FILE NAME: Baldwin (BALD)

DATE: 1940-1941

DOC#: BALD067

DOCUMENT DESCRIPTION: Legal - Lyons vs. Lima, Motions & Order

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO

James D. Lyons,
Plaintiff

-vs-

Lima Locomotive Works, Incorporated,
Lima, Ohio,
Defendant

No. 33472

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION

Defendant has filed a motion asking that plaintiff be ordered to set forth in his petition the name and exact nature of the disease from which plaintiff suffers. Plaintiff alleges in his petition that his lungs, throat and respiratory tract became diseased and weakened as a result of the negligence of the defendant. We believe that this is a sufficient allegation of injury and that plaintiff is not and should not be required to characterize plaintiff's condition by either medical or common names of diseases which one or more physicians might conclude plaintiff had contracted.

It is well known that diseases of the lungs and respiratory tract are difficult to diagnose. Plaintiff should not be required to adopt one diagnosis from among several. Plaintiff knows that he has been injured and he knows the locality of his injuries and the organs which are affected. He has alleged the facts within his knowledge. Any further allegation would be hearsay as far as plaintiff is concerned.

Defendant has a right under the statute to require an examination of plaintiff by physicians of its own choosing and to determine for itself what disease or diseases plaintiff, in its doctors' opinion, has.

We respectfully submit that defendant's motion should be denied.

January 7th, 1941.

Ritter & Dougherty

Julius J. Gilliod

Attorneys for Plaintiff

A copy of the foregoing memorandum has been mailed to counsel for defendant.

Ritter & Dougherty

Julius J. Gilliod

Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS, ALLEN COUNTY, OHIO

James D. Lyons, Plaintiff,	:	No. 33472
vs.	:	
Lima Locomotive Works, Incorporated, Defendant.	:	DEMURRER.

Now comes the defendant, Lima Locomotive Works, Incorporated, and demurs to the petition of the plaintiff herein for the following reasons, to-wit:

1. That said petition fails to state a cause of action in law against this defendant.
2. That said action is barred by the statute of limitations in such cases made and provided.

LIMA LOCOMOTIVE WORKS, INCORPORATED,

By _____
Its Attorneys

Section 11309 General Code of Ohio

30 Ohio Law Abstract 211

33 Ohio Law Abstract 582

Amended Senate Bill 297

THE STATE OF OHIO, } SS
Allen County, }

CERTIFICATE OF COPY

I, Anne E. Geiger, Clerk of the Courts within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original document now on file in said Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Lima, Ohio this 13 day of May A.D. 19 47.

(SEAL)

ANNE E. GEIGER
Clerk
By _____ Deputy

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY,
O H I O

James D. Lyons,
The District Tuberculosis Hospital,
Lima, Ohio,

Plaintiff

-vs-

Lima Locomotive Works Incorporated,
Lima, Ohio,

Defendant

No. 33472

P E T I T I O N

Plaintiff says that defendant is a corporation duly organized and existing under the laws of the State of Virginia and that it is duly authorized to transact business in the State of Ohio and has an office and place of business in the County of Allen, Ohio.

Plaintiff further says that during the year 1925 he became employed by defendant and worked for defendant during the period from 1925 to December 6th, 1938. Defendant is, and during all of the times mentioned in this petition has been, engaged in the manufacture of railroad locomotives and plaintiff's duties during his employment by defendant consisted first of riveting and thereafter of welding parts of said locomotives and locomotive tanks. In the performance of his work required of him by defendant, it was necessary for plaintiff to spend a great deal of his time on the inside of the locomotive tanks manufactured by defendant. It was also necessary for him to spend a great deal of his time grinding tools used by him in the furtherance of his work and im using portable grinders both on the inside and outside of said locomotive tanks.

The nature of the work which plaintiff was required to do, as well as the work being done by his fellow employees in the immediate vicinity of plaintiff, created large amounts of fine dust and gases which plaintiff was forced to inhale and breathe into his lungs. As a result

thereof, plaintiff on and after December 6th, 1938, became totally and permanently injured and disabled. His lungs, throat and respiratory tract became diseased and weakened with the result that he was forced, on or about December 7th, 1938, to enter a hospital where he still is and to give up his employment.

During all of said times, he has suffered pain, weakness and has been unable to rest properly. He has been forced to undergo treatments by physicians and has become indebted for hospital services and physicians' services in a large amount, the exact amount of which is not known at this time, and will continue to incur such indebtedness.

Plaintiff further says that his condition is permanent and that he will never again be able to engage in a remunerative occupation.

Plaintiff further says that the injuries and damage hereinbefore referred to, were due solely and proximately to the negligence of the defendant in that it failed to furnish him with a safe place in which to work; it failed to furnish him with appliances which would prevent him from inhaling the poisonous gases and dust while he was engaged in his employment although such appliances were available to defendant; it failed to properly ventilate the places in which plaintiff was required to work; and it ordered and required plaintiff to enter into closely confined spaces which were filled with poisonous and noxious fumes, dust and gases.

Plaintiff further says that as a result of the carelessness and negligence of defendant as aforesaid, he has been damaged, as hereinbefore alleged, in the sum of Seventy-Five Thousand Dollars ($75,000.00)

WHEREFORE, plaintiff prays judgment against defendant in the sum of Seventy-Five Thousand Dollars ($75,000.00) and his costs.

(Jules J. Pilliod
402 Home Bank Building)
Toledo, Ohio.
(Ritter & Dougherty,
610 Home Bank Building)
Toledo Ohio.

Jules J. Pilliod

George W. Dougherty

Attorneys for Plaintiff

STATE OF OHIO :
:
ALLEN COUNTY : ss

James D. Lyons being first duly sworn, says that he is the plaintiff in the above entitled action and that the statements and allegations contained in the foregoing petition are true, as he verily believes.

x James D. Lyons

Sworn to before me and subscribed in my presence this 2nd day of December, A.D. 1940.

Forest B. Scheidt
Notary Public, Allen County, Ohio

FOREST B. SCHEIDT
My Commission Expires March 7, 1941

THE STATE OF OHIO, } SS CERTIFICATE OF COPY
Allen County, }

I, Anne E. Geiger, Clerk of the Courts within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original document now on file in said Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Litas, Ohio this 13 day of May A.D. 19 47

(SEAL)

ANNE E. GEIGER
Clerk
By Heidi Grimm Deputy

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO.

JAMES D. LYONS,)
Plaintiff,)
vs.)
LIMA LOCOMOTIVE WORKS, INC.,)
Defendant.)

No. 34,472

JOURNAL ENTRY OVERRULING MOTION TO MAKE DEFINITE AND CERTAIN

* * *

This day came on for hearing the defendant's motion to make plaintiff's petition definite and certain, and the court being fully advised in the premises finds that said motion is not well taken and that the same should be and it is hereby overruled.

IT IS, THEREFORE, ORDERED AND DECREED that the defendant's motion be overruled. It is further ordered that defendant file its answer herein within two weeks from date hereof.

Judge of the Court of Common Pleas
of Allen County, Ohio.

Approved by:

Attorneys for Plaintiff.

Attorney for Defendant.

THE STATE OF OHIO, } SS
Allen County,

CERTIFICATE OF COPY

I, Anne E. Geiger, Clerk of the Courts within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original document now on file in said Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Lima, Ohio this 13 day of May A.D. 1947

(SEAL)

ANNE E. GEIGER
Clerk
By Deputy

IN THE COURT OF COMMON PLEAS OF

ALLEN COUNTY, OHIO

James D. Lyons,
The District Tuberculosis Hospital
Lima, Ohio,

Plaintiff

-vs-

Lima Locomotive Works Incorporated

Defendant

PETITION



Jules J. Pilliod

GEORGE W. DOUGHERTY,
TOLEDO, OHIO

(Home Bank Bldg)

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY,
O H I O

James D. Lyons,
The District Tuberculosis Hospital,
Lima, Ohio,

Plaintiff

-vs-

Lima Locomotive Works Incorporated,
Lima, Ohio,

Defendant

No. 33472

P E T I T I O N

Plaintiff says that defendant is a corporation duly organized and existing under the laws of the State of Virginia and that it is duly authorized to transact business in the State of Ohio and has an office and place of business in the County of Allen, Ohio.

Plaintiff further says that during the year 1935 he became employed by defendant and worked for defendant during the period from 1935 to December 6th, 1938. Defendant is, and during all of the times mentioned in this petition has been, engaged in the manufacture of railroad locomotives and plaintiff's duties during his employment by defendant consisted first of riveting and thereafter of welding parts of said locomotives and locomotive tanks. In the performance of his work required of him by defendant, it was necessary for plaintiff to spend a great deal of his time on the inside of the locomotive tanks manufactured by defendant. It was also necessary for him to spend a great deal of his time grinding tools used by him in the furtherance of his work and in using portable grinders both on the inside and outside of said locomotive tanks.

The nature of the work which plaintiff was required to do, as well as the work being done by his fellow employees in the immediate vicinity of plaintiff, created large amounts of fine dust and gases which plaintiff was forced to inhale and breathe into his lungs. As a result

thereof, plaintiff on and after December 6th, 1938, became totally and permanently injured and disabled. His lungs, throat and respiratory tract became diseased and weakened with the result that he was forced, on or about December 7th, 1938, to enter a hospital where he still is and to give up his employment.

During all of said times, he has suffered pain, weakness and has been unable to rest properly, He has been forced to undergo treatments by physicians and has become indebted for hospital services and physicians' services in a large amount, the exact amount of which is not known at this time, and will continue to incur such indebtedness.

Plaintiff further says that his condition is permanent and that he will never again be able to engage in a remunerative occupation.

Plaintiff further says that the injuries and damage hereinbefore referred to, were due solely and proximately to the negligence of the defendant in that it failed to furnish him with a safe place in which to work; it failed to furnish him with appliances which would prevent him from inhaling the poisonous gases and dust while he was engaged in his employment although such appliances were available to defendant; it failed to properly ventilate the places in which plaintiff was required to work; and it ordered and required plaintiff to enter into closely confined spaces which were filled with poisonous and noxious fumes, dust and gases.

Plaintiff further says that as a result of the carelessness and negligence of defendant as aforesaid, he has been damaged, as hereinbefore alleged, in the sum of Seventy-Five Thousand Dollars ($75,000.00)

WHEREFORE, plaintiff prays judgment against defendant in the sum of Seventy-Five Thousand Dollars ($75,000.00) and his costs.

Jules J. Silliod

George W. Dougherty

Attorneys for Plaintiff

STATE OF OHIO :
:
ALLEN COUNTY : ss

James D. Lyons being first duly sworn, says that he is the plaintiff in the above entitled action and that the statements and allegations contained in the foregoing petition are true, as he verily believes.

James D. Lyons X

Sworn to before me and subscribed in my presence this 2nd day of December, A.D. 1940.

Forest B. Scheidt
Notary Public, Allen County, Ohio
FOREST B. SCHEIDT
My Commission Expires March 7, 1941

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY,
O H I O

James D. Lyons,
St. Rita Hospital,
Lima, Ohio,

Plaintiff

-vs-

Lima Locomotive Works Incorporated,
Lima, Ohio,

Defendant

No. 33472.

P R A E C I P E

To the Clerk:-

Please issue summons in the above entitled action for the defendant, Lima Locomotive Works Incorporated, directed to the Sheriff of Allen County, Ohio, and returnable according to law. Endorse same - "Action for money only; amount claimed Seventy-Five Thousand Dollars ($75,000.00) and costs."

Jules J. Gilliod
George M. Daugherty
Attorneys for Plaintiff

THE STATE OF OHIO, } SS
Allen County, }

CERTIFICATE OF COPY

I, Anne E. Geiger, Clerk of the Courts within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original document now on file in said Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Lima, Ohio this 13 day of May A.D. 1947

(SEAL)

ANNE E. GEIGER
Clerk
By Verda Evans Deputy

SUMMONS

General Code, Sec. 11281, 11883

The State of Ohio, Allen County. **Common Pleas Court**

To the Sheriff of said County:

You are hereby commanded to notify Lima Locomotive Works Incorporated, Lima, Ohio

that it has *been sued by* James D. Lyons

in the Court of Common Pleas of said ALLEN COUNTY, and must answer by the 4th *day of* January *A. D. 1941, or the petition of said plaintiff will be taken as true and judgment rendered accordingly.*

Said Sheriff will make due return of this summons on the 16th *day of* December *1940*

WITNESS my hand and seal of said Court, this 2nd *day of* December *1940*

J. L. Schnabel

Clerk

By J. H. Kuhlen *Deputy*

THE STATE OF OHIO, Allen County, } SS CERTIFICATE OF COPY

I, Anne E. Geiger, Clerk of the Courts within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original document now on file in said Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Lima, Ohio this 13 day of May A.D. 1941

(SEAL)

ANNE E. GEIGER
Clerk

By Heid Turner Deputy