

HOME OFFICE LEGAL
September 12, 1958

HOME OFFICE CLAIMS
PAUL N. CARMICHAEL

RE: LINK VS. ~~WISSMAN~~ BEPRIG. CO. C42-180812

You have asked our opinion as to the advisability of pursuing the same procedure in this case as in King v. ~~Monetta~~, wherein we succeeded in a summary judgment motion in the federal courts.

Relevant material in the file is first summarized as follows:

Petition, Cir. Ct., St. Louis, filed 11/27/57: Plaintiff employed by defendant as welder 1945 - 1957, exposed to gases, fumes, dust and metal particles, causing general infection in respiratory system. Defendant was negligent in that the work and the nearby grinding operations were likely to and did produce and aggravate illness incident thereto, that defendant failed to provide protective devices in violation of Sec. 292.300 (O.D. statute), failed to have plaintiff examined monthly under Sec. 292.330 (which refers to 292.310), failed to post notices as to dangers under 292.420, failed to provide respirators under 292.320, exhaust fans under 292.380, dust catchers under 292.390 and grinding wheel hoods under 292.120. Petition also alleges common law negligence in failing to provide a safe place to work. Plaintiff has emphysema, pneumonitis, fibrosis and bronchiectasis, caused and aggravated by the above and is permanently disabled; ad damnum is \$150,000.

Employment History. When hired in 1945, plaintiff was examined by Dr. Meinhardt (deceased) who noted ankylosis of the spine but nothing as to respiratory system. According to his work attendance records, he was absent five weeks in March-April, 1947, and he stated on deposition that he had pneumonia and was off five or six weeks "about 1950 or 1951" (he must have meant 1947). Company medical records show his return to "light work" April 15 or 16, 1947. A "Physician's First Report," dated 4/14/47, states that plaintiff became sick 2/1/47, with what looks like "emphysema right," though the writing is not very legible. Not until July, 1954, was he again significantly absent; he was then out for 12 months with respiratory trouble. In July, 1955, he was re-employed with Dr. Donley's exam showing his right chest still bad; "patient extremely underweight...capable of doing only very light work for approximately 3-4 hours a day." Plaintiff's own Dr. Drum wrote, 7/8/55, that he was sufficiently improved so that "light occupation would be beneficial." He apparently then did part-time work as a welder, but 9/9/56 he became a "machine helper" as the company could not continue with the part-time arrangement. However,

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he stayed out most of the time until 12/18/56, when he was switched to small press brake operator. He was laid off 3/15/57 from this job and declined to take that of "machine helper," so stayed out until 9/3/57, when he was recalled to small press brake operator. Dr. Donley then indicated "Light work only--if none available, reject;" plaintiff was underweight with polyceptic disease of lungs and chronic bronchitis. He quit around March, 1958.

Hospital and Medical Records. Fever, pneumonia and fluid in right lung noted during February-April, 1947. Tentative diagnosis 7/31/54 was pneumonitis and TB. Readmitted 9/17/54 and discharged 10/2/54, diagnosis still TB. 5/31/56, huge right cavity with fibrosis and fluid noted. Plaintiff's attorney wrote Dr. Rouse, 10/2/57, asking, "Is condition occupational?" and was answered: "Mr. Arpin Link does have pulmonary fibrosis and cystic emphysematous changes in his lungs. I believe I would be perfectly safe in saying that this was not caused by any occupation or exposure to dusts or fumes, but it would most certainly be aggravated by such exposure. I cannot in any way say that his present condition would have arisen from such exposure, however." Discharge diagnosis, 11/29/56, is: Pulmonary fibrosis, right upper lobe cyst, emphysema, chronic pulmonary bacterial infection; condition unchanged. This report states: "The patient has been a welder at Hussman's for the past 12 years working in an enclosed room with no open windows or outlet fans, and has inhaled galvanized dust smoke and aluminum flux for this period of time. Fellow workers got epistaxis from this but not patient."

Testimony on Deposition 6/11/58. Plaintiff stated that there were grinders working along with the welders, raising metal dust, dirt and smoke. The room was very large, without a ventilating system. Arc welding causes fumes but welders wore face helmets. Fumes would sometimes get so bad at night that one could hardly see the lights, and in winter with the windows closed one could hardly see across the building. The grinding dust settled so that he could wipe it off his table with his finger. The volume of fumes and dust remained about the same except in 1953 he did some galvanized welding which caused white fumes to float around and get in his nostrils. The workers repeatedly complained, individually and through their union; exhaust fans were promised but never installed. During the entire 13 years of employment he never saw any notices that assured had accepted the O.D. amendment, nor was he ever advised as to precautionary measures.

O.D. Hazard and Question of Acceptance. Apparently, O.D. notices are not now posted at the plant. Only Mr. George Edwards, the safety engineer, recalls posting a notice in 1954. However, assured did notify the Commission of its election to bring O.D.