

File
File? LW.12

Babcock & Wilcox

Power Generation Group

To	M. Ruthrauff - Manager, Corporate Safety & Health	
From	L. Johnson - Safety Supervisor, Wilmington Works	BDS 663-7
Cust.		File No. or Ref.
Subj.	Joseph Holland vs Babcock & Wilcox - Asbestosis	Date November 24, 1980

This letter to cover one customer and one subject only.

Attached is a copy of transcript and rulings relative to the North Carolina Industrial Commissions hearing of Joseph Holland vs Babcock & Wilcox. It was noted at the onset of the hearing that a diagnosis of as little as 1% in any level of severity for asbestosis automatically qualifies an individual for 104 weeks compensation. Said compensation is based upon wages earned at time of last exposure.

Final settlement is to be determined following two additional appearances before a member of the Medical Advisory Committee to Industrial Commission.



NORTH CAROLINA INDUSTRIAL COMMISSION

DOCKET H-5747

JOSEPH HOLLAND,	Employee,	)	
	Plaintiff;	)	
		)	OPINION AND AWARD
-vs-		)	
		)	S Y
BABCOCK & WILCOX, INC.,		)	
	Employer;	)	FORREST H. SHUFORD II
		)	CHIEF DEPUTY COMMISSIONER
TRAVELERS INSURANCE		)	
COMPANY,	Carrier;	)	
	Defendants.	)	
		)	
		)	

FILED: NOV 19 1980

This case was heard before the undersigned in Wilmington
on 22 October 1980.

A P P E A R A N C E S

Plaintiff: Murchison, Fox & Newton, Attorneys,
Wilmington; Frank B. Gibson, Jr.,
appearing.

Defendants: Crossley & Johnson, Attorneys,
Wilmington; John F. Crossley
appearing.

The undersigned finds as facts and concludes as
matters of law the following which were entered by the
parties at the hearing as

STIPULATIONS

1. The parties are subject to and bound by the
provisions of the Workers' Compensation Act.
2. The Travelers Insurance Company is and was the
carrier on the risk.
3. Plaintiff has been and is regularly employed by

defendant-employer and has been so employed since 1953.

4. Plaintiff's average weekly wage with defendant-employer as of November, 1970 was \$150.00, and his present average weekly wage or average weekly salary is \$349.61.

* * * * *

Based upon all the competent evidence, the undersigned makes the following additional

FINDINGS OF FACT

1. Plaintiff started working for defendant-employer in 1953. He worked in the boiler division, and a part of his regular job was to cut pieces of asbestos, which was used in the construction of boilers. The asbestos would come in 4-feet by 8-feet sheets and was cut to the proper size. Such cutting operation created asbestos dust, and plaintiff was regularly exposed to the inhalation of such dust.

2. Plaintiff was so exposed to asbestos dust in the regular course of his employment with defendant-employer on a fairly regular basis until 1970, when he changed jobs. Starting in December, 1970, plaintiff began work as an industrial engineer, and his job did not involve any further regular exposure to the inhalation of asbestos dust.

3. On 15 November 1978, plaintiff was seen by Dr. William Credle of Wilmington for evaluation of chest lesion. After examinations, Dr. Credle was of the impression that plaintiff had asbestos lung disease, apparently stable.

Plaintiff was first advised that he had asbestosis when he was so advised by Dr. Credle in October, 1979.

4. In March, 1980, plaintiff underwent examination by the Advisory Medical Committee to the North Carolina Industrial Commission, consisting of Dr. H. F. Eason, Chairman; Dr. O. L. Henry, Jr.; and Dr. H. L. Seay. After examination and survey of plaintiff's history and work record, it was the impression of the Advisory Medical Committee that plaintiff had asbestosis, grade II. It was further the opinion of the committee that plaintiff should have no further exposure to high concentrations of asbestos dust and that it seemed that such requirement had already been met in the past few years, since plaintiff had been working in the office.

5. On 29 July 1980, plaintiff was examined by Dr. Herbert A. Saltzman of the Duke University Medical Center. After complete examination, Dr. Saltzman confirmed the fact that plaintiff had asbestosis.

6. Plaintiff has been exposed to asbestos dust as much as 30 working days or parts thereof within seven consecutive calendar months immediately preceding his last exposure while in defendant's employment in 1970.

7. Plaintiff has been exposed to the inhalation of asbestos dust in employment in North Carolina for at least two years within the ten years immediately preceding his last exposure.

8. Plaintiff filed claim with the Industrial Commission within a year after he was first advised by competent medical

authority that he had asbestosis.

9. Plaintiff has the occupational disease asbestosis and contracted such disease on or before December, 1970.

* * * * *

The above findings of fact and conclusions of law engender the following additional

CONCLUSIONS OF LAW

1. Plaintiff has been exposed to asbestos dust as much as 30 working days or parts thereof within seven consecutive calendar months immediately preceding his last exposure while in defendant's employment. G.S. 97-57.

2. Plaintiff has been exposed to the inhalation of asbestos dust in North Carolina for at least two years within the ten years immediately preceding his last exposure. G.S. 97-63.

3. Plaintiff has the occupational disease asbestosis, grade II, and he contracted such disease on or before December, 1970. G.S. 97-62.

4. Plaintiff filed claim with the Industrial Commission within a year from the date he was first advised by competent medical authority that he had the occupational disease asbestosis. G.S. 97-58.

5. Plaintiff is entitled to compensation from defendants at the rate of \$50.00 per week for a period of 104 weeks commencing 25 March 1980, the date of his examination by the Advisory Medical Committee. G.S. 97-61.6.

* * * * *

This Opinion and Award is not a final adjudication of the rights and liabilities of the parties. Such final determination, including the extent of disability of plaintiff on account of his asbestosis, if any, must await the report of the Medical Advisory Committee as provided in G.S. 97-61.4 and the hearing provided for after receipt of such report.

* * * * *

A W A R D

1. Plaintiff shall not engage in any occupation which exposes him to the hazards of asbestosis.

2. Defendants shall pay plaintiff compensation at the rate of \$50.00 per week, the maximum compensation rate in effect under the Workers' Compensation law at the time of plaintiff's last exposure, for a period of 104 weeks commencing 25 March, 1980; provided, however, that plaintiff complies with the above Order regarding further exposure to asbestos.

3. Plaintiff shall again appear before a member of the Medical Advisory Committee to the Industrial Commission as soon as practical after 25 March 1981 for his second examination by said Committee as required by G.S. 97-61.3, which member of said Committee shall make such examination as is required by statute and shall forward the X-rays and findings to the other members of the Committee for their examination. The Committee shall then make a written report to the Industrial Commission as is required by said statute.

4. As soon as practical after 25 March 1982,

plaintiff shall again appear before the Medical Advisory Committee for his third examination by said Committee, as is required by G.S. 97-61.4, which Committee shall make such examination as is required by statute. The Committee shall then make a written report to the Industrial Commission, as is required by said statute.

5. The Secretary of the Industrial Commission or the Occupational Disease Section of the Industrial Commission is hereby directed to make arrangements for such examinations herein provided.

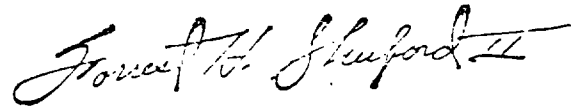
6. After receipt of the third report of the Medical Advisory Committee, unless an agreement between the parties shall have been approved, the case shall again be placed upon the Commission's hearing docket and shall be set for a final hearing, at which time the Commission shall receive competent evidence bearing on the case and shall make a final disposition of the case determining what compensation, if any, plaintiff may be entitled to receive in addition to the 104 weeks of compensation herein awarded.

7. Defendants shall pay medical expenses incurred as a result of the occupational disease giving rise hereto when bills for the same shall have been submitted to and approved by the Commission, and the defendants shall pay the cost of the examinations as contemplated by G.S. 97-61 as herein provided.

8. A counselfee in the amount of \$1,560.00 is

hereby approved for plaintiff's counsel, and such amount shall be deducted from compensation due plaintiff and paid directly to his attorneys.

9. Defendants shall pay the costs.



FORREST H. SHUFORD II
CHIEF DEPUTY COMMISSIONER

FHS:ccp

11-18-80

~~4-10-81~~
2) FILE

STATE OF NORTH CAROLINA

County of New Hanover

CITATION FILE: WILMINGTON N.C.
ASBESTOS CASE N/22/81

File # 80 CVS 2893

In The General Court of Justice

Superior Court Division

JOSEPH W. HOLLAND,
Plaintiff,

vs.

JOHNS-MANVILLE SALES
CORPORATION, et al.,
Defendants.

SUBPOENA TO PRODUCE DOCUMENT

OR OBJECT

NOTE: The necessity for the appearance of Mr. Womble may be eliminated by the furnishing of legible true copies of the requested documents to the following attorney of record for Raybestos-Manhattan, Inc.: Gerard H. Davidson, Jr. Smith Moore Smith Schell & Hunter, P. O. Box 21927, Greensboro, N. C. 27420

TO: Mr. B. G. Womble
name Personnel Manager
Babcock & Wilcox
Vance Street
address Wilmington, North Carolina 28403

GREETING:

YOU ARE HEREBY COMMANDED to appear ~~at the law offices of Crossley & Johnson,~~ at the law offices of Crossley & Johnson,
~~XXXXXX~~ 222 Princess St., Wilmington, N.C.
~~XXXXXX~~ N.C. on the 11th day of June, 19 81,
at 10:00 o'clock a.m., to testify in the above entitled action and bring with you
all personnel records, employment records, compensation records, medical records, and all
other records maintained by Babcock & Wilcox at the Wilmington, N.C., facility or any
other location pertaining to the employment, compensation, work history, and occupational
medical history of Joseph W. Holland.

This subpoena is issued upon application of the defendant Raybestos-Manhattan, Inc.
Issued this 19 day of May, 19 81.

McNeill Smith
Gerard H. Davidson, Jr.
Smith Moore Smith Schell & Hunter
Applicant's Attorney
500 NCNB Bldg., P. O. Box 21927
Greensboro, North Carolina 27420
Address
(919) 378-1450
Telephone Number

William D. Rehder
Clerk of Superior Court/Magistrate

By: Ram Grant
Assistant/Deputy Clerk

OFFICER'S RETURN

I certify that the above subpoena to produce documents or objects was received on the
____ day of _____, 19____, and that on the ____ day of _____,
19____, it was served on _____
in the following manner: _____

Fee, \$ _____ Paid

Sheriff or Other Officer