

FILE NAME: Eagle-Picher (EP)

DATE: 1962-1964

DOC#: EP033

DOCUMENT DESCRIPTION: Legal - Petition of Plaintiff in Pickard vs EP with Medical Report Letter

IN THE CIRCUIT COURT OF JASPER COUNTY
AT JOPLIN, MISSOURI

Russell L. Pickard,

Plaintiff,

-vs-

The Eagle-Fisher Company, a Corporation

Defendant.

No. 56126

PETITION

Comes now Russell L. Pickard, and states and alleges:

That his residence and address is 102 Malden Lane, Joplin, Missouri.

That the Eagle-Fisher Company, defendant herein, is a corporation, duly and legally incorporated under the laws of the State of Delaware, and given permission by the State of Missouri to do business within the State of Missouri.

Pleading for his cause of action against defendant, plaintiff states and alleges:

That plaintiff was employed on February 23, 1937, by the defendant herein, in the insulation division of defendant in Joplin, Missouri, and plaintiff worked for defendant in the said insulation division in Joplin, Missouri, until February 26, 1942, when employment of plaintiff was terminated by this defendant. Sometime during the year of 1942, the exact date of which plaintiff does not remember, that plaintiff was employed by defendant as supervisor of the insulation division of defendant in Joplin, Missouri, and in which capacity in the said employment plaintiff continued until the aforesaid date of February 26, 1942.

That this defendant is engaged and has been for many years last past, and throughout the time that plaintiff was employed by defendant, in the manufacture of insulation materials to insulate homes and buildings, and insulation for industrial purposes. That the said insulation was manufactured in the said insulation division of defendant in Joplin, Missouri, through the time that plaintiff was employed by defendant in the said insulation division of defendant.

That the said insulation used in its manufacturing process materials consisting of waste slag from smelting of lead products and wastes from iron ore slag, and that the mineral slag included silica from rocks. That this said mineral slag and silica was melted by defendant in the said insulation division in Joplin,

Missouri, in which division plaintiff was employed as aforesaid, by process in which the aforesaid materials were placed by the defendant in the furnace under temperatures of twenty-three hundred (2300) to twenty-six hundred (2600) degrees temperature. That the said materials ran from the furnace in a molten stream of slag over a steam shed. Then, the slag was blown at one hundred twenty-five (125) degrees steam pressure to the blow chamber and in the blow chamber the material became insulation wool. This wool consisted of fine fibers from the aforesaid mineral products. The fine fibers were then blown by steam into a blow chamber and the fine fibers, consisting of the insulation material, leaked out of the blow chamber and got into the air and was breathed by this plaintiff throughout the period that plaintiff was employed by the defendant as aforesaid. That after the aforesaid insulation material was put through the blow chamber, it then went into a hammer mill and was ground up in the hammer mill and the hammer mill created dust in the air throughout the time that plaintiff worked for defendant as aforesaid, the said dust escaping from the hammer mill. After the said insulation material went through the hammer mill, it then went through a cleaning system, then was packaged by a mechanical packer, that the insulation material was granulated in the hammer mill and was packaged as granulated insulation wool. That the said granulated insulation wool was packed in thirty (30) pound bags or sacks, and during the packing process, that large quantities of dust escaped into the air where plaintiff was employed as aforesaid, causing plaintiff to breathe the air in which the said dust was floating.

Further, that throughout the time the plaintiff was employed by the defendant, that defendant used compressed air to clean out the motors, which were covered with dust from the granulated insulation wool, causing said dust to contaminate the air plaintiff did breathe. Further, that during the last ten or fifteen years that plaintiff was employed by defendant, the exact time of which the plaintiff does not know, that defendant used compressed air to sweep up the floor that was covered by the fine dust from the aforesaid granulated insulation wool, where plaintiff was employed as aforesaid, causing the air plaintiff breathed

to be contaminated.

That defendant permitted the air which defendant required plaintiff to breathe while plaintiff was employed as aforesaid, to become saturated with the said fine fibers and dust from the aforesaid insulation wool.

Further, that defendant was negligent in permitting the air that defendant required plaintiff to breathe while plaintiff was employed as aforesaid, to become contaminated with smoke from the binder that defendant operated in the said insulation division in Joplin, Missouri, where plaintiff was employed.

That as the insulation material was blown as aforesaid into the blow chamber, that the insulation material was sprayed with chemicals consisting of a binder, to stiffen the fibers, and that plaintiff does not know the nature of the said chemicals, and that in applying this stiffening material, or binders, that large quantities of smoke, continuously throughout the time that plaintiff worked for defendant in said insulation division, escaped from an oven in which the insulation material was subjected to a heat of four hundred (400) degrees Fahrenheit to dry out the binders that were applied to the insulation material, and further, that fumes escaped from said oven, contaminating the air that plaintiff was required to breathe, said contamination continuing throughout the time that plaintiff was employed by defendant in said insulation division in Joplin, Missouri.

Further, that defendant operated trim saws and cut-off saws in its said insulation division in Joplin, Missouri, throughout the time that plaintiff was employed by defendant, and that these trim saws and cut-off saws, cutting and sawing the said insulation material, caused large quantities of dust, consisting of the said insulation material, to float in the air throughout the time that plaintiff was employed by defendant and defendant, by so contaminating the air, required plaintiff to breathe the said dust.

Further, that defendant manufactured plastic insulation in the building where plaintiff was employed by defendant, said manufacturing of the said

plastic material continuing throughout the time of the employment by defendant of plaintiff, and that the mixture of chemicals, insulation wool, asbestos, and granulated insulation, mixed in a cement mixture, caused dust from the said chemicals and materials to float in the air, which dust defendant required plaintiff to breathe in the said insulation division throughout the time the plaintiff was employed by the defendant.

That defendant took no precautions to prevent said dust, fumes, smoke and chemicals to contaminate the air that defendant required plaintiff to breathe while plaintiff was employed by defendant as aforesaid.

That throughout the time that plaintiff was employed by defendant, that plaintiff did breathe and inhale the aforesaid poisonous dust, smoke, chemicals, fibers and materials.

Further, that defendant was negligent in failing to provide, during the last twenty years that plaintiff was employed by defendant as aforesaid, proper masks or respirators, and had defendant provided plaintiff proper masks or respirators, that plaintiff could have worn said mask or respirators, and could have avoided breathing the said smoke, dust, chemicals and fumes.

Further, that defendant was negligent in permitting the fine insulation fibers to leak from the aforesaid blow chamber, and that defendant should have ventilated the said blow chambers, which the defendant could have properly ventilated, had defendant so desired.

Further, that defendant should have provided the said building, where plaintiff worked for defendant at aforesaid, with blow fans and suction fans to take the said dust, chemicals, fibers, and smoke and other materials as aforesaid, out of the building, and could have thus purified the air that plaintiff breathed.

Further, that defendant, if it had so desired, could have cleaned the said motors and swept the said floor by other processes other than compressed air.

That defendant, had it so desired, could have built a hood over the hammer mill, hooked on to a suction fan, carrying the said dust from the hammer mill, and thus preventing the said dust from getting into the air that plaintiff was so required to breathe.

Further, that defendant, had it so desired, could have covered with hoods or coverings the aforesaid cement mixers that were used to grind the materials as aforesaid, and could have used a suction fan inside the hood to carry the said dust from the said building, and thus not contaminate the air that plaintiff was required to breathe when employed by defendant as aforesaid.

That during the last two years that plaintiff was employed by defendant, that defendant did partially cover the said cement mixers, and used suction fans to take some of the dust and poisonous materials from the air, but quantities of dust and poisonous materials from the cement mixers continued to contaminate the air because sufficient suction fans were not used to take the said materials out of the air.

That it was known the entire time that plaintiff was employed by defendant, that defendant knew, or should have known by superior knowledge of defendant, of the poisonous and injurious and unhealthy conditions of the said air that the defendant required plaintiff to breathe as plaintiff was employed as aforesaid, but that defendant did not warn plaintiff of the poisonous nature of the said air that said plaintiff had to breathe, although defendant could have warned plaintiff of the poisonous and injurious and unhealthy nature of the said air that plaintiff was required to breathe while employed by defendant, and that plaintiff would not have worked for defendant in the said insulation division.

Further, that throughout the time that plaintiff worked for defendant at the said insulation division, that plaintiff was continually covered on his arms and face and head and the exposed parts of his anatomy with the said dust, and that the said dust did collect continuously throughout his entire employment upon his skin that was exposed to the said dust and also upon his head.

That during the last three and one-half years that plaintiff was employed by defendant, that the aforesaid poisonous dust, fumes, and chemicals and smoke that plaintiff did breathe as aforesaid, slowly and insidiously undermined and destroyed the health of plaintiff. That three and one-half years ago that plaintiff was a strong and able-bodied man, capable of doing hard manual labor and in fact doing hard manual labor each day.

That during the last three and one-half years that plaintiff was employed by defendant, that the said air that plaintiff did breathe slowly injured plaintiff to the extent that plaintiff could no longer perform hard manual labor or any manual labor whatsoever. That the entire body of plaintiff and the tissues of his said body, and his entire nervous system were injured and damaged by the aforesaid negligence of defendant through requiring plaintiff to breathe the aforesaid air, in the following particulars, to wit:

That plaintiff suffered silicosis, fibrosis, and emphysema of both lungs due to infiltration of undissolvable materials during the said period of three and one-half years, resulting in Parkinson's disease, causing plaintiff to be short of breath with the least exertion, causing plaintiff to be nervous, and causing plaintiff to be entirely and permanently and totally disabled from performing any type of manual labor, and that said injuries caused plaintiff great suffering, pain, shock, and mental anguish, to the damage of plaintiff in the sum of seventy-five thousand dollars (\$75,000.00).

That on February 28, 1962, that plaintiff was a man of fifty-two years of age, with a life expectancy of 19.91 years, had plaintiff not been so injured as aforesaid by the negligence of defendant. That on February 28, 1962, that plaintiff was earning on the average of four hundred eighty-five dollars (\$485.00) a month, or a total of five thousand eight hundred twenty dollars (\$5820.00) a year, or a total of one hundred sixteen thousand, thirty-five dollars and forty-eight cents (\$16,035.48), for the period of 19.91 years, which earnings plaintiff will lose as a result of said injuries to plaintiff

WHEREFORE, plaintiff prays for judgment against defendant in the sum of one hundred ninety one thousand and thirty-five dollars and forty-eight cents (\$191,035.48), and the costs of this action.

Hoy Coyne
Joplin, Missouri

Foyette Howe
Columbus, Kansas
Attorneys for Plaintiff

Circuit Court for the County of Jasper

State of Missouri at.....Joplin.....

Russell L. Pickard
Plaintiff.....

vs.

No. 56126

The Eagle-Picher Company, a Corporation,
Defendant.....

S U M M O N S

The State of Missouri to Defendant

Eagle Picher Company

You are hereby summoned to appear before the above-named court and to file your pleading to the petition, a copy of which is attached hereto, and to serve a copy of your pleadings upon Fayette Rowe, Columbus, Kansas and Roy L. G. Landreth Building, attorneys for plaintiff, whose address is Joplin, Missouri, all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition.

(Seal of Circuit Court)

Harold Jones
Circuit Clerk.

By

Marian Harley
Deputy Clerk.

Dated August 15, 1963

*This summons served on Alton L Jones
approx 10:00 am August 16, 1963
A Jones*

A. E. SPENCER, JR.
JOHN W. SCOTT
E. P. DWYER, JR.
FREDERICK H. LAAS

LAW OFFICES
SPENCER, SCOTT & DWYER
FIRST NATIONAL BUILDING
JOPLIN, MISSOURI
TELEPHONE MAYFAIR 3-6211

OF COUNSEL
HAYWOOD SCOTT

March 27, 1964.

Mr. Fayette Rowe
Attorney at Law
P. O. Box 173
Columbus, Kansas

Dear Mr. Rowe: Re: Pickard v. Eagle-Picher

Thank you for the copy of the medical report on
Mr. Pickard dated April 24, 1962.

We expect Mr. Spencer back in the office next
week and we will be in touch with you at that time
as regards another physical examination of Mr.
Pickard.

Very truly yours,

E. P. Dwyer, Jr.

EPD:mb

cc Mr. Charles Dautel

PH: 18
C. P. E. 8-8122
B. 1. 8-4070

OFFICE FILES
MR. DAISY ROGERS
MRS. LORNA THOMAS

J. M. McMILLAN, M. D.
MEMBER OF A.A.S.P. - ENT. - A.P.A.
100 SO. DRAPER
VINITA, OKLAHOMA

4-24-62

Fayette Rowe
Attorney at Law
Columbus, Kansas

Re: E. L. Picaard
102 Malden Lane
Joplin, Missouri

Dear Sir:

The above named patient was examined by me in my office this date.

Lung or Chest X-rays show Fibrosis of the bases or the lower 1/3 of both lungs, bilaterally with more pronounced fibrosis of the right base or the lower 1/3 of both lungs.

Left inguinal hernia noted. Patient wears a truss most of the time. Left indirect inguinal hernia, reducible, caused on the job.

He has an intentional tremor of the hands.

He has slight deafness of left ear from apparent loud noise from steam noise.

He is short of breath with the least exertion due to his lung condition.

Diagnosis: I. Silicosis and fibrosis and emphysema of both lungs due to inhalation of undissolvable material over a long period of time.

II. Mild Parkinson's disease, cause unknown.

III. Flat feet, chronic broken down arches.

Prognosis: This man is 100% permanently totally disabled from earning a livelihood because of the fibrosis and silicosis and emphysema of the lungs.

Sincerely,

J. M. McMILLAN, M. D.