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Rescon Walls Cause Trouble For Manville

By **RAYMOND A. JOSEPH**,
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As if Manville Corp. didn't already have enough trouble with asbestos, now Rescon is compounding its problems.

Manville sought protection under Chapter 11 of the federal Bankruptcy Code because it is reeling from thousands of lawsuits related to injuries and deaths allegedly caused by its

But there's also Rescon, a gypsum-like product for external walls that was supposed to give, according to the advertisements, "the stucco look without the stucco mess." And so it did for a few years. Its fairly rapid deterioration, however, is distressing homeowners and embroiling Manville in lawsuits.

The "Johns-Manville Rescon Exterior Wall System" introduced in 1970 and withdrawn in 1974, consisted of 4-foot-by-8-foot water-resistant boards that were nailed to the studs of exterior walls and sprayed with Rescon. The system was a considerable improvement over the conventional stucco technique, a messy process that takes about three weeks to complete. With Rescon, the job

Cracks and Blotches

In a promotional pamphlet, Johns-Manville Corp., the predecessor of Manville corp., boasted that "you save time and labor" with Rescon. "And what a job it is. Clean, crisp details and sharp corners. Smooth, flat surfaces, but with true stucco texture."

In appearance, Rescon can fool even the experts. "When you walk up to a 'Resconned' building and you look at it closely, you'll be hard-pressed to tell whether it's the natural stuff or Rescon," says Keith Keithly, president of California Building & Coating Co., a San Diego general contractor. His company has replaced a number of Rescon walls with conventional stucco.

is all to recognizable. Large cracks begin to appear at the board joints, and because the boards are specially treated, they don't respond to simple repairs. Soon, rain water seeps through the cracks, forming moisture chambers in the walls. Then, bit blotches are visible on inside walls. In buildings more than one-story high, water can even drip into light fixtures, turning them into so many unintended buckets.

That was the situation at Strawberry Hills, a middle-class development in La Mesa, Calif., of 180 units ranging in price from \$85,000 to \$100,000. The owners sued Manville.

Seven-Month Project

"I bought brand new in 1974 in-

MORE Legal TROUBLES For Manville Corp.

(Continued from front)

preparation for my retirement," says Kendall Park, owner of a three-bedroom unit and a former member of the Strawberry Hills condominium board. "I am used to evaluating projects, because that was my forte for 40 years," says Mr. Park, who retired in 1979 from his job as an assistant vice president at Talman Savings & Loan Association in Chicago. "I thought I was getting a good deal."

The former loan officer used his expertise to help sort out the Rescon mess. "We had to cocoon the buildings in plastic, erect scaffolding tear down all the Rescon, put in real stucco. And that took nearly seven months, which involved heavy equipment, the landscaping had to be demolished and streets resurfaced, he says. after a six-week trial, Manville settled out of court for \$1.2

Manville has settled other Rescon cases out of court, but how many isn't known. Manville refuses to discuss Rescon. Marvin Morgenstein, a San Francisco lawyer handling Rescon cases for Manville, says he doesn't know how many cases were settled before he took over in late 1979. But he has been instrumental in disposing of three and was working on four others when Manville filed for Chapter 11 protection.

Protecting a Judgment

Under Chapter 11, a company is allowed to operate free from creditor lawsuits as it works out a reorganization plan. But the Manville filing is being challenged because the company is financially strong. Manville has argued that the multiplicity of damage suits arising from injuries and death allegedly caused by asbestos would eventually wipe out its \$2.2 billion in assets.

The Chapter 11 status will proba-

Manville. "Can you imagine what would have happened to us if our lawyer wasn't clairvoyant enough to see what Manville was about to do?" ask Wallace Driver, president of the Costa Viva Homeowners Association, a San Diego waterfront development.

Mr. Driver alludes to Gary Aguirre, a San Diego lawyer who foresaw in a March 19 court appearance that Manville could file for Chapter 11 protection "within 45 to 60 days." He based his assertion on the "literally billions of dollars in potential liabilities" from asbestos litigation. The lawyer again used the argument on July 2 when he prevailed in obtaining a bond to cover a \$6.1 million judgment awarded his clients. Seven weeks later, Aug. 26, Manville filed for Chapter 11 protection.

Earlier this month, Burton Lifland, a New York bankruptcy judge, agreed to let an appeal of the judgment by Manville continue in a California court, thereby severing

Chapter 11 proceedings.

If the appeals court affirms the lower court decision, Judge Lifland said the plaintiffs can collect their award from the bonding agency, Federal Insurance Co., a unit of New York-based Chubb Corp. Federal Insurance is exposed for \$25 million worth of bonds it issued in various other judgements and settlements resolved by Manville before the Chapter 11 filing.

All other Rescon plaintiffs—actual and potential—probably will resort to "cocooning" their homes until Manville works out its Chapter 11 procedure. That could take three to four years, say the bankruptcy experts.

Meanwhile, there's a lot of potential for lawsuits. "I can't believe it," says Costa Viva's Mr. Driver. People with defective Rescon walls "are going to be cocooned in plastic for years, and living in mossy conditions while Manville works things out, slowly."

Los Angeles Times

TUESDAY, DECEMBER 15, 1982

A Hunch Could Pay Off in Manville Case

By MICHAEL A. HILTZIK, *Times Staff Writer*

In a San Diego courtroom last July attorney Gary J. Aguirre fired a lucky shot at Denver-based Manville Corp. This week it paid off.

It was July 2 - the day after he won a \$6.1 million jury verdict against Manville-and the 42 year-old lawyer suggested in court that the company might be planning to escape mounting claims against it from victims of asbestos poisoning by filing for bankruptcy.

Such an action, he pointed out would freeze many claims against the company—including that of his clients.

It was a prescient argument. In a surprise move nearly two months later, Manville filed for protection from creditors under Chapter 11 of the federal bankruptcy law.

Manville's unexpected bankruptcy filing is controversial because the company is financially healthy. Manville says it filed to protect its \$2.2 billion in assets from asbestos victims who blame the company, a major manufacturer of asbestos products, for their ailments. These claims could easily total billion of dollars, Manville has said.

But because Aguirre had persuaded Superior Court Judge Ben Hamrick to require a \$9 million bond from Manville in his case, his \$6.1 million judgment may become one of the few outstanding claims against Manville to be collectible despite its bankruptcy.

As a New York bankruptcy judge ruled Monday, the bond, a \$9 million insurance policy from New Jersey-based Federal Insurance Co., in effect insulates Manville from being affected by the judgement. The judge thus cleared the way for an appeal by Manville against the San Diego judgment and ruled that Aguirre's clients, if they prevail, can collect their money from the insurer.

The ruling may prove to be a valuable precedent for other people with outstanding claims against Manville, including some asbestos victims. Wayne Hogan, a Tallahassee, Fla., lawyer representing a plaintiff with a \$2-million judgment against Manville also protected by an insurance bond, has already conferred with Aguirre, and said Tuesday that he will also argue that the existence of the bond should permit his case to go forward.

Aguirre's case does not involve asbestos. He filed suit on behalf of the owners of two San Diego condominium complexes and a commercial building built with a Manville product called Rescon. Rescon is a gypsum drywall designed to be used on the outside of buildings, where it can be treated to resemble stucco. In actual use, the material deteriorated, allowing water to seep through and damage the building it covered.

Although Manville's bankruptcy filing Aug. 26 took the business and financial community by surprise, Aguirre says his close monitoring of Manville's activities as far back as October, 1981, gave him a sense that the company was taking extraordinary steps "to place their assets beyond the reach of judgment creditors."

His first clue was a Manville reorganization that month, in which the company, then Johns-Manville Corp., created five new corporations and transferred more than 75% of its assets to four of them leaving only about \$400 million to \$500 million in the old Johns-Manville.

"For a company that size to shuffle its assets" Aguirre said "told me they were pretty desperate. I began to follow more closely everything I could find out about them."