

FILE NAME: Early Asbestos Damage Suits (EADS)

DATE: 1980

DOC#: EADS021

DOCUMENT DESCRIPTION: Documents from Case of Bob Alan Speake

1
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8 Attorneys for Plaintiff

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF CONTRA COSTA

11 BOB ALAN SPEAKE,

12 Plaintiff,

NO. 160-993

13 vs.

REQUEST FOR
ADMISSIONS

14 JOHN-MANVILLE CORPORATION,
15 et al.,
16 Defendants.

17 TO: DEFENDANTS ABOVE NAMED AND TO THEIR ATTORNEYS OF RECORD:

18 Plaintiff herein requests that you answer the following Request
19 for Admissions within thirty (30) days of the service of this Re-
20 quest for Admissions on your attorneys. Each of the matters of
21 which an admission is requested shall be deemed admitted unless
22 denied within that time. A denial shall fairly meet the substance
23 of the requested admission. This request is made pursuant to
24 CCP 2033.

25 DATED: October 23, 1980

26 LAW OFFICES OF GEORGE W. KILBOURNE
27 STEVEN KAZAN

28 By 757 George W. Kilbourne
GEORGE W. KILBOURNE

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TO: JOHNS-MANVILLE CORPORATION, JOHNS-MANVILLE PRODUCTS CORPORATION-
TION and JOHNS-MANVILLE SALES CORPORATION;

With respect to the following requests for admission, reference is made to the public records of the County of Lake, State of Illinois contained in the Clerk's Office of the Circuit Court of Lake County, Illinois. Reference is also made to your own records and to the records of your attorneys of record in the proceedings, Heth & Lister, whose address on May 3, 1935 was 1 North LaSalle Street, Chicago, Illinois.

1. Suit was instituted by one William Norwood against "Johns-Manville, Inc."

Response:

a. The said suit bears action #34733.

Response:

b. Such suit was instituted in the Circuit Court of Lake County, Illinois.

Response:

c. Such suit was filed March 23, 1935.

Response:

d. Such suit was removed to the U. S. District Court, Northern District of Illinois, Eastern Division.

Response:

e. Such suit bears action #44474 after removal.

Response:

f. Appearance was made in such suit by Johns-Manville Products Corporation.

Response:

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6. Johns-Manville Products Corporation was represented in such suit by the law firm of Heth & Lister.

Response:

h. In said suit, the defendant moved to dismiss the said suit.

Response:

i. The ground asserted for dismissal was that Section 1 of the Occupational Disease Act and Section 12 and 13 of the Health, Safety and Comfort Act of the State of Illinois were in violation of the Fourteenth Amendment to the Constitution of the United States and Section 2 of Article II and Article III of the Constitution of the State of Illinois.

Response:

j. The notarized signature of John J. Flynn appears on the foregoing motion in the capacity of one of the attorneys of the defendant.

Response:

k. The complaint concerns acts which occurred on or before March 15, 1934.

Response:

l. The foregoing suit was for occupational disease allegedly caused by exposure to dust at plaintiff's place of employment.

Response:

m. From 1927 to 1934, William Norwood was an employee of Johns-Manville Products Corporation.

Response:

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2 n. From 1927 to 1934, Johns-Manville Products Cor-
3 poration operated a plant in Waukegan, Illinois.
4

5 Response:

6 o. William Norwood claimed to have contracted, among
7 other things, pneumoconiosis during his employment by
8 defendant.

9 Response:

10 2. Suit was instituted in the Circuit Court of Lake
11 County, Illinois against Johns-Manville Products Corporation or
12 Johns-Manville Corporation by each of the following named plaintiffs:

13 a. Clarence Jacobs, Action #34834;

14 Response:

15 b. Walter Canedy, Action #34835;

16 Response:

17 c. David Irons, Action #34836;

18 Response:

19 d. Foster Pool, Action #34837;

20 Response:

21 e. Frank Bankhead, Action #34838;

22 Response:

23 f. William Cunningham, Action #34839;

24 Response:

25 g. Lester Nixon, Action #34840;

26 Response:

27 h. Alonso Peele, Action #34841;

28 Response:

i. Dave Clark, Action #34842;

Response:

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3 j. William Mitchell, Action #34843;

4 Response:

5 k. Floyd Dixon, Action #34844;

6 Response:

7 l. Joe Bennett, Action #34845;

8 Response:

9 m. Edward Norwood, Action #34846;

10 Response:

11 n. James Simmons, Action #34847;

12 Response:

13 o. Clarence Gaines, Action #34848;

14 Response:

15 p. James H. Nye, Action #34850;

16 Response:

17 q. Steve Ruthkowski, Action #34851;

18 Response:

19 r. John Tillis, Action #34852;

20 Response:

21 s. Clyde Barney, Action #34853;

22 Response:

23 t. Andy Belcher, Action #34857;

24 Response:

25 u. Rufus Worthington, Action #34858;

26 Response:

27 v. Estella Hacker, Action #34859;

28 Response:

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3. In each of the suits listed in #2 herein, defendants were represented by Heth & Lister, attorneys at law.

Response:

4. In each of the suits listed in #2 herein, each of the plaintiffs was represented by attorneys Leo M. Tarpey, Drake H. Berg and Lloyd T. Bailey.

Response:

5. Each of the suits listed in #2 herein was removed to the federal court.

Response:

6. With respect to the suit of Andy Belcher, #34857, each of the following statements is true:

a. After removal to the federal Court, the notation bore the number "44494" in the District Court of the United States, Northern District of Illinois, Eastern Division.

Response:

b. The defendant moved the dismissal of the said suit,

Response:

c. The ground relied on for dismissal was that the action was barred by the provisions of the Illinois Workmen's Compensation Act.

Response:

d. Andy Belcher was an employee of the defendant from 1929 to 1934.

Response:

e. Plaintiff alleged injury due to handling asbestos, silica, finely powdered rock and stone and other dusty

1
2 substances.

3 Response:

4 f. Employment of plaintiff was in its Waukegan,
5 Illinois plant.

6 Response:

7 7. With respect to the suit of Estella Hacker, #34859, each
8 of the following statements is true:

9 a. After removal to the federal court, the action
10 bore the number "44473" in the District Court of the
11 United States, Northern District of Illinois, Eastern
12 Division.

13 Response:

14 b. The defendant Johns-Manville Corporation moved
15 the dismissal of the said suit.

16 Response:

17 c. The ground relied on for dismissal was that the
18 action was barred by the provisions of the Illinois
19 Workmen's Compensation Act.

20 Response:

21 d. Estella Hacker was an employee of either Johns-
22 Manville Corporation or Johns-Manville Products Corpor-
23 ation from 1922 to 1934.

24 Response:

25 e. Plaintiff alleged injury due to exposure to dust
26 including asbestos dust.

27 Response:

28 8. Suit was instituted by one Fred Seiffert against Johns-
Manville Products Corporation.

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Response:

a. The said suit bears action #34984;

Response:

b. Such suit was instituted in the Circuit Court

of Lake County, Illinois;

Response:

c. Such suit was filed May 9, 1935;

Response:

d. Such suit was removed to the U. S. District

Court, Northern District of Illinois, Eastern Division;

Response:

e. Such suit bears action #44963 after removal;

Response:

f. Appearance was made in such suit by John-

nanville Products Corporation.

Response:

g. Defendant was represented in said suit by the

law firm of Keith & Lister.

Response:

h. In said suit, the defendant moved to dismiss

the said suit.

Response:

i. The ground relied on for dismissal was the same

as stated in #11 above.

Response:

j. The notarized signature of John J. Flynn appears on

the foregoing motion in the capacity of one of the attorneys

of the defendant.

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2 Response:

3 k. The complaint concerns acts which occurred on or
4 before July 22, 1933;

5 Response:

6 l. The foregoing suit was for occupational disease
7 allegedly caused by exposure to dust at plaintiff's place
8 of employment.

9 Response:

10 m. From 1926 to 1933 Fred Seiffert was an employee
11 of Johns-Manville Products Corporation.

12 Response:

13 n. Fred Seiffert claimed to have contracted, among
14 other things, pneumoconiosis during his employment by
15 defendant.

16 Response:

17 With respect to the following requests for admission, refer-
18 ence is made to the public records of the County of Cook, State of
19 Illinois, contained in the Clerk's Office of the Superior Court
20 of Cook County, Illinois. Reference is also made to your own
21 records and to the records of your attorneys of record in the
22 proceedings Heth & Lister.

23 9. Suit was instituted against either or both Johns-Manville
24 Corporation and Johns-Manville Products Corporation by each of the
25 following named plaintiffs:

26 a. George Ruskell, Action #34C 354;

27 Response:

28 b. Nick Bojko, Action #34S 2959;

Response:

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c. Pearl H. Barenklau, Action #348 50591

Response:

d. Charles Baroum, Action #348 73421

Response:

e. Frank Brown, Action #348 8265.

Response:

10. In each of the suits listed in #9 herein, defendants were represented by Keith & Lister, attorneys at law.

Response:

11. Plaintiff's Baroum, Bojko and Brown, listed in #9

herein, were represented by attorney Sol Andrews.

Response:

12. Plaintiff's Hushell and Barenklau listed in #9 herein,

were represented by attorneys Johnson, Pense & Brandell.

Response:

with respect to the following requests for admission, referred to the public records of the U. S. District Court, Northern District of Illinois, Eastern Division contained in the Clerk's Office of the said Court.

13. On December 27, 1934, suits of the following named plaintiffs were pending against defendant Johns-Manville Corporation or Johns-Manville Products Corporation in the U.S. District Court referred to above:

a. George Hushell, Action #43,2181

Response:

b. Nick Bojko, Action #43,3631

Response:

c. Tony Takobich, Action #43,3641

Response:

of the suits listed in #13 above.

19. Defendants agreed that the Perez case was typical of all

Response:

18. The motion was argued in the Perez case (#43,672).

Response:

defendants' motion to dismiss each of the said suits.

17. On December 27, 1934, the U.S. District Court denied

Response:

dismiss.

16. Each of the suits listed in #13 above was for occupational

Response:

insurance of the defendants.

15. Removal of the suits listed in #9 above was at the

Response:

as shown by the duplication of names in #13 above.

14. The suits listed in #9 above were removed to Federal court,

Response:

h. Luis Perez, Action #43,672;

Response:

g. Alex Taraban, Action #43,635;

Response:

f. Frank Brown, Action #43,633;

Response:

e. Charles Barounas, Action #43,500;

Response:

d. Pearl H. Barenklum, Action #43,448;

Response:

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2 20. The basis of the motion to dismiss was lack of jurisdic-
3 tion.

4 Response:

5 21. Lack of jurisdiction was asserted by defendants because
6 Johns-Manville Products Corporation was the employer of each of
7 the plaintiffs listed in #13 above.

8 Response:

9 22. In the complaint in the Perez case referred to in #13
10 above, it is alleged:

11 a. On August 13, 1933, plaintiff was employed by defen-
12 dant Johns-Manville Products Corporation;

13 Response:

14 b. On his job, plaintiff breathed large quantities of
15 asbestos dust, cement dust and other dusts;

16 Response:

17 c. As a result of breathing dust, plaintiff was
18 caused to contract an occupational disease known as
19 asbestosis.

20 Response:

21 23. The plaintiff moved to advance the Perez case for trial.

22 Response:

23 24. To support the motion to advance the Perez case for
24 trial plaintiff obtained the affidavits of Dr. Clement, W.K. Briggs
25 and Dr. J. H. Carpenter.

26 Response:

27 25. Copies of the affidavits referred to in #24 were served
28 on defendants' attorneys.

Response:

Response:

dust created by asbestos and sand;

c. The basis of Plaintiff's claim was included exposure to

Response:

John-Manville Corporation;

b. Plaintiff erroneously alleged his employment by

Response:

Products Corporation;

a. Frank Brown was a former employee of John-Manville

31. In the Frank Brown case referred to in #13 above:

Response:

7, 1935.

the jurat therein that it was subscribed and sworn to on January

30. Each of the foregoing referred to affidavits shows by

Response:

was caused by "inhalation of asbestos and cement dust."

29. Dr. Carpenter stated under oath that Plaintiff's condition

Response:

asbestosis."

Peter case was suffering from "third stage of pneumoconiosis, and

28. Dr. Carpenter stated under oath that Plaintiff in the

Response:

asbestosis (sic) and cement dust."

"was contracted by reason of contact with and inhalation of

27. Dr. Briggs stated under oath that Plaintiff's condition

Response:

Peter case was suffering from "pneumoconiosis and asbestosis".

26. Dr. Briggs stated under oath that Plaintiff in the

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d. Defendant asserted an affirmative defense to the effect that plaintiff's remedy was under the Occupational Disease Act of the State of Illinois.

Response:

32. In the Sarounas case referred to in #13 above, plaintiff alleged that he had contracted pneumoconiosis during his employment.

Response:

33. Plaintiff Sarounas was employed by Johns-Manville Products Corporation prior to January 26, 1934.

Response:

34. Plaintiff Sarounas alleged, among other things that defendant

" . . . wilfully failed to provide reasonable and approved devices, methods or means for the prevention of said disease. . . ."

Response:

35. Johns-Manville Corporation filed an answer to the Sarounas complaint.

Response:

36. In the Barankian case referred to in #13 above, plaintiff alleged that she had contracted "pneumoconiosis," among other things, including "asbestosis".

Response:

37. Defendant Johns-Manville Products Corporation, through its attorneys Neth & Lister, moved the Court to remove the Barankian case to federal court on May 1, 1934.

Response:

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2 38. The Petition for Removal in the Barenklau case was veri-
3 fied by John J. Flynn, a member of the law firm of Heth & Lister.

4 Response:

5 39. A \$500 bond was posted by defendants in the Barenklau
6 case, with Royal Indemnity Company as surety.

7 Response:

8 40. The bond referred to in #39 was signed on behalf of de-
9 fendants by Vandiver Brown.

10 Response:

11 41. The bond referred to in #39 above was signed on May
12 16, 1934.

13 Response:

14 42. On May 16, 1934, Vandiver Brown was Secretary of Johns-
15 Manville Products Corporation and Assistant Secretary of Johns-
16 Manville Sales Corporation.

17 Response:

18 43. Vandiver Brown's signature was notarized by Paulita
19 Andrews, a Notary Public of the State of New York.

20 Response:

21 44. The Barenklau case was removed to federal court.

22 Response:

23 45. In its answer to the complaint in the Barenklau case,
24 defendant Johns-Manville Products Corporation admitted

25 ". . . it owned and operated a factory for the manufacture
26 of building materials in Mankato, Illinois, and admits
27 that plaintiff was employed in said factory in various
28 jobs."

Response:

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Response:

Workman Plant.

alleges employment in the John-Manville Products Corporation

53. The complaint in the Hartley case referred to in #13 above

Response:

Illinois Occupational Disease Act.

to the effect that plaintiff's exclusive remedy was under the

52. John-Manville Corporation asserted affirmative defenses

Response:

employer in the Bolin case.

51. John-Manville Products Corporation was the plaintiff's

Response:

employer in the Bolin case.

50. John-Manville Corporation was not the plaintiff's

Response:

Bolin case.

49. John-Manville Corporation denied employment in the

Response:

No case.

48. John-Manville Corporation was the defendant in the Bol-

Response:

stated disease known as "pneumoconiosis."

alleges that as a result of his exposure he contracted an occupa-

47. The complaint in the Bolin case referred to in #13 above

Response:

alleged exposure to asbestos in addition to other materials.

46. The complaint in the Bolin case referred to in #13 above

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3 54. In its answer to the complaint, it is denied in the Rus-
4 sell case that

5 "... defendants, or either of them, owned or operated
6 the factory alleged. . . ."

7 Response:

8 55. The assertion set out in #54 was in fact in error.

9 Response:

10 56. Johns-Manville Products Corporation in fact owned and
11 operated the plant referred to in the Rusell complaint.

12 Response:

13 57. In the Rusell complaint, plaintiff claims to have
14 contracted an occupational disease known as "silicosis."

15 Response:

16 58. Complaints in each of the cases listed in #2 and #13
17 above were served on Johns-Manville Corporation are one its
18 wholly owned subsidiaries.

19 Response:

20 59. Appearance by the named defendant was made in each of
21 the suits listed in #2 and #13 above.

22 Response:

23 60. The defendants and each of them had notice of the exist-
24 ence of each of the suits by reason of their receipt of a copy of
25 the complaint.

26 Response:

27 61. Each of the suits referred to herein was for an occu-
28 pational disease.

62. Each of the suits referred to herein was by an employee
of Johns-Manville Products Corporation.

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2 Response:

3 63. Each of the suits referred to herein claimed that the
4 plaintiff in each suit had contracted an occupational disease during
5 the course of his employment.
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7 Response:

8 64. Defendants and each of them knew of the alleged connection
9 between the work exposure to dust in each of the suits and the
10 asserted occupational disease.
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12 Response:
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VERIFICATION (Standard) CCP 446, 2015.5

1 I declare that:

2 I am the in the above entitled action; I have read the foregoing

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4 and know the contents thereof; the same is true of my own knowledge, except as to those matters which are therein stated
5 upon my information or belief, and as to those matters I believe it to be true.

6
7 I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on

8 at , California.
(DATE) (PLACE)

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10
(TYPE OR PRINT NAME)

SIGNATURE

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12 PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5

13 I declare that:

14 I am (a resident of/employed in) the county of **Contra Costa** , California.
(COUNTY WHERE MAILING OCCURRED)

15 I am over the age of eighteen years and not a party to the within cause; my (business/residence) address is:

16 **70 Doray Drive, Suite 20, Pleasant Hill, California, 94523**

17 On **October 23, 1980** , I served the within **Request for Admissions**
(DATE)

18 on the **Attorneys of Record**

19 in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the

20 **Pleasant Hill, California** addressed as follows:
United States mail at

21 **Arthur Jay Moore; MOORE, CLIFFORD, WOLFE, LARSON & TRUTNER**
201 19th Street; Oakland, CA 94612

22 **CRADDICK & CAMBLAND; 1801 N. California Blvd., Walnut Creek,**
CA 94596

23 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on

24 **October 23, 1980** , at **Pleasant Hill** , California.
(DATE) (PLACE)

25 **Michelle McAvoy**

26 **/s/ Michelle McAvoy**
SIGNATURE