

FILE NAME: Early Asbestos Damage Suits (EADS)

DATE: 1934

DOC#: EADS032

DOCUMENT DESCRIPTION: Documents from Case of Pearl Barenklau

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF ILLINOIS } ss.
EASTERN DIVISION

IN THE DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PEARL H. BARENKLAU

vs.

JOHNS-MANVILLE PRODUCTS CO.,
a corporation, and JOHNS-
MANVILLE SALES CORPORATION,
a corporation.

No. 43448

ANSWER OF JOHNS-MANVILLE PRODUCTS
CORPORATION, A CORPORATION.

JOHNS-MANVILLE PRODUCTS CORPORATION, a corporation,
by Heth & Lister, its attorneys, answering the complaint of
the plaintiff in this action:

1. Admits that it is a foreign corporation qualified
to do business in the State of Illinois, and that it is engaged
in the business of manufacturing and selling building materials.

2. Admits that on March 9, 1934, it owned and
operated a factory for the manufacture of building materials
in Waukegan, Illinois, and admits that plaintiff was employed
in said factory in various jobs.

3. Denies that any fumes, gases, or dusts arose
from any work done or process operated by the plaintiff, or
that plaintiff was exposed to the inhalation of any fumes,
gases or dusts.

4. Denies that this defendant knew, or should have known, that the inhalation of any dusts, fumes, or gases to which plaintiff is alleged to have been exposed was apt to or did produce illness or disease to the plaintiff of which the plaintiff now complains, or that any such illness or disease is or was peculiar to the work or operations carried on or used in said business, or that any such work or operation subjected plaintiff to dangers of illness or disease incident to such work or process to which employees were or are not ordinarily exposed in other lines of employment.

5. Denies that plaintiff was caused to or did, during the time in plaintiff's complaint alleged, or any other time, necessarily, or otherwise, inhale large quantities of silica dusts, or other fumes, gases, or dusts, through his nose, mouth, or otherwise, or that any silica dust or other fumes, gases, or dusts became lodged in plaintiff's throat or lungs, or caused any illness or disease in plaintiff, and further denies that plaintiff was in the exercise of due care and caution for his own personal health and safety.

6. Denies that plaintiff was exposed to various fumes, gases, and dusts of dangerous character, or that any such exposure could or would result in any illness or disease.

7. Denies that plaintiff has contracted silicosis, pneumoconiosis, siderosis, asbestosis, tuberculosis, or any other occupational disease, or that as a result of any occupational disease, or other illness arising out of his work, plaintiff has lost weight, or has been incapacitated or weakened

so that he cannot perform any work for which he is fitted, or that plaintiff has suffered mental or physical pain or anguish, or will continue to suffer such, for any length of time, or that plaintiff has become liable for, or expended, any sums of money in and about endeavoring to be cured, or has been kept from his usual occupation, or lost pecuniary gains which he might have made had he been employed, by reason of any such occupational disease or illness arising out of his employment.

8. Denies that this defendant wilfully failed to provide reasonable or approved devices, methods, or means for the prevention of occupational disease incident to such employment; denies that there were in and about said factory, no proper suction fans, or other apparatus, provided for collecting fumes, gases, or dusts in the room in said factory where plaintiff was employed, or that this defendant failed to provide masks or respirators, or other apparatus, to be used or worn by the plaintiff to protect him from inhaling any fumes, gases, or dusts in the air.

9. Denies that this defendant negligently failed to remove, so far as practicable, by either ventilation or exhaust devices, any injurious fumes, gases, or dusts in the room in which plaintiff worked, contrary to statute.

10. Denies that this defendant negligently caused or permitted premises to be so swept as to raise dust contrary to statute.

11. Denies that plaintiff sustained damage in the sum of Fifty Thousand (\$50,000) Dollars, or any sum whatsoever.

FIRST AFFIRMATIVE DEFENSE

12. That there is and was, during all of the plaintiff's employment, in full force and effect, a certain statutory provision, namely, "An Act to Promote Public Health by Protecting Certain Employees in this State from the Dangers of Occupational Diseases, and providing for the enforcement thereof," (Callaghan's Illinois Statutes Annotated, Chapter 48, paragraphs 185-200) in Section 2 of which certain classes of industries were listed, viz:

(1). Employers engaged in carrying on any process of manufacture or labor in which sugar of lead, white lead, lead chromate, litharge, red lead, arsenate of lead or paris green are employed, used, or handled,

(2). Employers engaged in the manufacture of brass or the smelting of lead or zinc,

(3). Employers engaged in any process of manufacture in which poisonous chemicals, minerals, or other substances are used or handled by the employees therein in harmful quantities or under harmful conditions,

and that in and by Section 15, subdivision B-4 of said Act it is provided that no common law or statutory right to recover damages for injury or death exists in favor of any employee by reason of an occupational disease arising out of or in the course of his employment in one or more of the occupations referred to in Section 2 of said Act.

13. It is alleged in plaintiff's complaint, the various ~~_____~~ alleged to have been handled by plaintiff, gave off ~~_____~~ fumes, gases, and dusts in harmful quantities, ~~_____~~ inhaled by plaintiff and caused the illnesses ~~_____~~ claimed by plaintiff, then it appears that ~~_____~~ ~~_____~~ for disability due to diseases incurred in a ~~_____~~ of manufacture or labor in which poisonous chemicals, ~~_____~~ or other substances are used or handled by the ~~_____~~ therein in harmful quantities or under harmful ~~_____~~, and that no common law or statutory right of action ~~_____~~ to the plaintiff by reason of the injuries in plaintiff's complaint alleged.

SECOND AFFIRMATIVE DEFENSE

14. ~~_____~~ and was, during all of the plaintiff's employment ~~_____~~ force and effect, a certain statutory provision, ~~_____~~ to Promote Public Health by Protecting Certain ~~_____~~ in this State from the Danger of Occupational Diseases ~~_____~~ for the enforcement thereof," (Callaghan's ~~_____~~ Annotated, Chapter 48, paragraphs 185-200. ~~_____~~ 2 of which certain classes of industries were ~~_____~~

(1) ~~_____~~ engaged in carrying on any process of ~~_____~~ or labor in which sugar of lead, white ~~_____~~ chromate, litharge, red lead, ~~_____~~ or paris green are employed, used, or ~~_____~~

(2) ~~_____~~ engaged in the manufacture of brass or ~~_____~~ of lead or zinc,

(3) ~~_____~~ engaged in any process of manufacture ~~_____~~ poisonous chemicals, minerals, or other substances ~~_____~~ used or handled by the employees

therein in harmful quantities or under harmful conditions,

and that in and by Section 15, subdivision B-4 of said Act, it is provided that no common law or statutory right to recover damages for injury or death exists in favor of any employee by reason of an occupational disease arising out of or in the course of his employment in one or more of the occupations referred to in Section 2 of said Act.

15. That in said factory, located at Waukegan, Illinois, wherein this defendant was engaged in the business of manufacturing various building materials and similar products, certain substances named in said Section 2 of said Occupational Disease Act were used in its processes and manufacture, viz: lead chromate and litharge, wherefore this defendant was engaged in processes of manufacture in which lead chromate and litharge were employed, used, and handled, and no common law or statutory right of action exists in favor of the plaintiff herein for the occupational disease alleged to have been contracted by plaintiff.

THIRD AFFIRMATIVE DEFENSE

16. That Section 1 of said "Act to Promote Public Health by Protecting Certain Employees in this State from the Dangers of Occupational Diseases, and providing for the enforcement thereof," (Par. 185, Chapter 48, Callaghan's Illinois Statutes Annotated) is 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, in that

(A) Said Section is so vague, indefinite, and uncertain that an employer may not reasonably know whether he is engaged in a work or process within its provisions, or what illnesses or diseases are peculiar to the work carried on and to which employees are not ordinarily exposed in other lines of employment; that no standard of approval is provided so that an employer may know with reasonable certainty what are approved devices, means, or methods, or what is necessary to be done to avoid the criminal and civil penalties provided; that said section places obligations on an employer in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application;

(B) Said Section is an unlawful delegation of legislative power by the legislature of Illinois to the jury impanelled, or the Court sitting without a jury, for the purpose of trying any case under said Section, to determine, ex post facto, the obligations of an employer under said Act, and whether his attempted compliance therewith will be approved.

JOHNS MANVILLE PRODUCTS
CORPORATION, a corporation.

BY

Heth & Lester
Its attorneys.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

IN THE SUPERIOR COURT OF COOK COUNTY

PEARL H. BARENKLAU

vs.

No. 349 5059

JOHNS-MANVILLE PRODUCTS CO., a
corporation, and JOHNS-MANVILLE
SALES CORPORATION, a corporation.

B O N D

KNOW ALL MEN BY THESE PRESENTS, That we, JOHNS-MANVILLE PRODUCTS CORPORATION, a corporation, and JOHNS-MANVILLE SALES CORPORATION, a corporation, as principals, and ROYAL INDEMNITY COMPANY, as surety, are held and firmly bound unto PEARL H. BARENKLAU, plaintiff, in the penal sum of FIVE HUNDRED (\$500) DOLLARS, lawful money of the United States, to be paid to said plaintiff, his executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated the 16 day of May, A. D. 1934.

WHEREAS, the said JOHNS-MANVILLE PRODUCTS CORPORATION, a corporation, and JOHNS-MANVILLE SALES CORPORATION, a corporation, have applied by petition to the Superior Court of Cook

removal of a certain cause therein
BARENKLAU is plaintiff and the said
CO., a corporation, and JOHNS-MANVILLE
Corporation, are defendants, to the
United States for the Northern District
Division, for further proceedings on
set forth, and that all further pro-
in said Superior Court of Cook County

if the said JOHNS-MANVILLE PRODUCTS CORPO-
JOHNS-MANVILLE SALES CORPORATION, a
in said District Court of the United
District of Illinois, Eastern Division,
the date of filing said petition, a
word in said suit, and shall well and
to be paid, all costs that may be awarded
Court of the United States, if said
said suit was wrongfully or improperly
this obligation shall be void, other-
in full force and virtue.

JOHNS-MANVILLE PRODUCTS CORPORATION,
a corporation.

BY Vandiver Brown
Secretary

JOHNS-MANVILLE SALES CORPORATION,
a corporation.

BY Vandiver Brown
Assistant Secretary

Royal Indemnity Company
BY John F. Dailley
Attorney in fact

STATE OF NEW YORK)
COUNTY OF NEW YORK } ss.

Before me, Paulita Andrews

a Notary Public in and for the county and state aforesaid,
personally appeared Vandiver Brown to me known to
be the Secretary of JONES-MANVILLE PRODUCTS CORPORATION,
a corporation, and Assistant Secretary of JONES-
MANVILLE SALES CORPORATION, a corporation, and then and
there acknowledged that he executed the foregoing instrument
as his free and voluntary act as such officer of each of
such corporations, and as the free and voluntary act of such
corporations.

1st day of May, 1934. GIVEN under my hand and notarial seal this

Paulita Andrews
Notary Public.

Seal

And afterwards to-wit, on the 18th
day of May A. D. 1934
a certain Bond
was filed in the office of the Clerk of said Co. in
in words and figures following to-wit.

STATE OF ILLINOIS }
COUNTY OF C O O K } ss.

PP

IN THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS

PEARL H. BARENKLAU
Plaintiff,

-vs-

345 5059

JOHNS-MANVILLE PRODUCTS CO.,
a corporation, and JOHNS-
MANVILLE SALES CORPORATION,
a corporation,
Defendants.

COMPLAINT AT LAW

Now comes the plaintiff, PEARL H. BARENKLAU, by his attorneys, JOHNSON, PENSE & BRANDELL, and complains of the defendants, JOHNS-MANVILLE PRODUCTS COMPANY, a corporation, and JOHNS-MANVILLE SALES CORPORATION, a corporation, as follows:

1. The defendants, JOHNS-MANVILLE PRODUCTS COMPANY and JOHNS-MANVILLE SALES CORPORATION, are foreign corporations, qualified to do business in the State of Illinois, and are engaged in the business of manufacturing and selling building materials.

2. That on March 9th, 1934, the said defendants owned and operated a factory for the manufacture of building materials in Waukegan, Illinois; that on the aforesaid date, and for a period of four years, excepting the period of from March, 1932, to July, 1933, prior thereto, plaintiff was employed by the defendants as a laborer in said factory; that his duties consisted of shovelling and mixing materials among which were rubber, asphalt, silica, ground wood-fibre, asbestos fibre, gilsonite and titanium oxide, paints and coloring matter; and that various

fumes, gases and dusts arose from said shovelling and mixing, and that, as a result thereof, plaintiff was exposed and subjected to the inhalation of the various fumes, gases and dusts.

3. That said defendants knew, or should have known, that the inhalation of the various aforesaid fumes, gases and dusts was apt to and did produce illnesses and diseases in the plaintiff, of which the plaintiff now complains, which illnesses and diseases are peculiar to such work and operations carried on and used in said business, and that the same did necessarily subject plaintiff to dangers of illnesses and diseases incident to such work and process of carrying on said business, to which employees were and are not ordinarily exposed in other lines of employment.

4. That plaintiff was caused to and did, during the period aforesaid, necessarily inhale large quantities of silica dust and other fumes, gases and dusts through his nose and mouth, and said silica dust, and other said fumes, gases and dusts, became lodged in his throat and lungs, causing the illnesses and diseases complained of, while he, the plaintiff, was in the exercise of due care and caution for his own personal health and safety.

5. That plaintiff was in entire ignorance of the dangerous character of the various fumes, gases, and dusts to which he was exposed, and to the specific nature of the illnesses and diseases that would or could result from the inhalation of the aforesaid fumes, gases and dusts, and was never, at any time, informed by the defendants, or any agents of the said defendants, of the fact that such danger did or could possibly exist.

6. That the defendants, during the aforesaid time and at the aforesaid place, did one or other of the following acts, thereby causing the plaintiff to contract silicosis, pneumoconiosis, siderosis, asbestosis and tuberculosis, and as a result whereof, he has lost considerable weight, and has

been incapacitated and weakened so that he cannot perform any work for which he is fitted; he has suffered great mental and physical pain and anguish, and will continue so to suffer for the rest of his life; he has become liable for and expended large sums of money in and about endeavoring to be cured; and he has been kept from his usual occupation and has lost the pecuniary gains which he might have made had he been employed:

(A) Wilfully failed to provide reasonable and approved devices, methods or means for the prevention of said disease, contrary to the provision of Section 1 of the Act entitled "An Act to Promote The Public Health by protecting certain employees in this State from the dangers of occupational diseases and providing for the enforcement thereof," of the State of Illinois, and in this that there were in and about the said factory no proper suction fans, or other apparatus, providing for collecting the injurious fumes, gases and dusts in the air in the rooms in said factory where plaintiff worked; that defendants failed to provide masks or respirators or other apparatus to be used or worn by said plaintiff to protect him from inhaling the said fumes, gases and dusts, which impregnated and floated in the air in and about the said rooms, as provided by said Statute, and which effectively would have prevented him from contracting the diseases herein complained of.

(B) Negligently failed to remove, as far as practicable, by either ventilation or exhaust devices the aforesaid injurious fumes, gases and dusts from the rooms in which plaintiff worked, contrary to Section 12 of an Act, entitled "An Act To provide for the health, safety and comfort of employees in factories, mercantile establishments, mills and workshops in this State, and to provide for the enforcement thereof," of the State of Illinois.

(C) Negligently caused and permitted the premises to be swept so as to raise dust contrary to Section 13 of an Act,

...AN ACT TO PROVIDE FOR THE HEALTH, SAFETY AND COMFORT
of employees in factories, mercantile establishments, mills and
workshops in this State, and to provide for the enforcement
thereof," of the State of Illinois.

7. Plaintiff prays for judgment in the amount of
\$50,000.00 for the foregoing damages.

JOHNSON, PENSE & BRANDELL
Attorneys for Plaintiff,

208 W. Washington Street, Chicago.
Tel. Franklin 2803.

59

PEARL H. BARENKLAU

vg

No. 34S 5059

To: Johnson, Pense & Brandell
208 West Washington Street
Chicago, Illinois

Heth & Lister
Attorneys for defendants.

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

IN THE SUPERIOR COURT OF COOK COUNTY

PEARL H. BARENKLAU

vs.

No. 343 5059

JOHN-MANVILLE PRODUCTS CO.,
a corporation, and JOHN-MANVILLE SALES CORPORATION,
a corporation.

N O T I C E

To: Johnson, Pense & Brandell
208 West Washington Street
Chicago, Illinois

PLEASE TAKE NOTICE That on Friday
the 18 day of May, A. D. 1934, at the opening of Court, or
as soon thereafter as counsel can be heard, we shall appear
before his Honor, Judge Shannon, in the room in
the County Building usually occupied by him as a Court Room,
or in his absence before such other Judge as may be sitting
in his stead, and shall then and there move the Court to enter
an order removing the above entitled cause to the District
Court of the United States for the Northern District of Illi-
nois, Eastern Division, and in support of such motion shall
present a petition and bond, as per copies attached hereto,
at which time and place you may appear if you so see fit.

Heck + Lister
Attorneys for defendants.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

IN THE SUPERIOR COURT OF COOK COUNTY

PEARL H. BARENKLAU

vs.

No. 343 5059

JOHNS-MANVILLE PRODUCTS CO., a
corporation, and JOHNS-MANVILLE
SALES CORPORATION, a corporation.

P E T I T I O N

The petition of JOHNS-MANVILLE PRODUCTS CORPORATION,
a corporation, and JOHNS-MANVILLE SALES CORPORATION, a corpora-
tion, being defendants in the above entitled cause, respect-
fully represent unto the Court:

1. That the above entitled suit is brought by the
plaintiff, PEARL H. BARENKLAU, to recover of the defendants named
therein the sum of Fifty Thousand (\$50,000) Dollars for alleged
injuries in the nature of an occupational illness or disease to
the plaintiff, and is wholly of a civil nature; that the matter
and amount in dispute in said suit exceeds, exclusive of interest
and costs, the sum of Three Thousand (\$3,000) Dollars, all of
which will more fully appear by the complaint filed in said
suit, which is hereby referred to and made a part hereof; that
there is a controversy in said suit which is wholly between citi-
zens of different States; that the defendants, JOHNS-MANVILLE
PRODUCTS CORPORATION, a corporation, and JOHNS-MANVILLE SALES
CORPORATION, a corporation, are foreign corporations, and were,

at the time of the commencement of said suit, and still are, corporations duly formed, created, and organized under and by virtue of the laws of the State of Delaware, and were then and still are citizens of the State of Delaware; that PEARL M. BARANKLAY, plaintiff, was, at the time of the commencement of this suit, and still is, a citizen and resident of the State of Illinois.

2. That the time within which the said defendants are required by the laws of the State of Illinois and the rules and practice of this Court to answer or plead in said suit has not yet expired.

3. That the defendants make and file herewith a bond in the sum of FIVE HUNDRED (500) DOLLARS with good and sufficient surety for their entering in the District Court of the United States for the Northern District of Illinois, Western Division, within thirty days from the date of filing of this petition a certified copy of the record in this suit and for paying all costs that may be awarded by said District Court if it shall hold that this suit was wrongfully or improperly removed thereto.

WHEREFORE, defendants, JOHN SAMANVILLE PRODUCTS CORPORATION a corporation, and JOHN SAMANVILLE SALES CORPORATION, a corporation, pray that this Court proceed no further herein except to make an order of removal as required by law and to accept the bond presented herewith and direct a transcript of the record herein to be made for said District Court of the

United States for the Northern District of Illinois, Eastern
Division, as provided by law.

JOHN-EVANVILLE PRODUCTS CORPORATION
a corporation.

BY John J. Flynn
one of its attys

JOHN-EVANVILLE SALES CORPORATION,
a corporation.

BY John J. Flynn
one of its attys

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

JOHN J. FLYNN, being first duly sworn, on oath deposes and says that he is a member of the firm of Rath & Lister, and is one of the attorneys of record of and for the defendants, JOHN-MANVILLE PRODUCTS CORPORATION, a corporation, and JOHN-MANVILLE SALES CORPORATION, a corporation, in the above entitled cause, the petitioners named in the foregoing petition; that he has read the case and believes the same to be true; and affiant further says that said petitioners are absent from and are non-residents of the County of Cook, State of Illinois, in which said suit is brought, and that there are no officers of defendants within the State of Illinois to make this verification, and that affiant makes this affidavit for the reason that the defendants and their officers are absent from and non-residents of the County of Cook, State of Illinois, in which said suit is brought.

John J. Flynn

Subscribed and sworn to before
me this 17th day of May, 1934.

Seal Evangeline Stetwald
Notary Public.

And afterwards to-wit, on the 18th

day of May A. D. 1934

a certain Petition

was filed in the office of the Clerk of said Court.

And the following to-wit.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

IN THE SUPERIOR COURT OF COOK COUNTY

PEARL H. BARENKLAU

vs.

No. 348 5059

JOHNS-MANVILLE PRODUCTS CO.,
a corporation, and JOHNS-
MANVILLE SALES CORPORATION,
a corporation

O R D E R

This cause coming on for hearing upon the petition and bond of the defendants herein for an order transferring this cause to the United States District Court for the Northern District of Illinois, Eastern Division, and it appearing to the Court that the defendants have filed their petition for such removal in due form of law, and that the defendants have filed their bond, duly conditioned, with good and sufficient sureties as provided by law, and that defendants have given plaintiff due and legal notice thereof; and it appearing to the Court that this is a proper cause for removal to said District Court,

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that said petition and bond are hereby accepted and that this cause be and it is hereby removed to the United States District Court for the Northern District of Illinois, Eastern Division, and the clerk is hereby directed to make up the record in said cause for transmission to said Court forthwith.

ENTER

Walter J. Stanton
Judge.