

Non Memorandum

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA.

JOSEPH HOMA,
Plaintiff,

vs.

No. 8726 July Term, 1937.

WESTINGHOUSE ELECTRIC AND
MANUFACTURING COMPANY, a
corporation,
Defendant.

PLAINTIFF'S
EXHIBIT
WH-345

STATEMENT OF CLAIM

Plaintiff, Joseph Homa, claims damages of the defendant, Westinghouse Electric and Manufacturing Company, a corporation, in the sum of Fifty thousand (\$50,000.00) Dollars upon a cause of action whereof the following is a statement:

FIRST: Plaintiff, Joseph Homa, is and at the time of the grievances hereinafter complained of was a resident of the Borough of East Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania.

SECOND: Defendant, Westinghouse Electric and Manufacturing Company, a corporation, was at the time of the grievances hereinafter complained of and still is a corporation duly authorized to operate and conduct business in the Commonwealth of Pennsylvania.

THIRD: Defendant corporation, from 1918 to 1936, and for a considerable period of time prior and subsequent thereto, owned and maintained, and through its agents, servants and employees, operated a plant or factory equipped with certain machinery designed for manufacturing various kinds of brass, steel, copper and other such products, and various kinds of other

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metals and manufacturing products, and for the purpose of on said business maintained and operated through its agents, servants and employees, machines, furnaces and other various kinds of equipment.

FOURTH: Plaintiff entered the employ of said defendant corporation in August, 1918, as a moulder, and was so employed in the brass foundry from August, 1918 to about 1926, when plaintiff was granted a leave of absence by the defendant corporation in order to attempt to effect a cure of a certain lung condition, a disease contracted by plaintiff while working as a moulder in the said brass foundry, in the course of which work he was forced to breathe poisonous fumes arising from mould and brass and other liquid metals over which plaintiff, in the course of his employment, was obliged to work without the benefit of a mask, ventilation or other safety devices and measures. That the aforementioned lung condition, contracted by plaintiff in the manner aforesaid, did subsequently become quiescent, dormant, or cured so that he fully recovered normal health with the result that in or about 1927 he returned to work for defendant in the capacity of janitor, continuing in latter employment until about 1934, during which latter period of time the plaintiff experienced normal health.

FIFTH: That in or about 1934, plaintiff was instructed and directed by defendant's duly authorized agent to resume new duties, namely, as a sweeper and dust remover in, inter alia, the department known as E 30, in which department there are, in addition to grinding machines, certain other machinery used for baking the ore and different types of dust, finishing certain materials and polishing the same.

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SIXTH: That in said Department 2 30 there are various moulds, or forms which are filled with various admixtures of dust, including cement and micardi, which moulds and forms are placed into furnaces for baking. In the course of mixing the various types of dust, there did arise large quantities of dust which permeated the air and which plaintiff, in the pursuit of his duties, was compelled to breathe into his lungs.

SEVENTH: That in addition to the foregoing plaintiff, in his capacity aforesaid, was obliged to work in the said department where grinding, finishing and polishing of the completed products took place; that in the process of said grinding, finishing and polishing, poisonous dust invaded the atmosphere, which plaintiff was obliged to breathe into his lungs.

EIGHTH: That plaintiff continued to work in a dust laden atmosphere in that there was in the said department crushing machines, the functions of which were to crush and grind the ore or rough products into fine dust, after which the same would be placed into moulds and diverse formed boxes preparatory to baking the same in the aforementioned furnaces. This latter process caused volumes of the said dust, including cement and micardi dust, to ascend into and stay in the air, which plaintiff, in the course of his work, unavoidably inhaled into his lungs, no safety devices being provided on the machines, or for the face of the employee.

NINTH: That certain employees of the defendant company would, while in the process of mixing and preparing the various products, cause excess dust to be thrown upon the floor indiscriminately, thereby causing the same to rise and permeate the air, which plaintiff, by reason of his employment, did breathe into his lungs; all of which was done in the presence of and with the consent of defendant's officers and employees of authority.

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TENTH: That in the course of his duties plaintiff called upon and directed by his foreman to empty various boxes and other containers filled with sacardi dust, cement and other forms of dust, by reason of which large quantities of the said poisonous dust would pollute the atmosphere and be breathed by plaintiff, who was unprotected by a mask or other such safety device.

ELXVENTH: That plaintiff continued to work in the dust laden atmosphere above described from about 1934 or 1935 to February, 1937, when he was compelled to leave his employment by reason of suffering a condition of the lungs known as Pneumonoconiosis, which disease was directly caused by plaintiff being compelled to breathe the aforementioned poisonous dust in the manner and place aforesaid.

THIRTEENTH: Plaintiff avers that his employment with defendant from 1934 or 1935 to February, 1937, in the capacity aforesaid, seemed reasonably safe and at first suffered no illness or disease which was obvious or discernible to him.

THIRTEENTH: The plaintiff avers that the defendant knew or by the use of reasonable diligence and prudence should have known that in the manufacture of said products as aforementioned poisonous dust would be created from said manufacturing process, which dust contained dangerous, insidious and harmful substances which were malignant and destructive to life in the human body when said dust and other substances created in the manufacturing operations came into close proximity to and were breathed or inhaled into the body of the plaintiff.

FOURTEENTH: Plaintiff avers that said defendant knew or should have known of the dangerous nature of the dust, but

Notwithstanding such knowledge, the said defendant failed to keep the same in control, and negligently permitted the dust from said grinding and mixing processes to get into close proximity of the plaintiff's person, so that he did inhale said particles of dust to such an extent that his bronchial tubes, lungs, and internal organs and other parts of his body generally became permeated and infected with the same.

FIFTEENTH: Plaintiff avers that said defendant corporation negligently permitted plaintiff to work in an atmosphere of poisonous and injurious dust, containing poisonous and injurious non-absorbable dust of such a nature and character, and other dangerous and insidious substances as produced by grinding and mixing processes, a considerable quantity of which was inhaled by the plaintiff, to contract or become afflicted with an ailment or disease of the lungs known as Pneumonoeciosis, with a possibility of later development of advanced tuberculosis; suffered from loss of sleep; has and will suffer from nightly sweats; has almost completely lost his appetite; has suffered severe injuries to his chest and will suffer continuous pain in his chest and other parts of his body; has contracted and is still suffering from a severe cough, which is of a continuous nature; has suffered great loss of weight; has Pneumonoeciosis in both lobes; has and will suffer from violent headaches; has and will suffer from shortness of breath; has suffered a violent nervous shock that affected his entire nervous system; has contracted Pneumonoeciosis, which is an incurable disease, all of which will greatly shorten the life of the said plaintiff, and has caused him to become a physical wreck and unable to do any work whatsoever; he has suffered injuries; the full nature of which plaintiff does not know at this time, therefore, is unable to state, but all of which he believes and alleges are permanent.

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SIXTH: The injuries, occupational disease or illness suffered by plaintiff were the result of what is commonly known as an occupational disease, to-wit, Pneumonoconiosis, which illness or disease was contracted while plaintiff was in the defendant's employ, during the time he was engaged as a sweeper and dustremover. Said occupational disease resulted solely from the inhalation of poisonous and injurious dust; and plaintiff further avers that the dust inhaled by plaintiff during his employment with the defendant company was a hard or non-absorbable dust.

SEVENTH: Plaintiff avers that it was not until sometime after he left his employment with the defendant corporation that he learned for the first time that his illness was caused and traceable to the inhalation by him of the dust hereinbefore and hereinafter mentioned, while employed by defendant company as aforesaid.

EIGHTH: Plaintiff avers that he had no knowledge of the composition of the dust created by grinding, finishing and mixing of the aforementioned products; nor did the plaintiff have any knowledge of the effect the said dust would have upon the human body, or any chemical or scientific education, and received no warning or instructions from defendant corporation on the subject; and that he had no knowledge that the dust created by the grinding and mixing process was poisonous and dangerous; and that he relied on the assurance of the defendant corporation that the dust was not dangerous or injurious to his health; plaintiff avers that relying upon said assurance he continued in the employment of the defendant company.

NINTH: Plaintiff avers that the injuries, illness or disease he sustained were the direct result of the carelessness, recklessness and negligence of the said defendant as follows:

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(a) In failing to supply adequate exhaust fans in compliance with the Act known as the Factory Act of 1903, P. L. 352.

(b) In using and operating said grinding and/or mixing machines, which machines were constructed in a defective manner in that it created an excessive amount of poisonous, harmful and injurious dust and other insidious and dangerous dust.

(c) In using and operating said grinding and/or mixing machines which were defectively constructed in that there were no provisions made in the construction of said grinding and/or mixing machines for the carrying off of the dust which accumulated as a result of the grinding and/or mixing of the aforementioned products.

(d) In failing to provide for the carrying off of said poisonous, harmful and injurious dust by the use of exhaust fans, or other means as is usual and customary in similar businesses requiring the grinding and/or mixing of the aforementioned products.

(e) In directing plaintiff to work in the capacity aforementioned when the defendant knew, or should have known that plaintiff was being subjected to disease and death by reason of inhaling said dangerous dust.

(f) In causing ventilators to be closed up and boarded tightly, and in otherwise failing to provide natural or artificial ventilation.

(g) In failing to provide plaintiff with dust masks in order that the work may be safely accomplished without injury to plaintiff.

(h) In failing to supply plaintiff with reasonable and safe appliances with which to work; or such reasonable and safe appliances as were supplied to others doing the same work under similar circumstances.

(i) In failing to warn plaintiff of the danger to his health arising from inhaling poisonous, harmful and injurious dust as aforesaid.

(j) In failing to warn plaintiff of such danger, when defendant corporation knew, or in the exercise of due care, should have known, that the plaintiff was ignorant of the danger of working with said grinding and/or mixing machines generating poisonous, harmful and injurious dust as aforesaid.

(k) In failing to instruct plaintiff as to how he could safely perform said work in order to avoid said danger.

(l) In ordering and directing plaintiff to continue to work, when the defendant corporation knew, or in the use of reasonable care, should have known that to continue to work would cause illness to the plaintiff and endanger his life.

(m) In failing to provide exhaust fans with sufficient power, or other sufficient devices, for the purpose of

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carrying off poisonous, harmful and injurious dust from said grinding and/or mixing machines as was required by said Act of Assembly.

(n) In causing more poisonous, harmful and injurious dust to be generated than a properly organized plant, properly conducted, would generate.

(o) In failing to provide sufficient natural ventilation in order to carry off the poisonous, harmful and injurious dust from the grinding and/or mixing process.

(p) In failing to supply plaintiff with a reasonably safe place to work such as is usual and customarily provided and maintained by others engaged in the operation of similar work under similar circumstances.

(q) In failing to provide at least 250 cu. ft. of air space for each and every person employed in said mill, and in failing to keep said mill in a clean and sanitary condition, contrary to the Factory Act of May 2, 1906, P. L. 382.

(r) In failing to provide plaintiff with a mask or other suitable device to protect his health and safety, as is customary in other similar establishments.

(s) That it was the custom on the part of others in operating similar businesses to so construct said grinding and mixing machines, and to so equip the same as to provide for the carrying off and escape of dust generated by the said grinding and mixing.

TWENTYTHIRD: Plaintiff avers that as a result of the negligence of the defendant company, and the continuous inhaling and breathing of the poisonous, harmful and injurious dust from the grinding and mixing operations aforesaid, plaintiff's lungs became infected with Pneumococcosis.

TWENTY-FIRST: Plaintiff avers that it was not until sometime after he left the employment of defendant corporation that he learned for the first time that his illness was caused and traceable to the inhalation by him of the poisonous, harmful and injurious dust aforesaid while employed in the grinding and moulding department of the defendant corporation.

TWENTY-SECOND: By reason of the injuries, illness, disease or ailments aforesaid, plaintiff herein has suffered, and will suffer great pain and inconvenience, has lost and will lose large sums of money in wages; has lost and will lose in the

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future large sums of money in diminution of his earning power, and his earning power has been permanently impaired and entirely destroyed; plaintiff has in the past and will be in the future forced to lay out and expend large sums of money for medical attendance; doctor bills, hospital bills, medicines, and supplies; has suffered and will suffer the loss of consortium of his wife; and has and will forever be deprived of the enjoyment of married life with its attendant privileges.

TWENTY-THIRD: The injuries, disease or illness suffered by plaintiff, which are more fully set forth in the fifteenth paragraph and other paragraphs, are the result of what is commonly known as an occupational disease, to-wit, Pneumoconiosis, which disease or illness was contracted while plaintiff was in defendant's employ, and which disease or illness resulted from defendant's negligence in failing to supply adequate exhaust fans and sufficient ventilation in accordance with the Pennsylvania statute known as the Factory Act of 1906, P. L. 328, and as a result of various other items of negligence set forth in the nineteenth paragraph hereof, and other paragraphs, said disease not being the result of any immediate or sudden physical violence to the body or traceable to any accident or any unforeseen occurrence causing violence to the physical structure of the body, so that the Workmen's Compensation Act of Pennsylvania cannot be invoked by the plaintiff, and is not applicable to him,

WHEREFORE, plaintiff claims of the defendant corporation damages in the sum of Fifty thousand (\$50,000.00) Dollars, to recover which this suit is brought.

Jury Trial Demanded.

A. R. and L. Pat McGrath
Attorneys for Plaintiff.

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COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) ss:

Before me, the undersigned authority, a Notary Public in and for said county and state, personally appeared JOSEPH ROMA, who, being duly sworn according to law, deposes and says that the facts contained in the foregoing Statement of Claim are true and correct.

Sworn to and subscribed before
me this _____ day of August,
1997.

Notary Public.