

FILE NAME: Early Asbestos Damage Suits (EADS)

DATE: 1957

DOC#: EADS005

DOCUMENT DESCRIPTION: Documents from Case of Frederick Le Grande

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE

Plaintiff

-vs-

JOHNS MANVILLE PRODUCTS  
CORPORATION, a corporation  
of the State of Delaware

Defendant

:

:

:

:

:

:

:

CIVIL NO. 741-57

COMPLAINT AND DEMAND FOR JURY

TRIAL

Plaintiff residing at 151 Montgomery Avenue  
in the Town of Irvington, County of Essex and State of New  
Jersey says:

FIRST COUNT

1. Plaintiff, Frederick Le Grande is a  
resident and citizen of New Jersey.

2. Defendant, Johns Manville Products  
Corporation is a corporation and citizen of Delaware.

3. The amount in controversy exceeds  
the sum of \$3,000.00 exclusive of interest and costs.

4. This Court has jurisdiction under Title  
28, U.S. Code, §1332.

5. Plaintiff Frederick Le Grande has  
been employed for some time and until September 1, 1956 as a  
construction worker.

particularly but not limited to the asbestos and other fibres, dust and particles in that continued contact with the said materials and products and handling of them would and did expose plaintiff and other persons similarly situated to the likelihood of contracting serious and crippling diseases, including but not limited to pulmonary asbestosis, fibrosis and silicosis.

8. Defendant knew or should have known of the dangerous and toxic qualities of its products and of the likelihood of said serious diseases resulting from prolonged exposure to and handling of the said products.

9. Defendant was negligent in failing to conduct or properly to conduct research concerning the contents, make-up and toxic effect of its products, and was further negligent in the manufacture, make-up, packaging and labeling of such dangerous and toxic products and was further negligent in failing to provide any or adequate warnings or instructions as to the use and handling of same. By reason of the defendant's negligence as aforesaid, plaintiff and others have been exposed to and have contracted the aforesaid serious and crippling diseases.

10. By reason of the foregoing plaintiff has contracted a serious and crippling disease or diseases affecting his lungs, heart and other members of his body and by reason of the same has incurred considerable medical and

have and will continue to have heavy and continued expenses for drugs, medicines, doctors, further hospital treatment and other remedial and alleviating treatment and plaintiff has been rendered nervous and mentally incapacitated as well as physically incapacitated by said disease heretofore alleged.

SECOND COUNT

11. Plaintiff repeats the allegations of Paragraphs 1 through 8 above.

12. Defendant in manufacturing and selling said products warranted that same were reasonably fit and safe for the uses to which they were to be put.

13. Plaintiff as one of the class of persons whom the defendant intended to, and knew or should have known, would use said products was entitled to the benefits of the aforesaid warranty.

14. The said products were not in fact reasonably fit and safe for the uses to which they were to be put in the respects set forth in paragraphs 7 and 8 above and further in that they contained no, nor adequate warnings or instructions as to their use and handling.

15. Plaintiff repeats the allegations of Paragraph 10 above.

WHEREFORE, Plaintiff demands judgment against the defendant for and in the sum of \$500,000.00 and costs of

# United States District Court

FOR THE

DISTRICT OF NEW JERSEY

                     DIVISION

CIVIL ACTION FILE NO. 741-57

FREDERICK LE GRANDE

Plaintiff

v.

JOHNS MANVILLE PRODUCTS CORPORATION, a  
corporation of the State of Delaware

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon William L. Brach, Esq.

plaintiff's attorney, whose address

60 Park Place, Newark, New Jersey

an answer to the complaint which is herewith served upon you, within 20 days after service

of this summons. If you fail to do so, judgment by default

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE, )

Plaintiff, )

Civil No. 741-57

-vs-

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corpora- )  
tion of the State of )  
Delaware, )

ANSWER

Defendant. )

The defendant Johns Manville Products Corporation, a corporation of the State of Delaware, duly licensed to transact business in the State of New Jersey, having an office therein in the Borough of Manville, County of Somerset, answering the complaint filed herein says that:

FIRST DEFENSE TO FIRST COUNT

1. It has no knowledge sufficient to form a belief as to the allegations of paragraphs 1, 2, 3, 4, 5 and 6.
2. It denies paragraphs 7 and 8.
3. It denies paragraphs 9 and 10.

SECOND DEFENSE TO FIRST COUNT

4. It alleges that any danger to which the plaintiff was exposed in the use of the products manufactured by the defendant was as open, obvious and apparent to him as to the defendant, and he assumed any and all risk incident to the use thereof.

THIRD DEFENSE TO FIRST COUNT

5. It alleges that the plaintiff was guilty of contri-

FIRST DEFENSE TO SECOND COUNT

6. Answering paragraph 11, it repeats paragraphs 1 and 2 hereof.

7. Answering paragraph 12, it admits that in the sale of its products it made such implied warranties as it was obliged by law to make, but it alleges that no warranties, express or implied, were made to the plaintiff.

8. It denies paragraphs 13, 14 and 15.

SECOND DEFENSE TO SECOND COUNT

9. It alleges that the said count fails to state facts upon which a claim for relief can be based.

STRYKER, TAMS & HORNER

By

John J. Monigan, Jr.  
John J. Monigan, Jr.  
Attorneys for Defendant  
744 Broad Street  
Newark 2, New Jersey

9-23  
9:15

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE :

Plaintiff, :

-vs- :

JOHNS MANVILLE PRODUCTS  
CORPORATION, a corporation  
of the State of Delaware :

Defendant. :

CIVIL NO. 741-57

INTERROGATORIES

TO: STRYKER, TAMS & HORNER, ESQS.,  
Attorneys for Defendant

SIRS:

PLEASE TAKE NOTICE that the plaintiff demands of the defendant, answers to the following Interrogatories, under oath, within the time prescribed by law:

1. List products containing asbestos and diatomite by name and by description which defendant sold to H. W. Porter & Co. or its controlled subsidiaries, listing which ones were sold during of the following years, 1952, 1953, 1954, 1955 and 1956, and state the name, address and registered agent of entity making the sale.

2. For each of the foregoing products, and for the type and form sold to H. W. Porter and Co., state, by weight or such other definible standard as may be used, the content of asbestos per unit and for for each state the range of size of the asbestos particles contained and the form in which

4. State whether there is any financial or stock relationship as common or interlocking ownership between H. W. Porter & Co. and Johns-Manville Products Corporation and state:

(a) Whether H. W. Porter & Co. is a subsidiary controlled by defendant.

(b) Which company owns stock in the other

(c) Percentage of stock thus held of total stock issued and whether the same represents a controlling interest.

(d) Class of stock held and voting rights of that class.

(e) Names of individuals who are employed or serve either as directors, officers, or common employees of both H. W. Porter & Co. and Johns-Manville Products Corporation.

5. For each of the products recited in Interrogatory 1, not contained in this list, state whether the same was supplied to H. W. Porter Co. during the years set forth in Interrogatory 1 by any other supplier than Johns-Manville and if so, state the name and address of the supplier, the type of material supplied, how that material compared with similar product supplied by Johns-Manville, the name or designation of the material supplied by each supplier for each year, dates when such materials were supplied and estimated quantity of material supplied by such supplier.

6. For each of the following materials:

etc:

sequence of  
2: 6 is  
reversed.

- (h) Fibrocel
- (i) 450 Cement
- (k) 552 Cement
- (l) One-Cote cement

state:

(a) The materials and substances of which each were made and the percentage of each such material and substance.

(b) Percentage by weight of asbestos in any form, describing form of and size range of asbestos particles.

(c) Percentage by weight of diatomite and others, in any form, describing form of and size range of diatomite particles.

(d) Percentage by weight of silica in any form, and form of, and size of silica particles.

(e) Period by years during which each product has been manufactured by Defendant.

(f) Period by years during which each product has been sold by Defendant to E. W. Porter & Co.

(g) Whether the content and make-up of each has remained unchanged during the last five years<sup>(1952 to date)</sup> and if there has been any such change, specify and describe the same for each product.

7. With reference to the Defendant corporation, state:

(a) The net worth of defendant corporation at the end of the last fiscal year.

(b) The annual appropriations for research into im-

which such research was continued and names of persons engaged in such research.

(c) Description by years of nature and extent of such research <sup>as in (c)</sup> and what such research accomplished or yielded.

8. List any and all publications, reports, memoranda, articles, or other writings known to Defendant, describing, discussing, or analyzing the effect of, risk of, or consequences of exposure to asbestos particles or to silico dust of the type contained in Defendant's products, and for each such writing, etc., state:

(a) Date of publication and publication in which contained.

(b) Whether a copy of the same is known by Defendant to be available and if so where.

(c) The name, status and responsibilities of the author or authors at the time of the writing.

(d) The title of the said article.

(e) Date when Defendant, through its staff, became aware of the existence of each such publication.

9. Recite the names and addresses of any person or persons known to Defendant, or its research staff to have made investigations or studies of any of the products set forth in <sup>Interrogatory</sup> ~~one~~ as to the contents or effect of asbestos in such products and if same was written, answer (a), (b), (c), (d) as set forth in the previous Interrogatory.

and periods during which same continued.

(b) Names and addresses of person or persons and department making the same,

(c) Place where same were made.

(d) For each such person set forth in (b) the present whereabouts (address) of such person and present employer, if known.

(e) Whether any records, journals, experiment books were kept of the studies, etc. and present location of each such record, journal, etc. and information contained in such record, journal, etc.

11. State whether Defendant, its subsidiaries, or its other staff or employees have been or are aware of any instance of asbestosis contracted by asbestos workers who had sustained exposure to any of the products listed in interrogatories 1 or comparable products containing asbestos, and, if so, state:

(a) Name and address of each such person or persons

(b) Whether Defendant was advised or received any report relating causally the sustained exposure to products containing asbestos to the contracting of asbestosis.

(c) If the answer to (b) is affirmative, state the name and address of the person or persons making the report, date of report, whether the same was in writing, if so where published or where is a copy of such report at this time.

(d) For each such worker, the conditions under which

are exposed to asbestos particles and if so, state:

(a) Each such safety or protective device or measure utilized by Defendant, its subsidiaries, employees, or agents.

(b) Period of time when each such device or measure was utilized (stating year when commenced and year when terminated, if it was terminated).

(c) Place and circumstances under which device or measure was utilized

(d) Facts and circumstances which caused Defendant to employ or utilize such device or measure.

(e) Date or year when Defendant first became aware of the facts or circumstances which caused it to resort to device or measure as in (d) above.

(f) With reference to defendant's own employees, state the date as nearly as is possible when Defendant first learned that any of its own employees had contracted the disease commonly called asbestosis.

10. With reference to the products named in (1) state which products are known to Defendant, or Defendant has reason to believe contains particles or dust which may cause fibrosis if inhaled in sufficient quantity and for each such state:

(a) Facts or information on which Defendant's knowledge

14. Did Defendant or its subsidiaries provide instructions or warnings to any of its employees to minimize the likelihood of contracting disease from sustained exposure to asbestos particles and if so, date:

(a) When the said instructions were first given, where and under what circumstances, by whom and to whom.

(b) Whether there were any such instructions, precautions, warnings or the like issued by Defendant, its subsidiaries or in its behalf in writing and if so, when, where, by whom, to whom and where a copy of such writing is presently available.

15. Did Defendant at any time issue any instructions, warnings or precaution with respect to the use or handling or risk of use or handling of any of its products containing asbestos particles to anyone other than its employees and if so, state:

(a) Was such warning, caution or instruction submitted to H. W. Porter & Co., its agents, or employees, and if so, when, where, in what form and to whom.

(b) Whether any such writing was contained in any package or as part of any label and if so, when, and for what material.

(c) Whether any instruction or warning sheets were ever published or composed and if so, when, where, by whom and how were the same utilized, and what was the substance

inquiry, agency making same, scope of inquiry, names and addresses of person or persons participating in the same, and consequences of the inquiry.

17. State whether any private agency, organization or group known to Defendant conducted any investigation or inquiry as to the production, manufacture, use, application or effect as set forth in the previous interrogatory and if so, state the name and location of such agency, date of inquiry, nature and scope of same, any and all writings or data accumulated therefrom, where the same is presently obtainable and the contents of the same.

18. With reference to masks utilized to limit or minimize exposure to asbestos dust, state whether the same have ever been utilized or made available by Defendant or its subsidiaries in any part of its operation and if so, state:

(a) When first used or made available, where, when, by whom and under what circumstances.

(b) Extent of use by Defendant or its subsidiaries during each year from 1940 through 1956, stating approximate number of such masks, where used, by how many employees and under what circumstances (as to exposure to asbestos particles).

(c) Describe in detail type or types of mask used and relate whether same was designed by Defendant specifically for use by persons exposed to asbestos dusts and features of mask making the mask specifically applicable for that purpose.

tained in any of its products and if so state:

(a) What steps taken were research or experimental in character describing the dates, nature of the problem to which research directed, location and persons involved in such research or experimentation.

(b) What steps actually resulted in changes in the final product or its packaging, content or form, means of manufacture.

(c) If there were steps outlined in (b) above, compare the changes effected by Defendant, dates when effected, reasons for such changes and the results observed or ascertainable from such changes.

20. State the names and address of all persons having knowledge of facts relevant to this cause.

21. For each person named in 20 above, state the matters to which such person has knowledge.

22. State the names and addresses of all expert witnesses who may testify on behalf of Defendant and state:

(a) Matters on or fields in which they will be qualified as expert.

(b) All publications or writings on these matters which the said expert has participated in preparing.

(c) Matters on which said expert will testify.

(d) Qualifications of such expert.

23. With respect to the second defense of the First

25. State the precautionary measures which Defendant asserts plaintiff should have utilized in the use of Defendant's products and state:

(a) Instances known to Defendant that establish these measures as standard in plaintiff's trade, giving location, date and particulars of each such instance.

(b) The facts on which Defendant bases its allegation that plaintiff did not exercise or utilize such precautionary measures.

(c) Steps taken by Defendant to publicize or recommend any such measures to persons in the same status or class as plaintiff, i.e. asbestos workers.

26. For the products sold to H. W. Porter & Co. recited in Interrogatory 1, state the names and addresses of registered agent or principals of all entities involved in the mining, manufacture, packaging, distribution, sale or research on products sold to H. W. Porter & Co.

27. With reference to plaintiff's employment from 1946 to date, state:

(a) The name and address of each employer known to Defendant

(b) Name, address and location of each job

(c) The dates (initial and permanent) when plaintiff worked on that job

(d) The nature of the work undertaken

(e) The nature of plaintiff's job

(f) The description of all materials containing

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE, )

Plaintiff, )

-vs-

Civil No. 741-57

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corpora- )  
tion of the State of )  
Delaware, )

ANSWERS TO INTERROGATORIES

Defendant. )

The defendant, Johns Manville Products Corporation answering the interrogatories propounded by the plaintiff, states on information and belief the following:

1. This defendant has no controlled subsidiaries nor did it sell any products to H. W. Porter & Co. This deponent has been informed that the following products manufactured by this defendant have been sold to H. W. Porter & Co. by Johns-Manville Sales Corporation during the years 1952 to 1956, inclusive:

**Superex**

Moulded pipe covering and blocks and cement calcined diatomaceous silicate combined with asbestos fiber.

**Thermobestos**

Moulded pipe covering and blocks hydrous calcium silicate combined with asbestos fiber.

**Magnesia Pipe covering**

Moulded pipe covering and blocks and cement hydrated basic carbonate of magnesia bonded with asbestos fiber.

**Asbesto-Sponge Felted**

Pipe insulation, sheets and blocks laminated asbestos fiber felts.

Millboard  
Fire Felt  
D. C. Flexstone  
Firetard  
Bonded asbestos fibers.

Insulating Cements 301, 302  
Asbestos fiber with various bonding materials.

2 & 3. The foregoing products have the percentage of  
asbestos fibers and diatomite as follows:

|                        | <u>Asbestos</u> | <u>Diatomite</u> |
|------------------------|-----------------|------------------|
| Magnesia Pipe covering | 5- 10           |                  |
| Superex                | 5- 10           | 60-70            |
| Thermobestos           | 10- 15          | 40-50            |
| Asbestos Sponge Felt   | 85- 95          |                  |
| Asbestocel             | 85- 95          |                  |
| D. C. Flexstone        | 60- 70          |                  |
| Fire Felt              | 90-100          |                  |
| Millboard              | 85- 95          |                  |
| Firetard               | 60- 70          |                  |
| Insulating Cements     |                 |                  |
| 301                    | 10- 15          | 10-15            |
| 302                    | 40- 50          | 20-30            |

4. No.

5. Stricken by order of Hon. Reynier J. Wortendyke,  
Jr. dated January 17, 1958.

6. Stricken by order of Hon. Reynier J. Wortendyke,  
Jr. dated January 17, 1958.

8. Stricken by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958.

9. Stricken by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958.

10. (As modified by order of Hon. Reynier J. Wortendyke Jr. dated January 17, 1958) See answer to No. 7 (d).

11. (As modified by order of Hon. Reynier J. Wortendyke Jr. dated January 17, 1958) It was not.

12. (As modified by order of Hon. Reynier J. Wortendyke Jr. dated January 17, 1958)

(a) This defendant supplies respirators to such of its employees as are engaged in manufacturing operations in which asbestos particles are used. The respirators are not limited to a particular brand, but any brand may be used which has the approval of the U. S. Bureau of Mines for use for pneumoconiosis producing dusts.

(b) Respirators have been used intermittently for approximately 25 years.

(c) See (a). The respirators have been used at various plants of this defendant.

(d) The use of respirators was adopted as a result of various Industrial Hygiene Foundation surveys.

(e) Approximately 25 years ago.

(f) This deponent has no knowledge of any case of asbestosis ever being contracted by an applicator. Asbestosis

are of the requisite size and are inhaled in sufficient quantities are: Magnesia Pipe covering, Superex Block Insulation, Superex M Block Insulation and Superex Combination Pipe Insulation. We have no knowledge of any case of disease ever being developed by an applicator of the products listed above. We know from experience in our plants that workmen engaged in the formation of these products have developed such a disease. See answer to No. 12 (f).

14. Stricken by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958.

15. Since this defendant never received notice of any claim of asbestosis resulting to any persons other than our employees who were engaged in the manufacture of the products, we had no reason to issue any warnings, instructions or preventions to any other persons.

16, 17 and 18. Stricken by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958.

19. See answer to No. 15. Since this defendant never had any reason to believe its products were toxic or noxious, it has not taken any action to reduce or minimize such supposed hazards in its products.

20 and 21. This deponent does not know what facts may be regarded as relevant to this cause; however, the only persons now known to this deponent who have any knowledge con-

22. (As modified by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958)

The name and address of persons, expert or otherwise, who may have knowledge of any facts in the case, in addition to those listed in the answer to the foregoing interrogatory No. 20 and No. 21, will be submitted to the plaintiff's attorney before trial.

23. To establish this defense this defendant will rely upon the nature of the products, the work performed, the knowledge and experience of the plaintiff and such facts as may be developed upon further discovery procedures and upon the trial of the case.

24. See No. 23.

25. See No. 23.

26. Stricken by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958.

27. (a - e) This deponent has been told that the plaintiff worked for H. W. Porter & Co., but none of the other details of his employment is known.

(f) See answer to No. 1.

(g) See answer to No. 1.

Whether H. W. Porter purchased products other than those which this defendant manufactured this deponent does not know, but since the business of this defendant is

it is probable that H. W. Porter

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE, )

Plaintiff, )

-vs-

Civil No. 741-57

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corpora- )  
tion of the State of )  
Delaware, )

ANSWERS TO SUPPLEMENTAL  
INTERROGATORIES

Defendant. )

The defendant, Johns Manville Products Corporation  
answering the supplemental interrogatories propounded by the  
plaintiff, states on information and belief the following:

1. There have been no substantial changes.
2. No.
3. See No. 12 (a).

STATE OF NEW YORK :  
COUNTY OF NEW YORK : ss.:

I, Herbert Morton Ball of full age, being duly sworn according to law upon my oath, depose and say:

1. I am Secretary of Johns Manville Products Corporation and am duly authorized to execute this affidavit on its behalf.

2. I have read the foregoing answers to interrogatories and the interrogatories, and the answers are true to the best of my information and belief.

Herbert Morton Ball

Subscribed and sworn to before me this 28<sup>th</sup> day of April, 1958.

Robert H. Seberle

ROBERT H. SEBERLE  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 60-3578150  
Qualified in Westchester County  
Certificates filed in the following offices:  
County Clerk - New York  
Commission Expires March 30, 1959

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE, )

Plaintiff, )

-vs-

Civil No. 741-57

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corpora- )  
tion of the State of )  
Delaware, )

INTERROGATORIES

Defendant. )

TO: FREDERICK LE GRANDE, Plaintiff and  
WILLIAM L. BRACH, ESQ., his attorney  
60 Park Place  
Newark 2, New Jersey

PLEASE TAKE NOTICE that the defendant requires  
that within the time required by the Federal Rules of Civil  
Procedure you answer under oath the following interrogatories:

1. State specifically the names of all the sub-  
stances in the materials manufactured by this defendant which  
plaintiff claims are of a dangerous or toxic character as al-  
leged in the complaint and specify in what products each such  
material is claimed to be found.
2. State in what manner each of the materials listed  
in the answer to interrogatory No. 1 is claimed to be dangerous  
or toxic.
3. Specify what warnings or instructions it is  
claimed this defendant should have issued with respect to the  
use of its products.

If it is claimed that this defendant was negligent

5. List the names and addresses of the persons other than the plaintiff who it is claimed contracted the serious and crippling diseases referred to in the complaint, and specify the disease contracted by each.

6. State whether it is claimed the plaintiff, himself, purchased from this defendant any products manufactured by it which it is claimed caused the disabilities referred to in the complaint.

7. If the answer to the foregoing 6th interrogatory is in the affirmative, specify the name of the product, the date of the purchase and the person and his position in the employ of this defendant from whom it is claimed the purchase was made.

8. State the medical name of the disease or diseases which it is claimed the plaintiff contracted by reason of his use of the products manufactured by this defendant.

9. State the date when the diagnosis of such disease or diseases was first made and the name and address of the physician or physicians who made such diagnosis.

10. Give the names and addresses of all physicians who have rendered treatment to the plaintiff for the disabilities referred to in the complaint, and state the dates between which treatment was rendered by each physician.

11. State the names and addresses of all physicians who have examined the plaintiff or been consulted by him in connection with the said disabilities and state the date or dates of examinations or consultations occurred.

(a) The date such injury, disease or disability was suffered.

(b) The nature thereof.

(c) The names and addresses of the institutions and physicians who rendered treatment therefor.

(d) The names and addresses of all persons to whom and organizations to which any claim was made by reason of such injury.

(e) A detailed statement of the nature of the claim.

13. Itemize the sums the plaintiff has paid or has become obliged to pay in an effort to cure himself of the disabilities referred to in the complaint, stating the name and address of each person to whom an obligation was incurred and the nature thereof.

14. State which of the obligations listed in the answer to the foregoing 13th interrogatory have been paid.

15. When the plaintiff became disabled as alleged in the complaint, state:

(a) The name and address of his employer.

(b) The specific kind of work he did in his employment.

(c) His rate of pay.

(d) His net take-home pay for each of the eight pay periods preceding the date of his disability.

(e) The dates between which he claims he was necessarily away from work by reason of said disability.

(f) The wages or earnings, if any, claimed to have been actually lost by reason of his disability.

17. If the plaintiff received Unemployment Compensation for any period subsequent to September 1, 1956, state the period, giving dates, for which they were paid.

18. If the plaintiff received any Workmen's Compensation benefits for the disabilities referred to in the complaint, state:

(a) The period, giving dates, during which he received compensation for temporary disability.

(b) The nature and the extent of the permanent disability benefits which he has received or is receiving, specifying the percentage loss of each member of the plaintiff's body for which benefits were paid, the total amount of such benefits actually received by the plaintiff and the amount to become due.

(c) Whether the aforesaid benefits awarded were made as a result of a settlement on workmen's compensation form No. 3, an informal hearing, upon a settlement or under a judgment.

(d) The date of the execution of workmen's compensation form No. 3, the date and the location of the informal hearing, or if a disposition of the case was made by an agreement or settlement or by a judgment, set forth a copy thereof.

19. State the name and address of each person now known to the plaintiff who has knowledge of any facts pertaining to the claim for relief asserted in the complaint.

20. State the name and address of any expert and the field in which he is specially qualified now known to the plaintiff who is familiar with any of the allegations contained in the complaint.

21. Specify the nature of the tests it is alleged this defendant should have made concerning the proper masks and respirators to be used by persons working with its products.

23. State whether or not it is claimed the masks or respirators furnished the plaintiff by H. W. Porter & Co. were defective or improper.

24. If the answer to the foregoing 23d interrogatory is in the affirmative, state the name and address of the manufacturer of the masks or respirators and specify in what respect each such mask or respirator is claimed to be defective or improper.

25. If the plaintiff makes any claim for any damages other than those specified in the answers to the foregoing interrogatories, state in detail the amount and the nature of such claims.

STRYKER, TAMS & HORNER

By John J. Monigan, Jr.  
John J. Monigan, Jr.  
Attorneys for Defendant

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRAND, )

Plaintiff, )

Civil No. 741-57

-vs-

) ANSWERS TO INTERROGATORIES

JOHNS MANVILLE PRODUCTS )

CORPORATION, a corporation  
of the State of Delaware, )

Defendant. )

FILED

OCT 30 1958

MICHAEL KELLER, JR., Clerk

The plaintiff, Frederick Le Grand, answering

the interrogatories propounded by the defendant, states on  
information and belief the following:

1. Asbestos particles, silica<sup>and silicae</sup>/particles.

See defendant's answers to interrogatories number 2 and 3  
which are incorporated herein. Also Fibrocel C Pipe  
Insulation and Fibrocel VS Pipe Insulation, 352 Cement,  
450 Cement, Super 66 Cement.

2. Materials containing particles of  
certain size ranges cause <sup>or u</sup>phemmoconiosis after continued  
exposure to these particles in sufficient concentration

3. Defendant should have made the dangers  
of exposure known to its consumers, users, distributors,

sufficient warning and information on the proper method of handling its products and the types and use of protective devices, including <sup>proper ventilation</sup> ~~ventilators~~, masks and respirators which should be utilized with its products and defendant should have taken steps to create an awareness among users of the latent dangers inherent in its products as well as a <sup>the user</sup> sufficient knowledge on how to protect/ in the use thereof.

4. For failing to provide <sup>adequate</sup> warning and information on and in the packaging of its products containing <sup>and silicae</sup> dangerous asbestos and silica/ particles.

5. Impossible to answer as the incidence of asbestosis and silicosis run into many thousands and plaintiff does not have personal knowledge of all such cases. However, plaintiff knows of many instances of asbestosis in the Local to which plaintiff belonged. Plaintiff is reluctant to submit names and addresses because it is believed that this may effect the employability of the men having this disease and their livelihood.

6. Purchases were made by defendant's employer.

7. See 6.

8. ~~Asbestosis~~ Pneumoconiosis including asbestosis and silicosis,

9. Diagnosis was definitely established

10. Dr. Rozsa, Nov, 1954, Feb., 1956, 837 South 11th Street, Newark, New Jersey. Dr. Samuel Einhorn, Dr. Harvey Einhorn, Nov., 1954 to date.

11. Dr. Emanuel Klosk February, 1956 to August, 1956, Dr. Harold Goldberg, January, 1955 to February, 1956. Dr. Klosk's address is 46 Lyons Avenue, Newark, New Jersey. Dr. Goldberg's address is 814 South 10th Street, Newark 8, New Jersey.

12. (a) Plaintiff collapsed November 9, 1954, thereafter resuming work until February 5, 1956, where after a second collapse he was hospitalized for a lung condition.

(b) Plaintiff suffered heart failure diagnosed as being caused by an asbestosis condition which crippled his lungs, called cor pulmonale. Plaintiff's lung condition ultimately manifested itself through his entire physical condition.

(c) As set forth previously. Beth Israel Hospital, 201 Lyons Avenue, Newark, New Jersey.

(d) H. W. Porter & Co., Travelers Insurance Co..

(e) See workmen's compensation file in defendant attorney's possession.

14. All expenses paid by workmen's compensation carrier.

15. (a) H. W. Porter & Co., 825 Frelinghuysen Avenue, Newark, New Jersey.

(b) Asbestos worker and mechanic.

(c) \$3.75 an hour.

(d) \$270.00

(e) Nov. 20, 1954 to January 2, 1955, Feb. 18, 1956 to June 17, 1956, Sept. 16, 1956 to Feb. 21, 1957.

(f) \$3.75 an hour for each date in (e) that he didn't work.

16. Plaintiff, while objecting to the relevancy of this question says he was employed by Armstrong Cork Co. 8/8/57 - 9/27/57 earnings \$1,062.80. Matthew-Balich Corp. for month of October, 1957, 10/7/57 to 6/2/58, to June, 1958 \$3,270.20.

17. Hxxxx20xx1954xthruangkxJanuaryxx2xx1955  
\$189x

September 16, 1956 through February 21, 1957.

18. Both parties have full record of this and plaintiff will stipulate workmen's compensation record to the extent same is relevant and material.

19. Knowledge of facts pertaining to plaintiff's exposure:

All the persons who worked with plaintiff through his many years of employment with H. W. Porter & Co. are familiar with the actual work which plaintiff did, the materials he handled, the extent of his exposure to asbestos dust, etc. Supervisory employees of H. W. Porter & Co., such as Mr. Morris and Mr. Stevens, also are aware of these facts. Paul Springle, business agent of plaintiff's local, c/o International Association of Heat and Frost Insulators and Asbestos Workers, Local 32 A F of L, 19th Avenue, Newark, New Jersey.

Knowledge of facts pertaining to plaintiff's condition are known to plaintiff's immediate family, his wife and daughter, doctors mentioned previously, all the friends, acquaintances and fellow employees who have worked with and near ~~the~~ the plaintiff.

By reason of the vagueness of the question, it is impossible for plaintiff to list the names and

Winchell, Industrial Engineer, 297 Euclid Avenue, Hackensack, New Jersey, ~~Dr. Allen Mierow, mineralogist.~~

21. Defendant should have conducted tests on its materials ~~yx~~ to develop means of curtailing release of toxic dusts and further on means of protection against such dust by persons compelled to handle defendants products on a regular basis, and further means of warning users of dangerous concentrations of such dust.

22. Plaintiff makes no such claim.

23. Yes.

24. This information is available only through H. W. Porter & Co. and respective counsel stipulated at deposition of H. W. Porter & Co. officials that this information would be supplied to both of them through the cooperation of H. W. Porter & Co.

25. Plaintiff asserts prospective loss of income based on earnings as set forth in interrogatory number 15 over his projected life expectancy, plaintiff anticipates continuing medical expenses, and plaintiff will claim further damages for pain and suffering, past, present and anticipated in the future as well as limitation of his activities and decrease in his normal life expectancy arising

20. Continued

Dr. Roy M. Allen, 120 Personette Avenue,  
Verona, New Jersey, microscopist and mineralogist, and  
Mr. A. Wallach, Industrial Hygiene Services, Bergen Street,  
Newark, New Jersey.

STATE OF NEW JERSEY )  
 ) SS  
COUNTY OF ESSEX )

FREDERICK LE GRAND of full age, being duly sworn according to law upon his oath deposes and says:

1. I am the Plaintiff in this matter.

2. I have read the foregoing answers to interrogatories and the interrogatories, and the answers are true to the best of my information and belief.

Sworn and Subscribed to

Frederick Le Grand

FREDERICK LE GRAND

before me this 1<sup>st</sup> day

of October ~~September~~, 1958.

Janet E. McCrane

JANET E. McCRANE  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Oct. 4, 1962

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

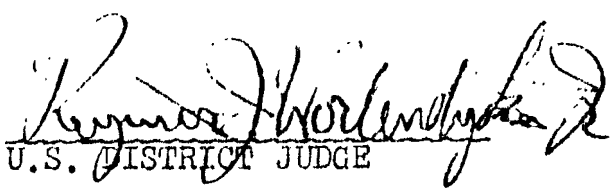
FREDERICK LE GRANDE

vs

JOHNS MANVILLE PROD. CORP.

CIVIL NO. 74-1-57

ORDERED that the stenographic notes or transcript  
(if made) of the pre-trial conference held today shall  
constitute the pre-trial order.

  
U.S. DISTRICT JUDGE

October 17, 1958  
(Date)

10/29  
10:170

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE,

Plaintiff,

vs.

JOHNS MANVILLE PROD. CORP.,

Defendant.

Civil No. 741-57

Newark, New Jersey  
October 10, 1958

Before: HONORABLE REYNIER J. WORTENDYKE, JR., U. S. D. J.

Appearances:

WILLIAM L. BRACH, Esq.,  
Attorney for plaintiff

MESSRS. STRYKER, TAMS & HORNER,  
Attorneys for defendant  
By JOHN J. MONIGAN, JR., Esq.

OCT 21 1958  
10:50  
A.

THE COURT: Diversity action for damages for physical disability alleged to have resulted through the negligence of the defendant during the course of plaintiff's exposure to products of the defendant containing asbestos and silica dust over a period extending from 1936 through September 1, 1956. The exposure complained of is alleged to have occurred principally during the course of plaintiff's employment by H. W. Porter & Company, installation engineers and contractors, in capacities including apprentice, mechanic, and foreman, and involving the use of material for insulation and other construction purposes containing the allegedly noxious substances.

It is conceded that the plaintiff made claim against his employer for Workmens Compensation based upon a charge that he was suffering from the occupational disease of Asbestosis, which arose out of and in the course of his aforesaid employment.

Plaintiff ceased his employment with Porter on July 31, 1956, but has subsequently been employed in various capacities by other employers not involving the direct handling of the materials of which he here complains.

He predicates his right to recover upon a charge of negligence on the part of the defendant in failing to provide the materials, which it manufactured and which the plaintiff used in his employ-

...of the defendant's knowledge of the hazards of its products at the time of their manufacture or distribution, and of the defendant's failure to provide adequate warnings, instructions, or recommendations to protect against such hazards, or with such information as the user would need to adequately protect himself against such hazards.

against such hazards, or with such information as the user would need to adequately protect himself against such hazards.

The hazards to which plaintiff refers in this charge are as follows:

Mr. BRACH: The risk of contracting asbestosis or silicosis by reason of continued exposure to asbestos or silica dust of a toxic nature and in sufficient concentration to cause these diseases.

THE COURT: The defendant concedes that its product bore none of the warnings, instructions, or recommendations referred to by the plaintiff, but denies that its products were hazardous or harmful either by reason of their characteristics, toxic or otherwise, when used for the purposes for which they were intended, and denies also any obligation to label its products in the respects claimed by the plaintiff.

Supplementing his above-stated contentions, plaintiff adds --

MR. BRACH: That the defendant, by reason of its access to special knowledge and information as the manufacturer of its products, by reason of which it took precautions in behalf of its own employees, who by reason of their jobs were exposed to the asbestosis and silica dusts in its products, had a duty to relay this information to those group of workmen who would incur a

similar degree of exposure to the toxic dusts contained in its

12-10-68  
MOTION:

THE DEFENDANT'S MOTION TO DISMISS THE SECOND COUNT OF THE COMPLAINT IS GRANTED.

the defendant takes the position that the obligations and practices owed and exercised by the defendant toward its employees in the production of the materials here complained of are irrelevant to and not controlling upon its duty to the plaintiff, a user of the finished products of the defendant.

In his second count the plaintiff charges that the defendant breached an implied warranty of fitness and safety of which the plaintiff was a beneficiary. The theory underlying this count is that there was an implied warranty between the defendant and the purchaser of the material, and that that warranty was for the benefit of third persons, including the plaintiff, i.e., that the plaintiff was in the class of intended beneficiaries of such an implied warranty.

Counsel will, within a week from this date, determine whether he will continue to rely upon the second count, and will within that time advise his adversary.

Defendant has already addressed a motion to the complaint with particular reference to the second count, which may become moot should the plaintiff abandon the count.

Discovery is complete except that the defendant objects to certain supplemental interrogatories recently served by the

ASSET TO BEQ DOE

IN THE PROCEEDINGS OF THE COURT

THE COURT HAS ORDERED THAT THE QUESTION BEING THE

THE COURT HAS ORDERED THAT THE QUESTION BEING THE

referred to in a deposition or depositions will be furnished, and such will be done within three weeks from date.

Physical examinations have been held, but leave is granted to the defendant for additional examination by Dr. York (respiratory)

Counsel undertake to confer and endeavor to agree upon the admission in evidence of certain exhibits, including specimens of or samples of defendant's product, slides, etc.

The hospital records will be admitted.

Plaintiff claiming permanent disability, will tender evidence of his expectancy of life, and it is stipulated by counsel that that will be computed on the basis of the table in the New Jersey Rules of Civil Procedure.

Case not to be moved for trial before November 20.

Estimated trial time is four days.

Trial briefs will be required so that the Court has both of them in hand a week before trial.

Plaintiff's hospital expense was paid by his employer's Workmens Compensation insurance carrier, and the defendant, therefore, will furnish the plaintiff's attorney with the particulars thereof.

FILED

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

MAR 18 1959

4:00 P M  
AT 3000  
MICHAEL KELLER, JR.  
CLERK

FREDERICK LE GRAND,  
Plaintiff

vs

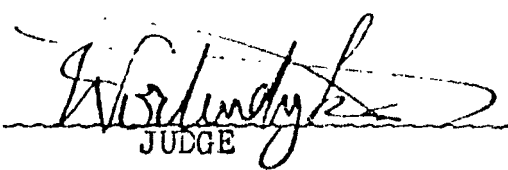
JOHNS MANVILLE PRODUCTS CORP.,  
Defendant

Civil #741-57

ORDER OF DISMISSAL

It appearing that it has been reported to the  
Court that the above action has been settled;

It is, on this 18<sup>th</sup> day of March 1959  
ORDERED, that this action is hereby dismissed, without costs,  
and without prejudice to the right to reopen the action if  
the settlement is not consummated.

  
JUDGE

Copies to: William L. Brach, Esq.  
Stryker, Tams & Horner, Esqs.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FREDERICK LE GRAND,

Plaintiff,

-vs-

JOENS MANVILLE PRODUCTS  
CORPORATION, a corporation  
of the State of Delaware,

Defendant.

)

)

)

)

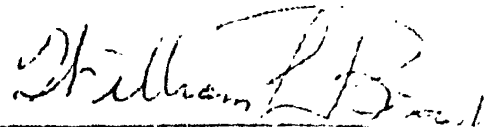
)

)

Civil No. 741-57

STIPULATION AND ORDER

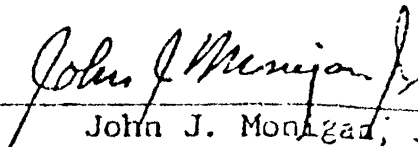
It is hereby stipulated by and between the  
parties hereto that the above captioned matter be  
dismissed with prejudice and without costs.



William L. Brach  
ATTORNEY FOR PLAINTIFF

STRYKER, TAMS & HORNER

By



John J. Monagan, Jr.  
ATTORNEY FOR DEFENDANT

It is so ordered.

115  
1/17-58

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE, )

Plaintiff, )

-vs-

Civil No. 741-57

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corpora- )  
tion of the State of )  
Delaware, )

ORDER

Defendant. )

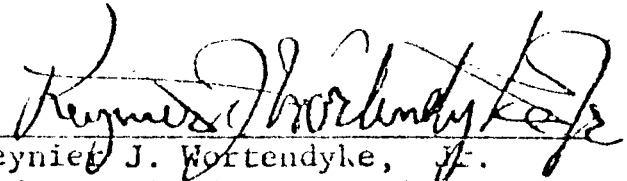
The defendant having filed objections to interrogatories which were served by the plaintiff in the above matter, and the Court having considered the arguments of counsel, and having on January 2, 1958, filed a letter opinion stating its disposition of the objections and the reasons therefor, which is incorporated herein and made a part hereof, it is on this day of January, 1958,

ORDERED that interrogatories No. 5, 6, 7 (a) (b) (c) (e), 8, 9, 14, 16, 17, 18, 22 (c) and 26 be and they hereby are stricken; and

IT IS FURTHER ORDERED that the defendant be and it hereby is ordered to answer interrogatories No. 7 (d), 13, 19 and 25 (a); and

IT IS FURTHER ORDERED that the defendant be and it hereby is ordered to answer interrogatories No. 1, 11 and 12, as modified, to delete therefrom any references to the subsidiaries of the defendant except that such information will

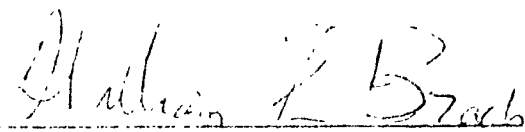
The objection to interrogatory Number 1 is withdrawn  
by reason of the agreement of counsel respecting the form and  
content thereof.

  
Reynier J. Wortendyke, Jr.  
Judge, United States District  
Court

On motion of

STRYKER, TAMS & HORNER,  
Attorneys for defendant

Consent to the form of the  
foregoing order is hereby  
given.

  
William L. Brach  
Attorney for plaintiff.

125  
p-10  
(B)

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE, )  
Plaintiff, )

Civil No. 741-57

-vs- )

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corpora- )  
tion of the State of )  
Delaware, )

NOTICE OF MOTION  
FOR SUMMARY JUDGMENT

Defendant. )

TO: WILLIAM L. BRACH, ESQ.  
Attorney for Plaintiff  
60 Park Place  
Newark 2, New Jersey

OCT 10 1958

428  
MICHAEL K. K... CL. CLK.

PLEASE TAKE NOTICE that on Monday, October 27, 1958, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, at the Federal Building, Newark, New Jersey, we shall apply to the Honorable Reynier J. Wortendyke, Jr., Judge of the United States District Court, or to such other Judge as shall then and there sit to hear motions in matters pending in the United States District Court, District of New Jersey, for a summary judgment in favor of the defendant dismissing the action of the plaintiff on the ground that the first count of plaintiff's complaint is barred by the New Jersey Statute of Limitations, and on the grounds that the second count of plaintiff's complaint fails to state a claim upon which relief can be granted.

EXHIBIT I

NEW JERSEY DEPARTMENT OF LABOR AND INDUSTRY  
DIVISION OF WORKMEN'S COMPENSATION  
NEWARK, ESSEX COUNTY DISTRICT

x -----x  
:  
FREDERICK M. LE GRANDE,  
:  
Petitioner,  
:  
-vs-  
:  
H. W. PORTER CO.,  
:  
Respondent.  
:  
x-----x

Friday, April 26, 1957.

B E F O R E :

HONORABLE MAURICE A. KALTZ,  
DEPUTY DIRECTOR.

APPEARANCES:

WILLIAM L. BRACH, ESQ.,  
For the Petitioner.

LESTER C. MARTIN, ESQ.,  
By: SKEFFINGTON, HASKINS & SKEFFINGTON, ESQS.,  
By: JAMES J. SKEFFINGTON, ESQ.,  
For the Respondent

F R E D E R I C K M. L E G R A N D E, the petitioner,  
appearing in his own behalf, being first duly sworn,  
testified as follows:

\* \* \*

Page 4

DIRECT EXAMINATION BY MR. BRACH:

Q You are the petitioner in this matter, Mr.  
LeGrande?

A I am, Sir.

Q Where do you live?

A 151 Montgomery  
Avenue, Irvington.

Q What is your age?

A At the present time,  
51.

Q When were you 51?

A 25th of February.

\* \* \*

Page 9

THE DEPUTY DIRECTOR: Your petition says that he  
stopped work between November of 1954 and February of 1956.

MR. BRACH: No, he stopped work between November of  
1954 and January 3, 1955. He had two attacks.

THE DEPUTY DIRECTOR: Wait a minute. You say here he  
stopped work 11/54 to 2/56. That can't be right if your  
records are right.

MR. BRACH: There were two stopping dates, if your  
Honor please; 11/54 and 2/56, and there were two re-  
starting dates.

Did something happen to you in November 1954?

THE WITNESS: Yes, I blacked out at home.

THE DEPUTY DIRECTOR: All right, you blacked out at home. Do you remember when it was?

THE WITNESS: Yes, I do.

THE DEPUTY DIRECTOR: When was that?

THE WITNESS: 11/8/54 at night.

THE DEPUTY DIRECTOR: At night?

THE WITNESS: Yes.

THE DEPUTY DIRECTOR: Were you doing anything in particular at the time?

THE WITNESS: No, I was sitting on a couch with my wife, and I stood up, and when I stood up I just blacked out. I was out for just maybe a minute or two. I couldn't tell offhand.

BY MR. BRACH:

Q Did you go to see a doctor?

A Well, the wife--I got up--then I got up on the couch, and then we contacted the doctor. I visited Dr. Einhorn. I visited Dr. Einhorn, I believe, on the 10th. I visited Dr. Einhorn on 11/10/54. And then--

Q Did you have any specific complaints at that time?

A You mean how I was feeling?

Q Yes. A I felt--to my experience, I felt good at that time up to the time I blacked out. I had no sickness or anything else previous to that that I know of:

product at all, you cough; due to dust that it raises you are bound to cough.

Q When you saw the doctor, what complaints did you have at that time? This was shortly after you blacked out when you first saw the doctor?

A You mean when I went to the doctor?

Q Yes. A Well, I went over and told him just what happened to me: I just passed out and that's all. I went to work the next day. Then the following day I went to the doctor. And I believe he sent me for X-rays-- yes, I went and had an X-ray taken on 11/11/54, by S. Rozsa.

THE DEPUTY DIRECTOR: Dr. Stephen Rozsa?

THE WITNESS: Yes.

THE DEPUTY DIRECTOR: Did you stay home, then, until February? Were you hospitalized?

THE WITNESS: I was under Dr. Einhorn's care, yes, until I went back to work.

BY MR. BRACH:

Q Did you stay home under the directions of the doctor? A Yes, I certainly did.

THE DEPUTY DIRECTOR: You stayed home till February 1956?

THE WITNESS: No, I stayed home until 1/3/55.

THE DEPUTY DIRECTOR: Until January 1955?

\* \* \*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE,                    )  
                                          Plaintiff,                    )     Civil No. 741-57  
                                          vs                                    )     AFFIDAVIT  
JOHNS MANVILLE PRODUCTS            )  
CORPORATION, a corporation            )  
of the State of Delaware,            )  
                                          Defendant.                    )

STATE OF NEW JERSEY     :  
                                          SS.:  
COUNTY OF ESSEX         :

ALEXANDER JASMAN, of full age, being duly sworn  
according to law, upon his oath deposes and says:

1. I am the Court Reporter who stenographically  
recorded the testimony introduced before the Honorable  
Maurice A. Kaltz on Friday, April 26, 1957 in the matter  
of Frederick M. Le Grande vs. H. W. Porter Co. heard in  
the Division of Workmen's Compensation in Newark, New Jersey,  
and under whose direction it was transcribed.

2. The schedule annexed hereto is a true and accu-  
rate copy of the portions of the testimony therein set  
forth.

Sworn to and subscribed    )  
before me, this 9 day        )

*Alexander Jasman*  
\_\_\_\_\_  
Alexander Jasman

X - - - - - X

FREDERICK M. LE GRABBE,

:

Petitioner,

:

- VS -

:

R. W. FORSTER CO.,

:

Respondent.

:

X - - - - - X

Friday, May 10, 1957

E S S E D :

COMMITTEE HARRISON A. KATZ,  
DEPUTY DIRECTOR.

APPEAL FROM:

WILLIAM L. BUCHAN, ESQ.,  
For the Respondent.

LESTER C. MARTIN, ESQ.,

By: SHEFFINGTON, HASKINS & SHEFFINGTON, ESQ.,  
By: JAMES J. SHEFFINGTON, ESQ.,  
For the Respondent.

WILLIAM C. O'NEILL & ASSOCIATES  
By: RICHARD J. SULLIVAN,  
Certified Shorthand Reporter.

page 43

F R E D E R I C K E. L E G R A N D E, the petitioner,  
having been previously sworn, resumed the stand and  
testified further as follows:

DIRECT EXAMINATION (Continued) BY MR. BRACH:

Q Mr. LeGrande, I believe you testified previously  
that you had been provided prescriptions and had obtained  
drugs since November 10, 1954: is that correct?

A That is right.

\* \* \* \* \*  
page 45

Q what are you pointing to?

A Codein phosphate.

Q November 10, 1954, this was prescribed?

A That was the first one I got. I said I had taken  
forty bottles of that up to 12/31/54. That was at \$2.50  
a bottle. He put me on another cough medicine.

\* \* \* \* \*  
page 50

MR. SAMUEL EINHORN, a witness appearing on behalf of  
the petitioner, being first duly sworn, testi-  
fied as follows:

DIRECT EXAMINATION BY MR. BRACH:

\* \* \* \* \*  
page 50

A Yes, Sir. He was examined with a history of a black-out after cough two days before. He had had a severe non-productive cough for one year, but brought up no blood. There was no chest pain and no loss of weight. He complained of palpitation and shortness of breath on one flight. There was no swelling of the legs, no nocturnal dyspnea, no cardiac pain, and no orthopnea. He smoked either one to two cigarettes a day.

On examination, his weight was 208, blood pressure 140/90. His physical was comparatively negative except for the chest. The percussion note was somewhat impaired over the right midportion of the lung. There were showers of rales and a great many ronchi over the entire lung field, chiefly at the bases. The heart was not enlarged; it was beating at a regular sinus rhythm. There were no murmurs. There was no evidence of peripheral failure. X-ray was obtained.

\* \* \* \* \*

page 142

DR. HAROLD H. GOLDBERG, a witness appearing on behalf of the petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BRACH:

\* \* \* \* \*

page 143

Q Did you have an opportunity to examine the petitioner in this matter, Frederick LeGrand?

A In my office.

Q Did he state any complaints to you at that time?

\* \* \*

THE WITNESS: Chief complaints were shortness of breath, cough and weight loss.

BY MR. BRACH:

Q Did you give the man a physical examination at that time?

A I took a complete history and did a complete physical examination and did some laboratory studies on him.

Q Would you describe the results of your examination, Doctor?

A You mean the diagnosis?

Q No, your physical findings.

A Can I read from this? (Indicating)

THE DEPUTY DIRECTOR: Sure.

THE WITNESS: The significant abnormalities were confined to the chest. He had some dullness and diminished breath sounds at both bases with occasional rales. Upon fluoroscopy, considerable cloudiness of both lower lung fields. The heart was not enlarged. There were no significant chamber alterations. The electrocardiogram merely showed the effects of digitalis therapy. My diagnosis was: Pneumoconiosis resulting from and handling of asbestos material, and probably pulmonary

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE, )  
Plaintiff, ) Civil No. 741-57  
vs ) AFFIDAVIT  
JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corporation )  
of the State of Delaware, )  
Defendant. )

STATE OF NEW JERSEY :  
COUNTY OF ESSEX : SS.:

RICHARD J. SALIERNO, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the Court Reporter who stenographically recorded the testimony introduced before the Honorable Maurice A. Kaltz on Friday, May 10, 1957 in the matter of Frederick M. Le Grande vs. H. W. Porter Co. heard in the Division of Workmen's Compensation in Newark, New Jersey, and under whose direction it was transcribed.

2. The schedule annexed hereto is a true and accurate copy of the portions of the testimony therein set forth.

Sworn to and subscribed )  
before me, this 9 day )  
of October, 1958. )

Richard J. Salierno

119  
9:30

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FREDERICK LE GRAND, )

Plaintiff, )

Civil No. 741-57

-vs-

)

ORDER

JOHNS MANVILLE PRODUCTS )

CORPORATION, a corporation

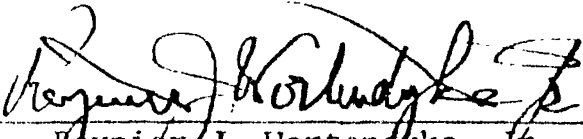
of the State of Delaware, )

Defendant. )

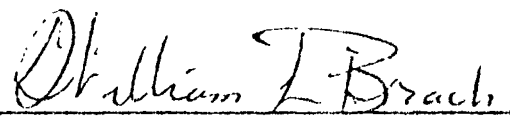
This matter being opened to the Court by John J. Monigan, Jr., Esq, appearing for Stryker, Tams & Horner, Esqs., attorneys for defendant, Johns Manville Products Corporation, and William L. Brach, Esq. appearing for the plaintiff, Frederick Le Grand, and counsel stipulating in open Court that the second count of plaintiff's complaint shall be dismissed without costs and the Court having heard the argument of counsel and having reviewed the proof submitted on the motion of the defendant to dismiss the first count of plaintiff's complaint, and for good cause appearing, it is, on this 19<sup>th</sup> day of November, 1958,

ORDERED and adjudged that the second count of

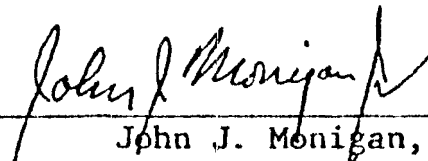
IT IS FURTHER ORDERED and adjudged that defendant's motion for a summary judgment on the first count of plaintiff's complaint be, and hereby is denied, without costs.

  
Reynier J. Wortendyke, Jr.  
U.S.D.J.

form  
We hereby consent to the entry of the foregoing  
ORDER this 16<sup>th</sup> day of November, 1958.

  
William L. Brach  
Attorney for Plaintiff

STRYKER, TAMS & HORNER

By   
John J. Monigan, Jr.  
Attorneys for Defendant

175  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE :

Plaintiff :

-vs- :

JOHNS MANVILLE PRODUCTS :  
CORPORATION, a corporation  
of the State of Delaware :

Defendant :

CIVIL NO. 741-57  
COMPLAINT AND DEMAND FOR JURY  
TRIAL

Plaintiff residing at 151 Montgomery Avenue  
in the Town of Irvington, County of Essex and State of New  
Jersey says:

FIRST COUNT

1. Plaintiff, Frederick Le Grande is a  
resident and citizen of New Jersey.

2. Defendant, Johns Manville Products  
Corporation is a corporation and citizen of Delaware.

3. The amount in controversy exceeds  
the sum of \$3,000.00 exclusive of interest and costs.

particularly but not limited to the asbestos and other fibres, dust and particles in that continued contact with the said materials and products and handling of them would and did expose plaintiff and other persons similarly situated to the likelihood of contracting serious and crippling diseases, including but not limited to pulmonary asbestosis, fibrosis and silicosis.

8. Defendant knew or should have known of the dangerous and toxic qualities of its products and of the likelihood of said serious diseases resulting from prolonged exposure to and handling of the said products.

9. Defendant was negligent in failing to conduct or properly to conduct research concerning the contents, make-up and toxic effect of its products, and was further negligent in the manufacture, make-up, packaging and labeling of such dangerous and toxic products and was further negligent in failing to provide any or adequate warnings or instructions as to the use and handling of same. By reason of the defendant's negligence as aforesaid, plaintiff and

have and will continue to have heavy and continued expenses for drugs, medicines, doctors, further hospital treatment and other remedial and alleviating treatment and plaintiff has been rendered nervous and mentally incapacitated as well as physically incapacitated by said disease heretofore alleged.

SECOND COUNT

11. Plaintiff repeats the allegations of Paragraphs 1 through 8 above.

12. Defendant in manufacturing and selling said products warranted that same were reasonably fit and safe for the uses to which they were to be put.

13. Plaintiff as one of the class of persons whom the defendant intended to, and knew or should have known, would use said products was entitled to the benefits of the aforesaid warranty.

14. The said products were not in fact reasonably fit and safe for the uses to which they were to be put in the respects set forth in paragraphs 7 and 8 above and further in that they contained no, nor adequate warnings or

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE, )

Plaintiff, )

Civil No. 741-57

-vs-

ANSWER

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corpora- )  
tion of the State of )  
Delaware, )

Defendant. )

The defendant Johns Manville Products Corporation, a corporation of the State of Delaware, duly licensed to transact business in the State of New Jersey, having an office therein in the Borough of Manville, County of Somerset, answering the complaint filed herein says that:

FIRST DEFENSE TO FIRST COUNT

1. It has no knowledge sufficient to form a belief as to the allegations of paragraphs 1, 2, 3, 4, 5 and 6.

2. It denies paragraphs 7 and 8.

3. It denies paragraphs 9 and 10.

SECOND DEFENSE TO FIRST COUNT

4. It alleges that any danger to which the plaintiff exposed in the use of the products manufactured by the defendant was as open, obvious and apparent to him as to the defendant, as he assumed any and all risk incident to the use thereof.

THIRD DEFENSE TO FIRST COUNT

5. It alleges that the plaintiff was guilty of contributory negligence in that he failed to exercise that degree of care and caution which a reasonably prudent person would have

FIRST DEFENSE TO SECOND COUNT

6. Answering paragraph 11, it repeats paragraphs 1 and 2 hereof.

7. Answering paragraph 12, it admits that in the sale of its products it made such implied warranties as it was obliged by law to make, but it alleges that no warranties, express or implied, were made to the plaintiff.

8. It denies paragraphs 13, 14 and 15.

SECOND DEFENSE TO SECOND COUNT

9. It alleges that the said count fails to state facts upon which a claim for relief can be based.

STRYKER, TAMS & HORNER

By John J. Konigan, Jr.  
Attorneys for Defendant  
744 Broad Street  
Newark 2, New Jersey

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
NEWARK 1, N. J.

REYNIER J. WORTENDYKE, JR.  
JUDGE

January 2, 1958

Re: C-741-57 - LeGrande v. Johns Manville Products Corp.  
-----

William L. Brach, Esq.,  
60 Park Place,  
Newark 2, New Jersey

Stryker, Tains & Horner, Esqs.,  
Attention: John J. Monigan, Jr., Esq.,  
744 Broad Street,  
Newark 2, New Jersey

Gentlemen:

In determining the propriety of interrogatories under Federal Rule 33, the limitations embodied in Rule 26(b) must serve as a criterion. The critical language expressing the scope of inquiry by deposition or interrogatory permits examination "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, \* \* \*."

Defendant has filed objections to interrogatories propounded to it by the plaintiff and a hearing was held upon these objections on December 23, 1957, at the conclusion of which the Court undertook to examine the interrogatories objected to and to decide the issue of the propriety

Messrs. Brach and Monigan  
January 2, 1958 - page 2  
Re: C-741-57

may not inquire further back than the year 1952.

6. By analogy to the principle in Kluchanac v. Oswald & Hess Co., D.C. Pa. 1957, 20 F.R.D. 87, the making of the scientific and statistical research which this interrogatory calls for is a burden which, in my opinion, plaintiff may not properly impose upon defendant. The objection to this interrogatory is sustained.

5. The objection to this interrogatory must be sustained because it calls upon the defendant, without any showing of its knowledge or ability to obtain information respecting the same, to disclose transactions between Porter and suppliers other than the defendant.

7. Subdivisions (a), (b) and (c) of this interrogatory call for information which, in my opinion, is not relevant to the issues in this case, hence the objections thereto are sustained. The objection to subdivision (d) is overruled. The objection to subdivision (e) is sustained because the interrogatory is not sufficiently specific but is too general.

8. I sustain the objections to this interrogatory and its subdivisions for reasons similar to those expressed in connection with interrogatory No. 5.

9. I consider this interrogatory to be in the same category as No. 8, and therefore objectionable.

10. With the understanding that this interrogatory shall be deemed to relate to "experimentation, study or investigation" made or caused to be made by the defendant, the

Messrs. Brach and Monigan  
January 2, 1958 - page 3  
Re: C-741-57

12. Subject to the elimination of reference to defendant's "subsidiaries" in this interrogatory, the objections thereto are overruled.

13. I overrule the objection to this interrogatory.

14. The objection to this interrogatory is sustained because I consider that instructions or warnings given by defendant or its subsidiaries to any of its employees respecting hazards of their employment is irrelevant to the issue of whether defendant violated its duty to the plaintiff, who I understand was not its employee.

16. The objection to this interrogatory is sustained because a responsive answer thereto would be irrelevant to the issues in this case, and because it is too broad.

17. The objection to this interrogatory is sustained for the same reasons stated respecting No. 16.

18. The objection to this interrogatory is sustained because the relationship between the parties to this action renders responsive answer thereto irrelevant.

19. The objection to this interrogatory is overruled.

22. Subdivision (c). The objection to this subdivision is sustained for the obvious reason that it is dependent upon the contingency that the defendant may desire to call the expert and because the defendant cannot be required to guarantee what will be the expert's opinion.

25 Subdivision (a). The objection to this interroga-

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE, )

Plaintiff, )

-vs-

Civil No. 741-57

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corpora- )  
tion of the State of )  
Delaware, )

ORDER

Defendant. )

The defendant having filed objections to interrogatories which were served by the plaintiff in the above matter, and the Court having considered the arguments of counsel, and having on January 2, 1958, filed a letter opinion stating its disposition of the objections and the reasons therefor, which is incorporated herein and made a part hereof, it is on this day of January, 1958,

ORDERED that interrogatories No. 5, 6, 7 (a) (b) (c) (e), 8, 9, 14, 16, 17, 18, 22 (c) and 26 be and they hereby are stricken; and

IT IS FURTHER ORDERED that the defendant be and it hereby is ordered to answer interrogatories No. 7 (d), 13, 19 and 25 (a); and

IT IS FURTHER ORDERED that the defendant be and it hereby is ordered to answer interrogatories No. 1, 11 and 12, as modified, to delete therefrom any references to the subsidiaries of the defendant except that such information will be furnished in the answer to interrogatory No. 1 in accordance with the agreement of counsel; and

IT IS FURTHER ORDERED that the defendant be and it

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE,

Plaintiff,

-vs-

JOHNS MANVILLE PRODUCTS  
CORPORATION, a corpora-  
tion of the State of  
Delaware,

Defendant.

Civil No. 741-57

STIPULATION AMENDING PLEADING

IT IS HEREBY STIPULATED AND AGREED by and between  
William L. Brach, Attorney for the Plaintiff, and Stryker, Tam  
& Horner, Attorneys for the Defendant, that the complaint in  
the above-entitled action be amended to allege, in addition to  
the other allegations therein, as follows:

"That the defendant was negligent in fail-  
ing to make any or adequate tests as to the proper  
type of mask or respirator to be used by those work-  
ing with its products and further to advise its users  
or their employees of the nature and type of masks  
and respirators to provide them with adequate pro-  
tection against respiratory diseases";

AND IT IS FURTHER STIPULATED AND AGREED that the  
answer of the defendant be amended to allege, in addition to  
the other defenses therein alleged, the following:

"It alleges that any claim for personal  
injuries resulting from the alleged negligence of  
the defendant is barred by the applicable provi-  
sions of the New Jersey Statute of Limitations  
(N.J.S. 2A:14-2)."

Dated: April 14, 1958

William L. Brach  
Attorney for Plaintiff

STRYKER, TAMS & HORNER

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE, )

Plaintiff, )

-vs-

Civil No. 741-57

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corpora- )  
tion of the State of )  
Delaware, )

ANSWERS TO INTERROGATORIES

Defendant. )

The defendant, Johns Manville Products Corporation answering the interrogatories propounded by the plaintiff, states on information and belief the following:

1. This defendant has no controlled subsidiaries nor did it sell any products to H. W. Porter & Co. This deponent has been informed that the following products manufactured by this defendant have been sold to H. W. Porter & Co. by Johns-Manville Sales Corporation during the years 1952 to 1956, inclusive:

Superex  
Moulded pipe covering and blocks and cement calcined diatomaceous silicate combined with asbestos fiber.

Thermobestos  
Moulded pipe covering and blocks hydrous calcium silicate combined with asbestos fiber.

Magnesia Pipe covering  
Moulded pipe covering and blocks and cement hydrated basic carbonate of magnesia bonded with asbestos fiber.

Asbesto-Sponge Felted  
Pipe insulation, sheets and blocks laminated asbestos fiber felts.

Asbestocel  
Pipe insulation sheets and blocks and flexible

Millboard  
Fire Felt  
D. C. Flexstone  
Firetard.  
Bonded asbestos fibers.

Insulating Cements 301, 302  
Asbestos fiber with various bonding materials.

2 & 3. The foregoing products have the percentage of  
asbestos fibers and diatomite as follows:

|                        | <u>Asbestos</u> | <u>Diatomite</u> |
|------------------------|-----------------|------------------|
| Magnesia Pipe covering | 5- 10           |                  |
| Superex                | 5- 10           | 60-70            |
| Thermobestos           | 10- 15          | 40-50            |
| Asbestos Sponge Felt   | 85- 95          |                  |
| Asbestocel             | 85- 95          |                  |
| D. C. Flexstone        | 60- 70          |                  |
| Fire Felt              | 90-100          |                  |
| Millboard              | 85- 95          |                  |
| Firetard               | 60- 70          |                  |
| Insulating Cements     |                 |                  |
| 301                    | 10- 15          | 10-15            |
| 302                    | 40- 50          | 20-30            |

4. No.

5. Stricken by order of Hon. Reynier J. Wortendyke,  
Jr. dated January 17, 1958.

6. Stricken by order of Hon. Reynier J. Wortendyke,  
Jr. dated January 17, 1958.

7. (a), (b), (c), (e) stricken by order of Hon.  
Reynier J. Wortendyke, Jr. dated January 17, 1958.

(d) No such research was conducted by this  
defendant.

8. Stricken by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958.

9. Stricken by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958.

10. (As modified by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958) See answer to No. 7 (d).

11. (As modified by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958) It was not.

12. (As modified by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958)

(a) This defendant supplies respirators to such of its employees as are engaged in manufacturing operations in which asbestos particles are used. The respirators are not limited to a particular brand, but any brand may be used which has the approval of the U. S. Bureau of Mines for use for pneumoconiosis producing dusts.

(b) Respirators have been used intermittently for approximately 25 years.

(c) See (a). The respirators have been used at various plants of this defendant.

(d) The use of respirators was adopted as a result of various Industrial Hygiene Foundation surveys.

(e) Approximately 25 years ago.

(f) This deponent has no knowledge of any case asbestosis ever being contracted by an applicator. Asbestosis was first contracted by an employee of this defendant at one of its plants in 1946.

13. This deponent has been informed that the produc

... which may contain

are of the requisite size and are inhaled in sufficient quantities are: Magnesia Pipe covering, Superex Block Insulation, Superex M Block Insulation and Superex Combination Pipe Insulation. We have no knowledge of any case of disease ever being developed by an applicator of the products listed above. We know from experience in our plants that workmen engaged in the formation of these products have developed such a disease. See answer to No. 12 (f).

14. Stricken by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958.

15. Since this defendant never received notice of any claim of asbestosis resulting to any persons other than our employees who were engaged in the manufacture of the products, we had no reason to issue any warnings, instructions or preventions to any other persons.

16, 17 and 18. Stricken by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958.

19. See answer to No. 15. Since this defendant never had any reason to believe its products were toxic or noxious, it has not taken any action to reduce or minimize such supposed hazards in its products.

20 and 21. This deponent does not know what facts may be regarded as relevant to this cause; however, the only persons now known to this deponent who have any knowledge concerning the matters set forth in the complaint or in these answers, in addition to himself, are:

Kenneth W. Smith, M.D., A. M. Schmidt, Frank Deeg, 22 East 40th Street, New York City; Wilbur H. Morris

22. (As modified by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958)

The name and address of persons, expert or otherwise, who may have knowledge of any facts in the case, in addition to those listed in the answer to the foregoing interrogatory No. 20 and No. 21, will be submitted to the plaintiff's attorney before trial.

23. To establish this defense this defendant will rely upon the nature of the products, the work performed, the knowledge and experience of the plaintiff and such facts as be developed upon further discovery procedures and upon the trial of the case.

24. See No. 23.

25. See No. 23.

26. Stricken by order of Hon. Reynier J. Wortendyke, Jr. dated January 17, 1958.

27. (a - e) This deponent has been told that the plaintiff worked for H. W. Porter & Co., but none of the other details of his employment is known.

(f) See answer to No. 1.

(g) See answer to No. 1.

Whether H. W. Porter purchased products other than those which this defendant manufactured this deponent does not know, but since the business of this defendant is highly competitive, it is quite probable that H. W. Porter used products of other manufacturers as well.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRANDE, )

Plaintiff, )

-vs-

Civil No. 741-57

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corpora- )  
tion of the State of )  
Delaware, )

ANSWERS TO SUPPLEMENTAL  
INTERROGATORIES

Defendant. )

The defendant, Johns Manville Products Corporation, answering the supplemental interrogatories propounded by the plaintiff, states on information and belief the following:

1. There have been no substantial changes.
2. No.
3. See No. 12 (a).

STATE OF NEW YORK :  
COUNTY OF NEW YORK : ss.:

I, Herbert Morton Ball of full age, being duly sworn according to law upon my oath, depose and say:

1. I am Secretary of Johns Manville Products Corporation and am duly authorized to execute this affidavit on its behalf.

2. I have read the foregoing answers to interrogatories and the interrogatories, and the answers are true to the best of my information and belief.

Herbert Morton Ball

Subscribed and sworn to  
before me this 21<sup>st</sup> day  
of April, 1958.

Robert H. Seberle

ROBERT H. SEBERLE  
NOTARY PUBLIC, STATE OF NEW YORK  
No. CO-3579150  
Qualified in Westchester County  
Certificates filed in the following offices:  
County Clerk - New York  
Commission Expires March 30, 1959

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRAND, )

Plaintiff, )

-vs-

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corporation )  
of the State of Delaware, )

Defendant. )

Civil No. 741-57

ANSWERS TO INTERROGATORIES

OCT 30 1958

The plaintiff, Frederick Le Grand, answering the interrogatories propounded by the defendant, states on information and belief the following:

1. Asbestos particles, silica<sup>and silicate</sup>/particles.

See defendant's answers to interrogatories number 2 and 3 which are incorporated herein. Also Fibrocel C Pipe Insulation and Fibrocel VS Pipe Insulation, 352 Cement, 450 Cement, Super 66 Cement.

2. Materials containing particles of certain size ranges cause <sup>as u</sup>pneumoconiosis after continued exposure to these particles in sufficient concentration

3. Defendant should have made the dangers of exposure known to its consumers, users, distributors, and workmen, whose activities call for repeated and continual

sufficient warning and information on the proper method of handling its products and the types and use of protective devices, including <sup>proper ventilation</sup> ~~ventilators~~, masks and respirators which should be utilized with its products and defendant should have taken steps to create an awareness among users of the latent dangers inherent in its products as well as a sufficient knowledge on how to protect <sup>the user</sup> in the use thereof.

4. For failing to provide <sup>adequate</sup> warning and information on and in the packaging of its products containing dangerous asbestos and silica <sup>and silicae</sup> particles.

5. Impossible to answer as the incidence of asbestosis and silicosis run into many thousands and plaintiff does not have personal knowledge of all such cases. However, plaintiff knows of many instances of asbestosis in the Local to which plaintiff belonged. Plaintiff is reluctant to submit names and addresses because it is believed that this may effect the employability of the men having this disease and their livelihood.

6. Purchases were made by defendant's employer.

7. See 6.

8. ~~Asbestosis~~: Pneumoconiosis including asbestosis and silicosis,

9. Diagnosis was definitely established

10. Dr. Rozsa, Nov, 1954, Feb., 1956,  
837 South 11th Street, Newark, New Jersey. Dr. Samuel  
Einhorn, Dr. Harvey Einhorn, Nov., 1954 to date.

11. Dr. Emanuel Klosk February, 1956 to  
August, 1956, Dr. Harold Goldberg, January, 1955 to February,  
1956. Dr. Klosk's address is 46 Lyons Avenue, Newark, New  
Jersey. Dr. Goldberg's address is 814 South 10th Street,  
Newark 8, New Jersey.

12. (a) Plaintiff collapsed November 9,  
1954, thereafter resuming work until February 5, 1956,  
where after a second collapse he was hospitalized for a  
lung condition.

(b) Plaintiff suffered heart failure  
diagnosed as being caused by an asbestosis condition which  
crippled his lungs, called cor pulmonale. Plaintiff's  
lung condition ultimately manifested itself though his entire  
physical condition.

(c) As set forth previously. Beth  
Israel Hospital, 201 Lyons Avenue, Newark, New Jersey.

(d) H. W. Porter & Co., Travelers  
Insurance Co..

(e) See workmen's compensation file in  
defendant attorney's possession.

13. Plaintiff's medical expenses have been

14. All expenses paid by workmen's compensation carrier.

15. (a) H. W. Porter & Co., 825 Frelinghuysen Avenue, Newark, New Jersey.

(b) Asbestos worker and mechanic.

(c) \$3.75 an hour.

(d) \$270.00

(e) Nov. 20, 1954 to January 2, 1955, Feb. 18, 1955 to June 17, 1956, Sept. 15, 1956 to Feb. 21, 1957.

(f) \$3.75 an hour for each date in (e) that he didn't work.

16. Plaintiff, while objecting to the relevancy of this question says he was employed by Armstrong Cork Co. 3/3/57 - 9/27/57 earnings \$1,032.30. Matthew-Balich Corp. for month of October, 1957, 10/7/57 to 6/2/58, to June, 1958 \$3,270.20.

17. ~~xxxxxx29xx1954xxxxxxoughxxxxJanuaryxx2xx1955~~  
~~139x~~

September 16, 1956 through February 21, 1957.

18. Both parties have full record of this and plaintiff will stipulate workmen's compensation record to the extent same is relevant and material.

19. Knowledge of facts pertaining to plaintiff's exposure:

All the persons who worked with plaintiff through his many years of employment with H. W. Porter & Co. are familiar with the actual work which plaintiff did, the materials he handled, the extent of his exposure to asbestos dust, etc. Supervisory employees of H. W. Porter H& Co., such as Mr. Morris and Mr. Stevens, also are aware of these facts. Paul Springle, business agent of plaintiff's local, c/o International Association of Heat and Frost Insulators and Asbestos Workers, Local 32 A F of L, 19th Avenue, Newark, New Jersey.

Knowledge of facts pertaining to plaintiff's condition are known to plaintiff's immediate family, his wife and daughter, doctors mentioned previously, all the friends, acquaintances and fellow employees who have work with and near~~XXX~~ the plaintiff.

By reason of the vagueness of the question, it is impossible for plaintiff to list the names and addresses of all persons falling into the above categories.

20. Besides the three doctors previously

20. Continued

Dr. Roy M. Allen, 120 Personette Avenue,  
Verona, New Jersey, microscopist and mineralogist, and  
Mr. A. Wallach, Industrial Hygiene Services, Bergen Street,  
Newark, New Jersey.

Winchell, Industrial Engineer, 297 Euclid Avenue, Hackensack, New Jersey, ~~Dr. Allen Mierow~~, mineralogist.

21. Defendant should have conducted tests on its materials ~~xx~~ to develop means of curtailing release of toxic dusts and further on means of protection against such dust by persons compelled to handle defendants products on a regular basis, and further means of warning users of dangerous concentrations of such dust.

22. Plaintiff makes no such claim.

23. Yes.

24. This information is available only through H. W. Porter & Co. and respective counsel stipulated at deposition of H. W. Porter & Co. officials that this information would be supplied to both of them through the cooperation of H. W. Porter & Co.

25. Plaintiff asserts prospective loss of income based on earnings as set forth in interrogatory number 15 over his projected life expectancy, plaintiff anticipates continuing medical expenses, and plaintiff will claim further damages for pain and suffering, past, present and anticipated in the future as well as limitation of his activities and decrease in his normal life expectancy arising out of the disabilities from contracting asbestosis as well as the effects of this disease.

STATE OF NEW JERSEY )  
 ) SS  
COUNTY OF ESSEX )

FREDERICK LE GRAND of full age, being duly sworn according to law upon his oath deposes and says:

1. I am the Plaintiff in this matter.
2. I have read the foregoing answers to interrogatories and the interrogatories, and the answers are true to the best of my information and belief.

Sworn and Subscribed to



FREDERICK LE GRAND

before me this 2nd day  
October  
of ~~September~~ 1958.



JANET E. MCCRANE  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Oct. 4, 1962

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRAND, )

Plaintiff, )

Civil No. 741-57

-vs- )

ANSWERING AFFIDAVIT

JOHNS MANVILLE PRODUCTS )

CORPORATION, a corporation  
of the State of Delaware, )

Defendant. )

STATE OF NEW JERSEY )  
 ) SS  
COUNTY OF ESSEX )

Samuel Einhorn, of full age, being duly  
sworn according to law, upon his oath deposes and says:

1. I am a licensed medical practitioner  
of the State of New Jersey specializing in internal medicine.

2. On November 10th, 1954, I examined and  
treated the plaintiff, Frederick Le Grand, and have been the  
treating doctor of Frederick Le Grand since that date to  
and through the present time.

3. At that time I treated this patient for  
heart failure, after fluoroscopic examination and receipt of  
x-ray reports from Dr. Stephen Rozsa I arrived at the

4. On January 19th, 1955, I sent the patient to Dr. Harold Goldberg to evaluate the cardiac component of the illness.

5. Dr. Goldberg, at that time, confirmed his own diagnosis to the effect that his condition appeared to be pulmonary in nature. It was recommended that the patient be kept on digitalis so the cardiac factor could be further evaluated.

6. At no time prior to the second attack in February, 1956, did I conclude that the patient was suffering from asbestosis nor any other condition arising from an exposure in his employment nor was I advised by Dr. Goldberg or any other person that such was the patient's condition. The facts available as of that time were entirely insufficient to justify any such diagnosis and the exact nature of the patient's illness was not ascertained or diagnosed until his hospitalization in 1956, at which time there were further x-rays and laboratory tests, including specifically the examination of the patient's sputum for asbestos particles. Such particles were found in his sputum on February 25th, 1956, when a diagnosis of asbestosis was first established with a reasonable degree of accuracy.

7. The terms "pulmonary disease" or "pulmonary congestion" or "pulmonary fibrosis" do not of

a cause not due to exposure to materials used in plaintiff's employment. "Pulmonary disease" or congestion or fibrosis can be due to many causes not arising from the handling of materials used in plaintiff's employment. It was not until the specific diagnosis of asbestosis was made that any causal connection with plaintiff's employment was indicated, and I could not and did not advise plaintiff that his condition was due to such exposure until that time.

Sworn and Subscribed

to before me this 7<sup>th</sup>

day of November, 1958.

*Samuel Einhorn*  
Samuel Einhorn

*Samuel Einhorn*

NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES SEP 13, 1962

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY .

FREDERICK LE GRAND, )

Plaintiff, )

-vs- )

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corporation )  
of the State of Delaware, )

Defendant. )

Civil No. 741-57

ANSWERING AFFIDAVIT

FILED

1955

205 31

STATE OF NEW JERSEY )  
COUNTY OF ESSEX ) SS

Harold H. Goldberg, of full age, being  
duly sworn according to law, upon his oath deposes and  
says:

1. I am a licensed medical practitioner  
of the State of New Jersey specializing in cardiovascular  
diseases.

2. At the request of Dr. Samuel Einhorn,  
I examined his patient, Frederick Le Grand, the plaintiff  
herein, on January 26th, 1955, at which time he specifically  
requested my opinion as to whether Mr. Le Grand's illness  
had a cardiac component.

digitilizing the patient and determining whether the pulmonary cloudiness disappeared. I did not at that time nor at any time before February, 1956, communicate to Dr. Einhorn any diagnosis or impression that Mr. Le Grand was suffering from asbestosis or any other condition arising from an exposure to materials used in his employment.

4. My attention has been called to the abstract from page 143 of the transcript of my testimony before the Division of Workmen's Compensation attached to defendants notice of motion. I note a reference in the transcript to some writing from which I read. To my best recollection this was from a letter I wrote to William L. Brach, Esq., plaintiff's attorney, on April 2nd, 1957. The letter was compiled from results of visits by Mr. Le Grand not only in 1955 but also in February, 1956, when I again saw the patient. In the actual letter, I merely stated it to be "my impression" in January, 1955, that the plaintiff was suffering from pneumoconiosis resulting from handling asbestos material, and I did not at that time communicate this impression to either the patient or Dr. Einhorn. The actual diagnosis referred to in the testimony was not made until I had the benefit of all of the information available to me, including the laboratory tests, x-rays and sputum tests made in 1956.

assigned to me, namely, to evaluate the cardiac component of the patient's illness.

6. I may have had some impression as early as 1955 that the patient was suffering from pneumoconiosis in April, 1957 and I so advised William L. Brach, Esq.,/but I did not provide Dr. Einhorn nor Frederick Le Grand with any such diagnosis as there was insufficient objective data to warrant a definitive diagnosis as of that date.

Sworn and Subscribed

to before me this

day of November, 1958.

Harold H. Goldberg  
Harold H. Goldberg

Harold H. Hochberg

NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES SEPT. 1, 1960

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

FREDERICK LE GRAND, )

Plaintiff, )

Civil No. 741-57

-vs- )

AFFIDAVIT

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corporation )  
of the State of Delaware, )

Defendant. )

FILED

NOV 10 1958

AT 265 P.M.  
MICHAEL KILPATRICK, J.

STATE OF NEW JERSEY )

) SS

COUNTY OF ESSEX )

Frederick Le Grand, of full age, being duly sworn according to law, upon his oath deposes and says:

1. He has been in good health all of his life and has had no unusual illnesses until he suffered an attack at home on November 10th, 1954.

2. Following that attack he was treated by Dr. Einhorn until he was able to go back to work on January 5th, 1955.

3. At the time of this attack the only diagnosis of which he was aware was that he had heart trouble and he believed that this was the sole and only cause of his illness.

numerous tests and x-rays; that he was advised by his doctor that he was suffering from an occupational disease, namely, asbestosis.

5. He filed for Workmen's Compensation in May, 1955, and he did not file for Workmen's Compensation after the first illness because he was completely unaware of any relationship between his condition and any disease arising out of employment until the final diagnosis was made in February, 1956.

Sworn and Subscribed to

Frederick Le Grand

Before me this 22nd day

of October, 1956.

Janet E. McGrane

Janet E. McGrane

JANET E. MCGRANE  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Oct. 4, 1962

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FREDERICK LE GRAND, )

Plaintiff, )

-vs- )

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corporation )  
of the State of Delaware, )

Defendant. )

Civil No. 741-57 \*

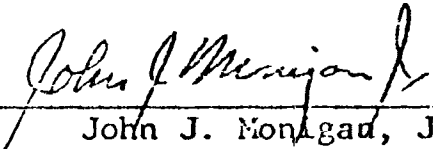
STIPULATION AND ORDER

It is hereby stipulated by and between the  
parties hereto that the above captioned matter be  
dismissed with prejudice and without costs.

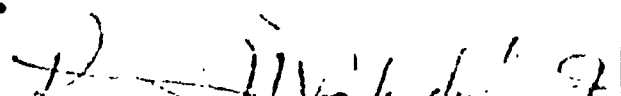
  
\_\_\_\_\_  
William L. Brach  
ATTORNEY FOR PLAINTIFF

STRYKER, TAMS & HORNER

By

  
\_\_\_\_\_  
John J. Monagan, Jr.  
ATTORNEY FOR DEFENDANT

It is so ordered.



UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FREDERICK LE GRAND, )

Plaintiff, )

Civil No. 741-57

-vs- )

ORDER

JOHNS MANVILLE PRODUCTS )  
CORPORATION, a corporation  
of the State of Delaware, )

Defendant. )

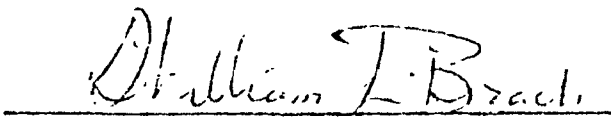
This matter being opened to the Court by  
John J. Monigan, Jr., Esq, appearing for Stryker, Tams &  
Horner, Esqs., attorneys for defendant, Johns Manville  
Products Corporation, and William L. Brach, Esq. appearing  
for the plaintiff, Frederick Le Grand, and counsel  
stipulating in open Court that the second count of  
plaintiff's complaint shall be dismissed without costs  
and the Court having heard the argument of counsel and  
having reviewed the proof submitted on the motion of the  
defendant to dismiss the first count of plaintiff's com-  
plaint, and for good cause appearing, it is, on this 19<sup>th</sup>  
day of November, 1958,

ORDERED and adjudged that the second count of  
plaintiff's complaint be, and hereby is dismissed without

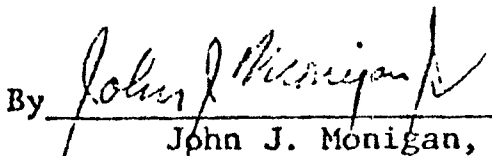
IT IS FURTHER ORDERED and adjudged that defendant's motion for a summary judgment on the first count of plaintiff's complaint be, and hereby is denied, without costs.

  
Reynier J. Wortendyke, Jr.  
U.S.D.J.

form  
We hereby consent to the entry of the foregoing  
ORDER this 14<sup>th</sup> day of November, 1958.

  
William L. Brach  
Attorney for Plaintiff

STRYKER, TAMS & HORNER

By   
John J. Monigan, Jr.  
Attorneys for Defendant

THE COURT: The terms of your agreement may be stated on the record.

MR. MONIGAN: If your Honor please, counsel have conferred in this matter, and it has been determined to settle the matter now on the basis of the payment to the plaintiff of \$35,000. The payment is made upon the usual submission of the closing papers, stipulation of dismissal of the present action with prejudice, and a general release from the plaintiff to the defendant. It also involves the fact that there is a Workmens' Compensation matter which was pending between the plaintiff here and the H. W. Porter Company, as a result of which a judgment was entered in the Workmens' Compensation Division of New Jersey, Department of Labor, by the terms of which certain medical payments were made, temporary disability payments awarded and a permanent disability of seventy-five percent of total.

The parties have agreed that out of this thirty-five thousand dollars, which will be paid in settlement of this matter, the H. W. Porter Company, as employer of the plaintiff

Travelers Insurance Company and Travelers Indemnity Company, no claim will be asserted by Travelers to the thirty-five thousand dollars. There will be no claim asserted by the plaintiff against H. W. Porter Company, or its Workmens' Compensation carrier until the exhaustion of the payments of the thirty-five thousand dollars are made.

The obligation of Porter and Travelers Insurance Company, which is imposed upon it by reason of the Statute of New Jersey will continue subject to such credits as it is entitled to have by reason of the Statute in such case may provide.

THE COURT: Does that embody your understanding, Mr. Brach?

MR. BRACH: The only addition I think the record might show is that all expenses incurred, whether paid or not, up to the date of this settlement, will be paid by the Workmens' Compensation carrier, and on those items no lien will be asserted against the recovery of thirty-five thousand dollars.

MR. MONIGAN: That is so.

MR. BRACH: And that the oxygen respirator equipment

741-57

LE GRAND V. JIM

SUMMONS + COMP. FILED 7-17-57

S' TIP. <sup>RET PARTIES</sup> + ORDER DISMISSING  
COMP. W / PRET. 4-6-57

ASBESTOS + OTHER FIBERS, DUST + PARTICLES  
PARTICULARLY BUT NOT LIMITED TO

DISEASES INCL. B.N. L TO  
PULMONARY HYPEROSTOSIS  
FIBROSIS + SILICOSIS

EMPLOYED BY H.W. PORTER  
SUFFERED FOR 35,000