber Insulation Company as an insulator.

26.

That during the said period of time, the Aber Insulation Company contracted for an installed insulation on the American Cynamid Company Project in Orleans Parish, Louisiana, on which job foam glass, fiberglass and unibestos were used, and the said Clarence A. Faciane was required to install said insulation without the benefit of respirators or inhalators or other protective devices.

27.

That during the year 1956, the decedent was employed by McCarthy & Branton as an insulator on the State Welfare Building Project in Baton Rouge, Louisiana, on which job [illegible] Fiberglass and Foam Glass were used and the

said Clarence A. Faciane was required to install such insulation without the benefit of respirators or other protective devices.

28.

That during the year 1957, the decedent was employed by M. W. Kellogg & Company on a construction project at Esso Standard Oil Company in Baton Rouge, Louisiana, on which project the said Clarence A. Faciane was required to install asbestos, foam glass and fiberglass without the benefit of respirators or other protective devices.

29.

That during the year 1958, the decedent was employed by defendant, Armstrong Contracting & Supply Corporation on the construction of Fidelity National Bank in Baton Rouge, Louisiana, the Library Building in Baton Rouge, Louisiana and during 1959, on the Grace Chemical Company Project in East Baton Rouge Parish, Louisiana, on each of which jobs the said decedent was required to install foam glass, fiberglass, asbestos and asbestos mud, without the benefit of respirators or other protective devices.

30.

That on and prior to the year 1931, the decedent smoked Camel Cigarettes, manufactured by defendant, R. J. Reynolds Tobacco Company, and continued to smoke said Camel Cigarettes continuously until on or about 1955.

31.

That from about the year 1955 until the time of his death, on or about March 20, 1960, the decedent smoked Kent Cigarettes manufactured by defendant, P. Lorillard & Company.

32.

That the decedent switched to Kent Cigarettes because of advertisements and assurances of safety and warranties that that product was wholesome and was safer and less harmful than the non-filter tip cigarettes.

33.

That the decedent became a confirmed tobacco addict and was unable to stop smoking.

34.

Your petitioner now shows that the decedent, Clarence A. Faciane, during 1955, became ill because of damage to his lungs and internal organs and that his condition grew progressively worse until his death on or about March 20, 1960.

35.

Your petitioners now show that the doctrine of res ipsa loquitur is applicable to the facts herein.

36.

Your petitioner now shows that the death of the said Clarence A. Faciane was caused by the negligence of the defendants, Aber Company, Inc., M. W. Kellogg & Company, B & B Engineering & Supply Company and Armstrong Contracting & Supply Corporation in failing to warn the said Clarence A. Faciane of the danger inherent in using the insulating material; in failing to supply and furnish safeguards for the use of the decedent; in failing to furnish the decedent with a safe place to work; in giving assurances of safety to the decedent and in failing to make a full disclosure of the dangers inherent in such operations.

37.

Your petitioners now show that the death of the said Clarence A. Faciane was further caused by the negligence of the defendants, Johns-Manville Sales Corporation, Johns-Manville Products Corporation, Owens Corning Fiberglass Corporation, Ruberoid Company, U. S. Rubber Company, Philip Carey Manufacturing Company, Mundet Cork Corporation, Nicolet Industries, Inc., Glass Fibers, Inc., Keasby & Mattison Company, Baldwin-Ehret-Hill, Inc., Eagle Picher Company, Inc., Arrowhead Products, Inc.,

Funeral Expenses----------$ 2,000.00

Mental pain and anguish of deceased---------- 50,000.00

Mental pain and anguish of petitioner---------- 50,000.00

Loss of support---------- 50,000.00

Loss of love, affection and companionship---------- 50,000.00

or a total of $204,832.41.

41.

Petitioner, Mrs. Gladys Faciane, on behalf of the minor, Catherine Jean Faciane, itemizes her damages as follows:

Mental pain and anguish of deceased----------$15,000.00

Mental pain and anguish of the minor---------- 15,000.00

Loss of support (3 years)---------- 6,000.00

Loss of love, companionship and guidance---------- 15,000.00

or a total of $51,000.00.

42.

Petitioner, Mrs. Gladys Faciane, on behalf of the minor, Ronald Markel Faciane, itemizes his damages as follows:

Mental pain and anguish of deceased $15,000.00

Mental pain and anguish of petitioner---------- 15,000.00

Loss of love, companionship and guidance---------- 15,000.00

or a total of $45,000.00.

44.

In the alternative and in the event that petitioners are not entitled to damages for the wrongful death of the said Clarence A. Faciane, then and in that event, they are entitled

Fiberglass Company, Pittsburg Corning Corporation, R. J. Reynolds Tobacco Company and P. Lorillard & Company, in solido, in the full sum of $204,832.41, and in favor of petitioner, Mrs. Gladys Faciane, on behalf of the minor, Catherine Jean Faciane and against the defendants, in solido, in the full sum of $51,000.00; and in favor of petitioner, Gary Phillip Faciane, and against defendants, in solido, in the full sum of $45,000.00, together with legal interest on each of said amounts from judicial demand until paid.

In the alternative, and in the event that petitioners are not entitled to damages as herein prayed for, then and in that event, petitioner, Mrs. Gladys Faciane, Individually and for the use and benefit of the minors, Catherine Jean Faciane and Ronald Markel Faciane, prays that there be judgment herein in her favor and against the defendants, Aber Company, Inc., M. W. Kellogg & Company, B & B Engineering & Supply Company, Armstrong Contracting & Supply Corporation, and Travelers Insurance Company, in solido, for Workmen's Compensation Benefits at the rate of $35.00 per week beginning March 20, 1960 and continuing weekly thereafter for a period of 400 weeks, together with legal interest on each past due installment from its maturity date until paid, and for funeral expenses in the sum of $600.00, together with legal interest thereon from judicial demand until paid.

Petitioners further pray for all costs, all necessary orders, general and equitable relief.

By Attorneys:

H. ALVA BRUMFIELD
VELMA P. GERDING
ROBERT E. TURNER

FILED Mar. 15, 1961
REGISTERED Reggie L. Palmer DY. CLERK
A TRUE COPY Mar. 20, 1961
Enid A. Cain DY. CLERK

BY: /s/ H. Alva Brumfield
205 American Bank Bldg.
Baton Rouge, Louisiana