

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

HERMAN YANDLE, ARTHUR BURDEN,)
J. C. YANDLE, HAROLD SPENDER,
RUFUS J. LEE, HERBERT SOMAS)
and JESSIE MAE THOMAS)

vs.

CIVIL ACTION NO.
TT-14-4-CA

P. P. G. INDUSTRIES, INC., DR. LEE)
GRANT, CORNING GLASS WORKS, INC.,)
THE ASBESTOS TEXTILE INSTITUTE,)
PITTSBURGH CORNING CORPORATION,)
NORTH AMERICAN ASBESTOS CORP.,)
E. G. N. E. P. LTD., CAPE ASBESTOS)
LTD. and INDUSTRIAL HEALTH FOUN-)
DATION)

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Lindell Lee Dean, hereinafter referred to as Plaintiff, complaining of P. P. G. Industries, Inc., Dr. Lee Grant, Corning Glass Works, Inc., The Asbestos Textile Institute, Pittsburgh Corning Corporation, North American Asbestos Corp., E. G. N. E. P. Ltd. and Cape Asbestos Ltd., hereinafter referred to as Defendants, and after first obtaining leave of Court, intervenes as Plaintiff in the above cause and would respectfully show as follows:

I.

That the Plaintiff for a number of years was an employee of Union Rubber and Asbestos Company whose ownership was acquired by Pittsburgh Corning and Plaintiff worked for said Defendant or its successor in title for a number of years in and around Tyler, Texas.

II.

Plaintiff would allege that the Defendants, and each of them, required or allowed the Plaintiff to work in and around dangerous materials

PLAINTIFF'S
EXHIBIT
WV-09765

PLAINTIFF'S
EXHIBIT

46620

and substances without taking proper precaution to safeguard the Plaintiff against the same and without making a proper warning to the Plaintiff of the dangerous propensities of such substances though they were well known to the Defendants. Plaintiff alleges that such acts and omissions of the Defendants were negligence and a proximate cause of serious injuries to the Plaintiff's body and particularly his lungs.

III.

Plaintiff alleges that the acts aforesaid described were wilfully, knowingly and wantonly committed and amount to what is known in the law as gross negligence and such acts were a proximate cause of the damages of the Plaintiff.

IV.

Plaintiff further alleges that the Defendants, and each of them, warranted to the Plaintiff that the products he was required and allowed to work with were reasonably fit for their intended use and free from defect and not unreasonably dangerous, but in spite of such warranty, the Defendants, and each of them, breached said warranty to the Plaintiff, which was a proximate cause of the damages to the Plaintiff's body, and particularly his lung. The Plaintiff invokes the doctrine of implied warranty, strict liability and the provisions, where applicable, of the Uniform Commercial Code.

V.

Plaintiff would show that the real cause of the injuries and damages to his body have just now become known to the Plaintiff and that he has forthwith brought this action. Further, the Plaintiff alleges that the Defendants, and each of them, committed acts and omissions which were calculated to and did fraudulently conceal from the Plaintiff his true condition and the true dangers involved in working in and around and near the product in question and that the Plaintiff has just now become aware of such dangers and such fraudulent concealment by the

VI.

Plaintiff alleges that by reason of the actions described herein, he has suffered severe and permanent injuries to his entire body and nervous system and particularly has been damaged in the area of his lungs and that prior to the actions of the Defendant, the Plaintiff was healthy, able-bodied and capable of earning large sums of money and had a reasonable life expectancy, but that by reason of the actions of the Defendants as herein described, his ability to work and earn money has been greatly diminished, if not totally destroyed, and Plaintiff has been required to undergo hospital and medical services from the date of such injuries to the present date and that he alleges and believes that he will be required to incur such reasonable services in the future. By reason of such injuries to his body, the Plaintiff has undergone severe and excruciating pain and suffering, both mentally and physically, from the date of such injuries to the present, and he alleges and believes that he will so suffer for the rest of his natural life.

VII.

Plaintiff says that if, at the time the accidental injuries above enumerated were sustained, the Plaintiff was suffering from arthritis or any other disease or condition, then that the same was not disabling but that the injuries above complained of caused such disease or condition to become aggravated or exacerbated so that it also became a cause of the Plaintiff's disability.

VIII.

By reason of such allegations set forth herein, the Plaintiff has been damaged in the sum of \$250,000.00 actual damages and the Plaintiff alleges that he is entitled to exemplary damages in a like amount.

WHEREFORE, premises considered, Plaintiff prays that the Defendants be cited to appear herein as required by law and that on final hearing hereof Plaintiff have judgment against the Defendants in the sum of \$250,000.00 actual damages, \$150,000.00 exemplary or punitive damages, and for such other and further relief as he may show himself justly entitled.

JONES, JONES & BALDWIN
P. O. Drawer 1248
Marshall, Texas 75670

By: Andrew Dean
ATTORNEYS FOR PLAINTIFF,
LINDELL LEE DEAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Plaintiff's Original Complaint has been forwarded by United States Mail to Mr. Otto Mullins, Suite 300, 8204 Kimbrook Dr., Dallas, Texas 75247, attorney for the Plaintiff; Mr. Tom Hathaway, 797 Petroleum Bldg., Tyler, Texas 75701, attorney for Asbestos Textile Institute; Mr. Jack Flock, Citizens First National Bank Bldg., Tyler, Texas 75701, attorney for P. F. G. Industries, Inc. and Dr. Lee Grant; and Mr. Preston Shirley, 700 First Hutchings-Seely National Bank Bldg., Galveston, Texas 77550, attorney for Pittsburgh Corning Corporation; Mr. Richard Bernays, 1500 Fidelity Union Tower, Dallas, Texas 75201, attorney for Cape Asbestos Ltd.; Mr. John H. Hall, One Main Place, Dallas, Texas 75240, attorney for Corning Glass Works, Inc.; and Mr. Thomas J. Reinhardt, 2100 Lawyers Bldg., 428 Forbes Ave., Pittsburgh, Pennsylvania 15219 and Mr. William N. Hamilton, Republic National Bank Tower, Dallas, Texas 75201, attorneys for Industrial Health Foundation, on this the 6th day of March, 1976.

Andrew Dean
BY COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

HERMAN YANDEL, ET AL)
VS.) CIVIL NO. TY-74-3-CA
YPO INDUSTRIES, INC., ET AL)

PLAINTIFFS' FIFTH AMENDED ORIGINAL COMPLAINT
TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW James S. Allen, Larry V. Allen, Ottie Earl Allen, Julian Amays, Byron Keith Arnold, ^{Loyce Anteliving} Perfice Atkins, Winnie Attaway, R. K. Baird, Carl Edward Barnes, James B. Bates, Roger Alvin Bates, Mrs. Harold Battles, individually and on behalf of the heirs of Harold Battles, deceased, Marilyn L. Baul, James Becknell, Jr., Benny M. Brock, Chester Lee Brooks, Jasper E. Brooks, Billy Ray Brown, Jesse Lee Burton, Billy Joe Byrd, Donald E. Campbell, Arbie Dean Choice, Roy Lee Choice, Adolphus Christopher, Bobby J. Clark, Luther James Clark, Traversia Clark, Edward C. Clay, Howard L. Clifton, Nolan Cooke, Jr., James Leroy Craig, ^{James P. Craig} Charles Mack Davis, Lindell Lee Dean, Gregory Lynn Dearlone, Otto F. Derrick, Lee A. Dinson, Frederick Dunn, J. L. Elder, Lindsay Franklin, Cullie Garner, Morse Green, Willie B. Green, Deprinst Hall, John W. Hamilton, W. C. Harold, Charles Hawkins, Coy Lee Hawley, Janet Haynes, Arthur W. Henderson, Perry L. Henderson, Glynn Lee Hendley, Riley E. Hicks, Willie L. Hicks, Jerry V. Holly, James J. Holmes, Alvie Lee Howard, Alvin Hyter, Joe Steve Hyter, David Lee Jackson, Jesse Jackson, Jr., John Wayne Jackson, Terrill Jackson, Jr., Charlie Johnson, Ed Johnson, Gene Carl Johnson, James Johnson, James Dudley Johnson, James Hubert Johnson, Karl B. Johnson, Parkinson A. Johnson, Thomas E. Johnson, Ben Jones, Fred Jones, Freddie Jones, Jr., George Thomas Jones, Charles Alvin Jordan, Ronald Clifton Jung, Barry K. Knight, Hank Randal Knight,

Jack Knight, Roy Deen Langford, J. T. Lidia, Orland Davis McClain, Pat Wendell McCollum, Frank McCormick, Les McGuin, W. A. McGowan, Emmitt Martin, Mrs. John E. Medlock, Individually and on behalf of the heirs of John E. Medlock, deceased, Jimmy Ray Melton, Roger W. Miles, Andrew Lee Mitchell, Gerald Eugene Mitchell, Irich Morrison, Roy Jean Mosley, Ernest Moore, Clarence Ray Murphy, H. J. Newcome, Charlie Ray Oliver, Stonevill Oliver, Jr., Larry David Rack, Virgil Thomas Pace, Clowia Ferryman, Walter Leo Phillips, Willie Pinkie, Jr., Walter Wyatt Pope, Jerry Ross Potter, Wardell Price, David Prince, Ralph Morris Pritchett, Joe Radford, Hugh Lee Ray, William R. Ray, Sammy W. Rice, Glen Howard Richardson, Ed Richardson, Moss Hanson Richardson, Jr., Warren G. Richardson, Donald T. Roberson, Anthony E. Roberts, Sr., Clyde B. Roberts, Ronald Lee Roper, David Roy, Charlie J. Rush, Jr., Auther Childress Birmore, Gordon C. Smith, Lewis Wayne Snider, Roger Stephenson, Clyde E. Summerville, Raymond Summerville, Abraham C. Taylor, Clavin Frederick Taylor, Herbert Taylor, Lee Aubrey Thomas, Joseph Thompson, Melvin C. Wady, Eligha Walker, Jr., James Ward, John Wesley Ward, Burness Warren, Frank Warren, Jr., Gary Warren, Leon Warren, Levester Warren, Yuquay Webster, A. G. Welch, Truman Wells, Roy J. Wesley, Charles Edward Wickware, Fina Wickware, Willie Charles Wickware, Jesse J. White, Allen V. Whittiker, Riram Williams, Isaac Williams, Joseph H. Williams, Billy Williamson, James T. Wilson, Jessie Don Wilson, Eolus F. Winston, Willie Wright, Jr., Ernest Lee Wyatt, A. D. Yandle, Miles B. Young, Tommy Albritten, Lee Ray Russell, Clyde Calvin Moore and Vernon Bartlett Rozell, hereinafter referred to as Plaintiffs, complaining of PPG Industries, Inc., Dr. Lee Grant, Corning Glass Works, Incorporated, The Asbestos Textile Institute, Pittsburgh Corning Corporation, North American Asbestos Corp., EGNEP, Limited, Cape Asbestos Company, Limited, The United States of America, Cape Industries, Cape Asbestos Fibers, Ltd.,

UNARCO, Industries, Inc., and Oil Chemical and Atomic Workers International Union, hereinafter referred to as Defendants, and after first obtaining leave of Court, file this their Fifth Amended Original Complaint and would respectfully show as follows:

I.

That the Plaintiffs, for a number of years, performed work for the Defendant Pittsburgh Corning or its successor in title for a number of years in and around Tyler, Texas.

II.

Plaintiffs would allege that the Defendants, and each of them, required or allowed the Plaintiffs to work in and around dangerous materials and substances without taking proper precaution to safeguard the Plaintiffs against the same and without making a proper warning to the Plaintiffs of the dangerous propensities of such substances though they were well known to the Defendants. Plaintiffs allege that such acts and omissions of the Defendants were negligence and a proximate cause of serious injuries to the Plaintiffs' bodies, and particularly their lungs.

III.

Plaintiffs further allege that at all material times hereto the Defendants Cape Asbestos Company, Limited, North American Asbestos Corporation, and ECRF, Limited, were acting as agents each for the other and that said Defendants were acting as agents, servants and employees one for the other on the material times expressed herein, and further that such Defendants, and each of them, committed acts of negligence which were a proximate cause of the injuries to the Plaintiffs and that such Defendants failed to warn the Plaintiffs of the dangers of asbestos and further that such Defendants failed to take steps to ascertain the dangers involved in working in and around asbestos products and that they failed to keep reasonably abreast of the literature in connection with same and further the said Defendants committed other acts of negligence, all of which were carelessness and a proximate cause of the injuries hereinafter set forth.

IV.

Plaintiffs would further allege that the Defendant UNARCO sold or caused to be sold the Tyler Plant, including raw asbestos materials, to Pittsburgh Corning and that said UNARCO failed to take steps to warn the Plaintiffs of the dangerous propensities of same, which was negligence and a proximate cause of the Plaintiffs' injuries.

Plaintiffs would further show that said asbestos was reasonably dangerous, a fact which was well known to the Defendant, and further that the Defendant warranted same to be fit for its intended use, both expressly and impliedly, but in spite thereof the Defendant breached its warranty to the Plaintiffs and further Plaintiffs would show that such product was defective and unreasonably dangerous, all of which was a producing cause of Plaintiffs' injuries.

V.

Plaintiffs allege that the acts aforesaid described were wilfully, knowingly and wantonly committed and amount to what is known in the law as gross negligence and such acts were a proximate cause of the damages to the Plaintiffs.

VI.

Plaintiffs further allege that the Defendants, and each of them, warranted to the Plaintiffs that the products they were required and allowed to work with were reasonably fit for their intended use and free from defect and not unreasonably dangerous, but in spite of such warranty, the Defendants, and each of them, breached said warranty to the Plaintiffs, which was a proximate cause of the damages to the Plaintiffs' bodies, and particularly their lungs. The Plaintiffs invoke the doctrine of implied warranty, strict liability and the provisions, where applicable, of the Uniform Commercial Code.

VII.

Plaintiffs further allege that the agents, servants and employees of OCAW committed acts of negligence and carelessness which were a proximate cause of the Plaintiffs' injuries. Further Plaintiffs show that agents, servants and employees contributed by their acts to the dangerous condition in which the Plaintiffs were compelled to work, which was negligence and a proximate cause of the Plaintiffs' injuries.

Further Plaintiffs would show that the agents, servants and employees of the Defendant, by virtue of their position occupied a special relationship to the Plaintiffs and thereby owed a high degree of care to the Plaintiffs and the said agents, servants and employees of the Defendant OCAW negligently breached this duty of care, which was a proximate cause of the Plaintiffs' injuries.

VIII.

Plaintiffs would show that the real cause of their injuries and damages have just now become known to the Plaintiffs and that they have forthwith brought this action. Further, the Plaintiffs allege that the Defendants, and each of them, committed acts and omissions which were calculated to and did fraudulently conceal from the Plaintiffs their true conditions and the true dangers involved in working in and around and near the product in question and that the Plaintiffs have just now become aware of such dangers and such fraudulent concealment by the Defendants.

IX.

Plaintiffs allege that by reason of the actions described herein, they have suffered severe and permanent injuries to their entire body and nervous system and particularly have they been damaged in the area of their lungs and that prior to the actions of the Defendants, the Plaintiffs were healthy, able-bodied and capable of earning large sums of money and had a reasonable life expectancy, but that by reason of the action of the Defendants as herein described, their ability to work and earn money has



been greatly diminished, if not totally destroyed, and Plaintiffs have been required to undergo hospital and medical services from the date of such injuries to the present and that they allege and believe that they will be required to incur such reasonable services in the future. By reason of such injuries, the Plaintiffs have undergone severe and excruciating pain and suffering, both mentally and physically, from the date of such injuries to the present, and they allege and believe that they will so suffer for the rest of their natural lives.

X.

Plaintiffs say that if, at the time the accidental injuries above enumerated were sustained, the Plaintiffs were suffering from arthritis or any other disease or condition, then that the same were not disabling but that the injuries above complained of caused such disease or condition to become aggravated or excited so that it also became a cause of the Plaintiffs' disability.

XI.

By reason of such allegations set forth herein, the Plaintiffs have each been damaged in the sum of \$250,000.00 actual damages and the Plaintiffs allege that they are entitled to exemplary damages in a like amount.

WHEREFORE, premises considered, Plaintiffs pray that the Defendants be cited to appear herein as required by law and that on final hearing hereof Plaintiffs have judgment against the Defendants in the sum of \$250,000.00 each for actual damages, \$250,000.00 each for exemplary or punitive damages, and for such other and further relief as they may show themselves justly entitled.

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By: *Antti Belbin*
ATTORNEYS FOR PLAINTIFFS

