PLAINTIFF'S EXHIBIT
GF-853

IN THE UNITED STATES DISTRICT COURT WITHIN AND FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

FILED
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CLERK

FEE JAMES,

Plaintiff,

vs.

No. 8864 (2)

THE RUBEROID CO., a corporation,

Defendant.

PLF. ☐ DEF. ☒ ☐
EXHIBIT NO. DL-17
DEPO OF: Dr. O'Leary
DATE: 3-30-82

DEFENDANT'S ANSWER.

For answer to plaintiff's petition defendant states:

I

1. Defendant admits the averments set forth in paragraph 1 of the petition.

2. Defendant admits that plaintiff was employed as a laborer in defendant's plant in the City of St. Louis, Missouri, from the early part of the year 1943 until the early part of the year 1952.

3. Defendant denies each and every allegation set forth in plaintiff's petition which is not hereinabove expressly admitted.

II

1. Defendant states that at all times mentioned in plaintiff's petition, and for a long time theretofore, defendant was a major employer under the terms of the Missouri Workmen's Compensation Law, Chapter 287, Sections 287.010 et seq., Missouri Revised Statutes, 1949, in that defendant at all said times had more than ten employes regularly employed; that defendant duly elected to accept the occupational disease section of said law, Section 287.020, M.R.S. 1949,

by filing with the Missouri Workmen's Compensation Commission, (now Division of Workmen's Compensation) created by said law, a written notice of its said election, and defendant posted in conspicuous places in its said plant and on its premises notices of said election furnished by said commission; and defendant states that it was at all said times a duly qualified self-insurer under said Missouri Workmen's Compensation Law.

2. Defendant states that the plaintiff at the time he filed this suit and at all times mentioned in his petition well knew that the defendant had elected to accept the occupational disease section of the Missouri Workmen's Compensation Law, and defendant states that plaintiff at no time filed with the Missouri Workmen's Compensation Commission or the Division of Workmen's Compensation any notice that he elected to reject the Missouri Workmen's Compensation Law or said occupational disease section thereof, and that both plaintiff and defendant were at all times mentioned in plaintiff's petition bound by all the provisions of said law.

3. Defendant states that if the plaintiff contracted an occupational illness or disease as the result of his employment in defendant's plant, as he alleges, his sole and exclusive right of recovery therefor was and is by means of a claim before the Division of Workmen's Compensation, of the Department of Labor and Industrial Relations of Missouri, as in said law provided, and that he has no right to maintain this suit.

III

1. Defendant states that on or about the 21st day of May, 1952, plaintiff filed with the Division of Workmen's Compensation, Department of Labor and Industrial Relations

of Missouri, a claim wherein he asserted that he had contracted an occupational disease, namely silicosis and asbestosis, arising out of and in the course of his employment by defendant, and prayed compensation therefor.

2. That a true copy of said claim is attached to and is hereby made a part of this answer.

3. That the plaintiff thereby made an election to seek recovery for said alleged occupational disease under the Missouri Workmen's Compensation Law, and by the method of recovery in said law prescribed, by which election the plaintiff is bound, and defendant therefore states that plaintiff has no right to maintain this suit.

WHEREFORE, having fully answered, defendant prays to be hence dismissed with its costs.

John S. Marsalek
(John S. Marsalek)
MOSER, MARSALEK, CARPENTER, CLEARY & CARTER
Attorneys for defendant.
330 Pierce Building,
St. Louis 2, Missouri.
GArfield 5365.

The foregoing answer was served upon plaintiff this 14th day of November, 1952, by mailing a copy thereof to Milton R. Fox and Courtney S. Goodman, 722 Chestnut Street, St. Louis 1, Missouri, his attorneys of record.

John S. Marsalek
Attorney for defendant.