

FILE NAME: Insulators Workers' Comp Claims (IWC)

DATE: 1954

DOC#: IWC037

DOCUMENT DESCRIPTION: Claimant - Reed, Gloria D., et al. [Reed v. Ruberoid]

STATE OF MISSOURI } ss.
 CITY OF ST. LOUIS }
 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS,
 STATE OF MISSOURI
 RETURN DATE NOTED
 Jul
 7/1/54

GLORIA DEAN REED,
 LILLIAN MARL REED,
 OPAL PATRICIA REED,
 COLLEEN ELDONER REED,
 EDNA EAPLEBAE REED,
 ALBERTA REED, and
 RAYMOND WERNARD REED, Plaintiffs
 vs
 THE HUBBOLD COMPANY,
 a corporation,
 9215 Riverme Defendant.

CAUSE NO. 74320
 DIVISION NO. 1

PLF. ☐ DEF. ☒
 EXHIBIT NO. DL-1
 DEPO OF: Mr. O'Leary
 DATE: 3-30-52

PETITION FOR DAMAGES

1. Plaintiffs state that they are residents of the city of St. Louis, State of Missouri; that defendant, The Hubbard Company, was at all times herein mentioned a corporation organized and existing under the laws of the State of New Jersey, and duly licensed to do business in the state of Missouri.

2. Plaintiffs further state that they are the surviving children of Opil B. Reed who died in the city of St. Louis, State of Missouri June 24, 1953, and were born of the union of said Opil B. Reed and Illseae Reed who were lawfully married in Berwyn, Arkansas.

3. Plaintiffs further state that from the year 1944 until the middle of the year 1953, said Opil B. Reed was employed as a common laborer at defendant's plant in the city of St. Louis, Missouri; that during all of said period of employment he was principally employed in the manufacturing and processing department, and in the asbestos room or warehouse of defendant's said plant; that in said manufacturing and processing department defendant used various winding machines and mechanical equipment; that throughout said period of employment said employee was required to work on numerous occasions and for great lengths of

time at, or about said machines and equipment; that the same in the operation generated great quantities of asbestos and cement dust, and that from time to time during his employment said employee was required to work in a dusty atmosphere in defendant's manufacturing and processing departments and in defendant's asbestos room or warehouse, all of which contained large quantities of asbestos and cement dust; that as a result of all of the operations carried on in said plant and the work which said employee was required to perform as aforesaid, said employee inhaled great quantities of dust during the entire period of his employment which came in contact with said employee's eyes, nose, throat, bronchial tubes, lungs, chest and respiratory system generally.

4. Plaintiffs further state that as a result of inhaling said dust, and of coming in contact with same as aforesaid, said Opil B. Reed was rendered ill and suffered disease incident to his work, resulting in his death on or about June 24, 1953.

5. (a) Plaintiffs further state that said employee's illness and disease were due to the negligence of defendant in that defendant, in the conduct of its business, operated said machines and equipment which caused and created vast quantities of dust to be emitted into the atmosphere where said employee was at work as aforesaid and negligently and carelessly failed to provide each and every one of the said machines with a hood, blower or suction fan of sufficient power to carry off said dust and to prevent its inhalation by said employee and other employees there at work, in violation of the duly enacted Statute of the State of Missouri then in full force and effect, known as Section 292.120 of the Revised Statutes of Missouri of 1949, and also known as Section 10194 of the Revised Statutes of Missouri of 1939, which provides that every person, firm or corporation using any machine of any character which generates dust in its operation shall provide such machine with a hood which shall be connected with a blower or suction fan of sufficient power to

carry off said dust and prevent its inhalation by those employees about said machine.

(b) That said defendant was also negligent in that said work and manufacture in which defendant was engaged was work likely to produce, and which did produce, illness or disease incident to the work or process there carried on, to-wit, the disease or illness from which said employee suffered and which caused his death, namely, asbestosis, plural effusion, bronchitis and empyema, and defendant did negligently and carelessly fail to adopt and provide approved and effective device, means or methods for the prevention of such disease or illness in violation of what is known as Section 292.300 of the Revised Statutes of Missouri of 1949 and also known as Section 10211 of the Revised Statutes of Missouri of 1939, which was in full force and effect and which provides that every employer of labor in this State engaged in carrying on any work, trade or process which may produce any illness or disease incident to such work, trade or process carried on or which subjects the employee to the danger of illness or disease incident to such work, trade or process to which employees are exposed, shall for the protection of all employees engaged in such work, trade or process, adopt and provide approved and effective devices, means or methods for the prevention of such industrial or occupational diseases as are incident to such work, trade or process.

(c) Plaintiffs further state that during the time that said employee was engaged in said work as aforesaid, defendant negligently and in violation of what is known as Section 292.330 of the Revised Statutes of Missouri of 1949, and also known as Section 10214 of the Revised Statutes of Missouri of 1939, which was then in full force and effect, failed to cause said employee to be examined monthly by a competent licensed and reputable physician for the purpose of ascertaining the existence of any disease or illness incident to said work or any industrial or occupational diseases due to the character of the work in which

said employee was engaged; and as a result of said failure said employee contracted the illness or disease as above mentioned and grew constantly worse without being warned of his condition and which resulted in his death as aforesaid.

(d) That defendant was also negligent in that negligently and in violation of Section 292.380 of the Revised Statutes of Missouri of 1949, and also Section 10219 of the Revised Statutes of Missouri of 1939, which was then in full force and effect, it failed to provide and maintain adequate and efficient facilities for carrying off all injurious dust and failed to prevent the raising of dust, and contrary to said statutes engaged in sweeping during working hours without first dampening the floors in its said plant and failed to dampen or cover the material which was handled and transported in said plant by said employee and other employees of said defendant.

(e) That defendant was also negligent in that negligently and in violation of Section 292.390 of the Revised Statutes of Missouri of 1949, and also Section 10220 of the Revised Statutes of Missouri of 1939, which was then in full force and effect, it failed to provide and maintain sufficient, adequate and efficient means or devices, such as canvas bags or other devices to collect dust or to dampen or wet down the dust or to provide and maintain any other efficient method of catching or collecting the dust and prevent it from unnecessarily fouling or polluting the air in which said employee was obliged to work at such times when the mixing machines and mechanical equipment as aforesaid were being cleaned or emptied, and defendant further failed, in violation of said Statute, to dampen or wet down or cover the dust generated in the work or process carried on during said employee's period of employment as aforesaid and to adopt every reasonable precaution to prevent the unnecessary creation or raising of dust, and during said time failed to wash and scrub the floors in said plant every working day and to wash and clean

at reasonable intervals the fixtures, tools, machinery and equipment employed in said work or process, and failed to carry on said work or process in separate rooms and under cover of some suitable and efficient device to remove the danger to the health of said employee and other employees, and, as a result of the failure to comply with said Statute said employee suffered the condition above mentioned and his said condition grew constantly worse which resulted in his death as aforesaid.

(f) That defendant was also negligent in that negligently and in violation of what is known as Section 292.400 of the Revised Statutes of Missouri of 1949 and also Section 10221 of the Revised Statutes of Missouri of 1939, which was then in full force and effect, it failed to properly cover or dampen in such a way as to protect the health of said employee and other employees all conveyances or receptacles used for the transportation about or the storage in said plant of said asbestos and permit and permitted refuse and dust of said material to remain accumulated on the floors thereof.

(g) That defendant was also negligent in that negligently and in violation of Section 292.420 of the Revised Statutes of Missouri of 1949 and also Section 10223 of the Revised Statutes of Missouri of 1939, which was then in full force and effect, it failed to post any notice at said plant disseminating general knowledge of the dangers to the health of the employees engaged in the work or process in which said deceased employee was engaged as aforesaid and containing simple instructions as to any known means of avoiding, so far as possible, the injurious consequences thereof, and, as a result of said failure to comply with said Statute said employee in ignorance of said dangers and without knowledge of the injurious consequences thereof continued in said work for a long period of time as aforesaid, causing him to become weak and run down and during which time he contracted the diseases above mentioned and his condition grew constantly worse and on account of the failure to comply with said Statutes

said employee was not advised of the necessity of taking precautionary measures to prevent or to relieve the condition so suffered by him, and that as a result thereof said employee died as aforesaid.

(h) That defendant negligently failed to provide said employee with a reasonably safe place in which to work, and as a result of which said employee was rendered ill and died as aforesaid.

WHEREFORE, the premises considered plaintiffs state that they have been damaged in the sum of Fifteen Thousand Dollars (\$15,000.00), for which sum together with their costs herein they pray judgment against the defendant.

Gillette P. Wright
Gillette P. Wright
1204 Fullerton Bldg.
St. Louis 1, Missouri
Ch. 1-2272

Courtney S. Goodman
Courtney S. Goodman
722 Chestnut Street
St. Louis 1, Missouri
Ch. 1-1990

Attorneys for Plaintiffs

Circuit Court for the City of St. Louis

State of Missouri

Gloria Dean Reed et al,

Plaintiff

vs.

The Ruberoid Company

Defendant

No. 74320

Div. 1

SUMMONS

~~The State of Missouri~~ The Ruberoid Company

The State of Missouri to Defendant

You are hereby summoned to appear before the above-named court and to file your pleading to the petition, copy of which is attached hereto, and to serve a copy of your pleading upon

Wright & Goodman attorney for plaintiff

whose address is 722 Chestnut Street

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.

Dated June 21, 1954, 19

PHELM O'TOOLE

Circuit Clerk

By *Emalia Harris*
Deputy Clerk

(Seal of Circuit Court)

PL. ☐ DEF. ☒ ☐
EXHIBIT NO. DL-2
FOR BY Mr. O'Leary
DATE: 3-30-82

IN THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
EASTERN DIVISION.

GLORIA DEAN REED, et al.,

Plaintiffs,

-VS-

THE RUBEROID COMPANY,
a corporation,

Defendant.

No. 9875

Courtroom No. 3

DEFENDANT'S ANSWER TO PLAINTIFFS' PETITION.

For answer to plaintiffs' petition defendant states:

1. Defendant admits the averments of paragraph 1 of said petition.

2. Defendant admits that Opil B. Reed died in the City of St. Louis on June 24, 1953. Defendant has no knowledge or information, sufficient to form a belief, regarding the remaining averments of paragraph 2 of the petition.

3. Defendant admits that Opil B. Reed was employed as a laborer at defendant's plant in the City of St. Louis during the period alleged in paragraph 3 of the petition. Defendant denies the remaining averments of said paragraph.

4. Defendant denies each and every averment set forth in paragraphs 4 and 5 of the petition, including all subparagraphs of paragraph 5.

5. For further defense, defendant states that plaintiffs' petition fails to state a claim upon which the relief prayed for, or any relief, can be granted the plaintiffs or any of them, and fails to plead facts showing that the plaintiffs or any of them have any right to bring or maintain this suit.

6. For further defense defendant states that prior to and during the entire period of the employment of Opil B. Reed by defendant, as aforesaid, the defendant was a major employer under the Missouri Workmen's Compensation Law (now Sections 287.010 - 287.800 Missouri Revised Statutes, 1949); that defendant at all said times had more than ten employees regularly employed; that defendant was a duly qualified self-insurer under said law; that defendant had duly elected to accept the occupational disease Section of said law, as provided in Section 287.020, Missouri Revised Statutes 1949 by filing with the Division of Workmen's Compensation and Industrial Commission written notices of said election, and by posting and keeping posted in conspicuous places in its said plant, wherein Opil B. Reed was employed, notices of its said election furnished by the said Division and Commission; that said Opil B. Reed was in defendant's service and employment, as aforesaid, for more than thirty days after the posting of said notices, and that he at no time filed with said Division or Commission any notice that he rejected said Workmen's Compensation Law or any

part or section thereof; by reason whereof, defendant states that if said Opil B. Reed contracted an occupational disease as alleged in plaintiffs' petition, and died as a result thereof, (which allegations defendant denies) the sole and exclusive remedy of the plaintiffs therefor, if any, is under said Workmen's Compensation Law, and that the plaintiffs have no right of recovery against defendant in this suit.

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

The foregoing answer was served on plaintiffs this 9th day of July, 1954 by mailing a true copy thereof to their attorney of record, Mr. Courtney S. Goodman, at 722 Chestnut Street, St. Louis 1, Missouri.

John S. Marsalek
John S. Marsalek,
MOSER, MARSALEK, CARPENTER, CLEARY & CARTER,
Attorneys for Defendant,
330 Pierce Building,
St. Louis 2, Missouri,
GARfield 1-5364.