

FILE NAME: RT Vanderbilt (RTV)

DATE: 1979 Apr 19

DOC#: RTV049

DOCUMENT DESCRIPTION: Workmen's Compensation Board Notice of
Decision

STATE OF NEW YORK
WORKMEN'S COMPENSATION BOARD

NOTICE OF DECISION
IN DEATH CASE

DATE OF HEARING		DATE OF THIS NOTICE	
3/27/79 JMA:mas		4/19/79 JN	
WCB Case No. 67605422		Decedent [REDACTED]	
Carrrier Case No. 40 126992	Code 14	Social Security Number (CHA)	

Claimant: [REDACTED]
[REDACTED]
Employer: Gouverneur Talc Co.
Balmat, NY
Attys. Oot & Fallon
501 E. Washington St.
Syracuse, NY 13202

Edward L. Burr
33 Park St.
Gouverneur, NY
Special Funds Coma Comm
1st National Bank Bldg.
Utica, NY 13501
Finance Unit
Workers' Compensation Board
1949 No. Broadway
Albany, NY 12241

FINDINGS: Average weekly wage \$120.33. Refer to Board per 12/1/78

decision. Case comes within provisions of Sect. 15-8a.

Case is closed.

AWARD -- THE EMPLOYER AND/OR THE INSURANCE CARRIER ARE DIRECTED TO PAY AT ONCE AS FOLLOWS:

Name	Address	Relationship	Date of Birth	Percentage	Rate per Week
[REDACTED]	[REDACTED]	widow	8/4/25	40	\$48.13

Fee of \$ 3000.00 to Atty. Thaddeus B. Oot

as lien on award payable by separate check

and funeral expenses \$ 750.00 to Edward L. Burr, Funeral Dir. 33 Park St., Gouverneur

Employer and carrier are directed to pay at once \$ 7277.26 for 151 1/5 weeks at \$ 48.13
from date of death 5/3/76 to 3/27 19 79 direct to the bi-weekly.

Balance of the award is ordered paid into the Aggregate Trust Fund as provided under Section 27 of the law. Present value of the award as ordered paid into the Aggregate Trust Fund as of 5/3/76 is \$ 96.26. Present value does not include funeral benefits.

Check to be drawn to the order of "State Insurance Fund -- Aggregate Trust Fund Account." The Aggregate Trust Fund is to make bi-weekly payments at the rate of \$ beginning with 5/3/76 to the

Albert D. Anton
Chairman

C 1. Death benefits to surviving widow shall be increased to 40% of decedent's average weekly wage base upon termination of benefits to children.

State Office Bldg.-Rm 312 3 F)		Wed 10 AM	
1 E. Washington St.-Syracuse		Sept 13, 1978	
Case No (67511536)	Date of Accident	Social Security Number	Claim Case No
67605422 Dth	5/3/76 Dth	[REDACTED]	40 126992 14
Claimant [REDACTED] (Dth) [REDACTED] [REDACTED]		Special Funds Cons. Comm. First National Bank Bldg. Utica, NY 13501	
Employer Gouverneur Talc Co. Balmat, N.Y. 13609		Sugarman, Wallace, Manheim, etal*** 499 So. Warren St.-Suite 203 Syracuse, NY 13202	
CNA Insurance Co. P.O. Box 4855 Syracuse, NY 13221		THE CAPTIONED CASE WAS HEARD BEFORE A PANEL OF THREE MEMBERS AT THE PLACE, DATE AND TIME INDICATED Present: Seymour Posner Ilene J. Slater Presiding Henry M. Christman	
Out & Fallon, Attys. 501 E. Washington St. Syracuse, NY 13202		PLEASE TAKE NOTICE THAT THE BOARD'S MEMORANDUM OF DECISION IN THE ABOVE CLAIM IS PRINTED BELOW.	

MEMORANDUM OF DECISION

Claimant-widow's attorneys object to the decision below filed 1/18/78 contending decedent's death is causally related to the occupational talcosis.

Case 67511536 involves a compensable occupational talcosis. Date of disablement 11/17/75. Compensation awarded from 11/17/75 to 5/3/76, date of death, at \$80.22, total disability. Average weekly wage \$120.33. The record indicates decedent was employed at Gouverneur Talc Company from 1952 to 1959, some 10-12 years as a machine operator, and some 4-5 years as a car liner and was exposed to talc. Decedent was employed from 1969 to 1975 as a stock clerk at Harrisville Manufacturing Corporation with no hazardous exposure. Clifford Kitts, Chief Chemist with International Talc from 1952 to 1974 testified on 8/3/77 as to the chemical content of the mined talc; that the talc mined at International Talc is substantially the same as the talc mined at Gouverneur Talc; that the mines are about 200 to 300 yards apart; that he became familiar with the talc and surrounding environment at both Gouverneur and International Talc; that asbestos is found in the talc mined at both International and Gouverneur Talc--at least two to five percent, and some of it as high as 60% asbestos, found in the talc mined at International Talc. Mr. Kitts also testified that he took samples from Gouverneur from 1948-1952 and conditions have not changed since then. Larry Mishler, Industrial Hygiene Chemist, carrier's consultant, testified on 10/12/77 that he tested samples of airborne particles at the Gouverneur Talc mine, Mill #1, where decedent worked; and his report indicates that the asbestos form mineral was practically non-existent; that the International Talc mines located some 200-300 feet from Gouverneur mines would not necessarily have the same properties or composition, and the tests were performed from 5/28/75 to 8/3/75. Dr. Miller reported and testified on 8/3/77 that he examined the decedent on 11/17/75 and 3/22/76 and diagnosed condition as pneumoconiosis, namely talcosis, and bronchogenic carcinoma, operated; that in his opinion the decedent's pneumoconiosis was causally related to his 17 years of employment with the Gouverneur Talc Company; and that the underlying lung condition was a predisposing factor for cancer; that a postmortem report gives a diagnosis of bronchogenic carcinoma with carcinomatosis and cause of death would seem to be carcinomatosis and it is known that there is an increase in incidents of lung cancer in people with pneumoconiosis and there is felt to be a relationship between talcosis and lung cancer, and in this case the lung cancer was the cause of the final demise. Dr. Maxon, Expert Chest Consultant, reported and testified on 10/6/76 that his review

Cont.....

Take notice that the decision in the above claim was duly filed in the Office of the Secretary of the Workmen's Compensation

9/13/78

~~XXXXXXXXXX~~ (Dth) vs. Gouverneur Talc Company
~~XXXXXXXXXX~~

of the medical record indicated the decedent had talcosis; that in the literature there is a definite proven relationship between the development of malignant disease of the chest and asbestosis; that there is no evidence that the decedent had asbestosis; that in his opinion decedent was not totally disabled from the combination of talcosis and lung cancer. Dr. Dooling filed a C-64, Proof of Death, dated 5/11/76 indicating date of death as 5/3/76 and cause of death as carcinomatosis.

Upon review of the record the Board Panel finds, based on the testimony of Mr. Kitts, that tests performed on samplings of talcosis indicate a 2%-5% asbestos content and as high as a 60% content, and on the basis of Dr. Miller's testimony that decedent's underlying lung condition, pneumoconiosis, is a predisposing factor for lung cancer and Dr. Maxon's testimony that there is a definite relationship between asbestosis and lung cancer, that the decedent's death on 5/5/76 is causally related to his compensable occupational talcosis.

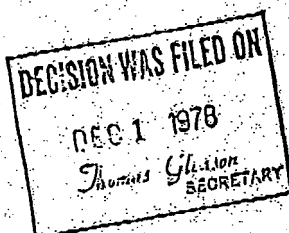
Accordingly, findings are made as indicated in the preceding paragraph. The decision below filed 1/18/78 is REVERSED. Case is Restored to the trial calendar for appropriate award.

All concur.

Seymour Posner

Ilene J. Slater

Henry M. Christman



of death would seem to be carcinomatosis and it is known that there is an