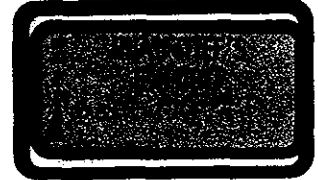


Babcock & Wilcox

20 South Van Buren Avenue, Barberton, Ohio 44203
Telephone: (216) 753-4511

March 11, 1981

Mr. Charles E. Wilson
Sullivan & Cromwell
125 Broad St.
New York, NY 10004



SUBJECT: Wilmington, NC, Asbestos Case - Civil Summons

Dear Charlie:

Attached for your information are materials relative to the above subject. I have also included a North Carolina Industrial Commission Opinion and Award on the same individual.

Since talking to you on the phone yesterday, I have learned more about the circumstances regarding the Civil Summons. Two Civil Summons' have been received by the Plant Manager at Wilmington. These were served from the Superior Court. As I understand it, these were served on us under a state regulation, however, we are not required to file an answer since this process does not place us in the position of being a defendant. It is, however, very likely that we will later need to provide a deposition or testimony, or both. It is also unclear as to what remedy the present defenders in the civil case might have in obtaining relief from us in the State of North Carolina.

Confer To complicate matters further, I am finding it necessary to deal with Division legal counsel, who is Ron Rinner at our I&M headquarters in North Carolina, and he, in turn, is dealing with a Travelers Insurance selected counsel in North Carolina. None of these people have done anything to date except to say that we do not have to answer the Civil Summons. Rinner recognizes that we should be preparing to respond to future activity in this case. He indicates that he will try to obtain an evaluation of whether the defendants can come after us from the local counsel, whose name is Max Howard.

At the present time, I would appreciate your looking over the material, and then let's talk about it by phone.

Sincerely,

A handwritten signature in cursive script, reading "M.L. Ruthrauff".

M.L. Ruthrauff, Manager
Corporate Safety and Health

MLR/11
attach

NORTH CAROLINA INDUSTRIAL COMMISSION

RALEIGH

cop

NOTICE OF HEARING

Plaintiff

Joseph Holland
110 Aqua Drive
Wilmington, N.C.

Employer

Babcock & Wilcox, Inc
P O Box 1730
Wilmington, N.C.

Carrier

Travelers Ins Co
Raleigh, N.C.

Plaintiff's Counsel

Marchison, Fox & Newton, Attys
16 North 5th Street
Wilmington, N.C.

Defendant's Counsel

Crossley & Johnson, Attys
P O Box 740
Wilmington, N.C.

Docket No. H-5747
Emp. Code No. _____
Carrier Code No. 250-2
Carrier File No. CS

(Refer to Docket No. in all correspondence about this injury.)

The parties and counsel named herein are hereby given notice that a hearing in said case will be held at a place to be assigned by the Clerk of the Superior Court for 4th & Chestnut Streets County Co Commissioners Assembly Room, Wilmington, N.C. at 2:00 o'clock P.M. on October 22, 1980 (Twenty-Second) 19__

SUBJECT OF HEARING

To determine all matters involved

CC: Western N.C. Hospital
Black Mountain, NC
Eastern Sanatorium
Wilson, N.C.
Occupational Health and
Div. of Health Services
Raleigh, N.C.

This hearing is part of a schedule. Postponement will cause inconvenience and added expense. Continuance is entirely within the discretion of the Commission except as otherwise provided by law.

The parties must arrange to have all witnesses present to testify at the time and place designated. Failure of any party to appear at the time and place herein prescribed will result in action by the Commission as provided by law.

NORTH CAROLINA INDUSTRIAL
COMMISSION

Deby R. Hinkley
Executive Secretary

Date of this notice

9 11 80, 19__

NORTH CAROLINA INDUSTRIAL COMMISSION

DOCKET H-5747

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

FILED: NOV 18 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-foot by 8-foot 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.

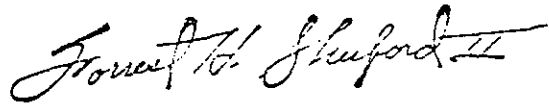
6. After receipt of the third report of the Medical Advisory Committee, unless an agreement between the parties shall have been approved, the case shall again be placed upon the Commission's hearing docket and shall be set for a final hearing, at which time the Commission shall receive competent evidence 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. SEUFORD II
CHIEF DEPUTY COMMISSIONER

FHS:ccp

11-18-80

STATE OF NORTH CAROLINA

County of New Hanover

FILED

1981 JAN -6 PM 4:46

File # 80 Cvs 2893
Film # _____
In the General Court of Justice
Superior Court Division

JOSEPH W. HOLLAND,

Plaintiff

BY cep

NEW HANOVER COUNTY, C.S.C.

Against

CIVIL SUMMONS

JOHNS MANVILLE SALES CORPORATION;

RAYBESTOS-MANHATTAN, INC.;

ASBESTOS FABRICATORS, INC. and

PORTER HAYDEN, Defendants

STATE OF NORTH CAROLINA

To each of the defendants named below at the indicated addresses---GREETING:

Babcock & Wilcox, Inc.-Serve on Plant Manager
Vance Street
Wilmington, N. C. 28406

(ANSWER BEING SERVED ON B&W IN ACCORDANCE WITH NCGS 97-10.2(e)).

YOU ARE HEREBY SUMMONED AND NOTIFIED to appear and answer to the above entitled civil action as follows: A written Answer to the Complaint must be served upon the plaintiff or his attorney within THIRTY DAYS after the service of this Summons and a copy thereof must be filed at the office of the undersigned Clerk. If you fail to do so, the plaintiff will apply to the Court for the relief demanded in the Complaint.

Issued at 4:46 o'clock p.m., this 6 day of January, 1981.

Name and Address of Plaintiff's Attorney

JOHN F. CROSSLEY
Crossley & Johnson
Attorneys at Law
222 Princess St.-P.O. Box 740
Wilmington, N. C. 28401
Telephone: (919) 762-9711

Celia C. Pope
Deputy/Assistant Clerk of Superior Court

RETURN OF SERVICE

I certify that this Summons was received on the _____ day of _____, 19____, and together with the Complaint was served as follows:

On _____ on the _____ day of _____, 19____, at the following place: _____ By: _____
(fill in address where copy was delivered or left)

() delivering copies to him personally. () leaving copies at the defendant's dwelling house or usual place of abode with _____ who is a person of suitable age and discretion and who resides in the defendant's dwelling house or usual place of abode.

On _____ on the _____ day of _____, 19____, at the following place: _____ By: _____
(fill in address where copy was delivered or left)

() delivering copies to him personally. () leaving copies at the defendant's dwelling house or usual place of abode with _____ who is a person of suitable age and discretion and who resides in the defendant's dwelling house or usual place of abode.

If not served on defendant, state reason and give his name: _____

Fee \$ _____ Sheriff of _____ County, N. C.

Paid _____ By: _____ Deputy

By _____ Date: _____

A TRUE COPY
CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY

BY cep
Assistant, Deputy, Clerk Superior Court

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
(80 CVS 2893)

JOSEPH W. HOLLAND,
Plaintiff

v.

JOHNS-MANVILLE SALES CORP.;
RAYBESTOS-MANHATTAN, INC.;
ASBESTOS FABRICATORS, INC.;
and PORTER HAYDEN,

Defendants

ANSWER

A TRUE COPY
CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY.

BY

ref
Assistant, Deputy, Clerk Superior Court

FILED
EST JAN - 6 PM 4:46
NEW HANOVER COUNTY, N.C.

The defendant, JOHNS-MANVILLE SALES CORPORATION, answering
the First Claim For Relief of the Complaint, says and alleges:

FIRST DEFENSE

The First Claim For Relief of the Complaint fails to state
a claim against this answering defendant upon which relief may be
granted.

SECOND DEFENSE

1. The allegations in Paragraph 1 of the First Claim
For Relief of the Complaint are admitted.
2. The allegations in Paragraph 2 of the First Claim For
Relief of the Complaint are admitted on information and belief.
3. This answering defendant denies that it has sufficient
knowledge and information to form a belief as to the truth of the
allegations in Paragraph 3 of the First Claim For Relief of the
Complaint.
4. The allegations in Paragraphs 4, 5, 6, 7, 8, 9, 10
and 11 of the First Claim For Relief of the Complaint are denied,
except it is admitted on information and belief that plaintiff is
an employee of Babcock & Wilcox, Inc. of Wilmington, North Carolina.

Answering the Second Claim For Relief of the Complaint,
this answering defendant says and alleges:

FIRST DEFENSE

The Second Claim For Relief of the Complaint fails to state
a claim against this answering defendant upon which relief may be
granted.

SECOND DEFENSE

The allegations in Paragraphs 12, 13, 14, 15 and 16 of the Second Claim For Relief of the Complaint are denied.

Answering the Third Claim For Relief of the Complaint, this answering defendant says and alleges:

FIRST DEFENSE

The Third Claim For Relief of the Complaint fails to state a claim against this defendant upon which relief may be granted.

SECOND DEFENSE

The allegations in Paragraphs 17, 18, 19, 20 and 21 of the Third Claim For Relief of the Complaint are denied.

Answering the Fourth Claim For Relief of the Complaint, this answering defendant says and alleges:

FIRST DEFENSE

The Fourth Claim For Relief of the Complaint fails to state a claim against this defendant upon which relief may be granted.

SECOND DEFENSE

The allegations in Paragraphs 22, 23 and 24 of the Fourth Claim For Relief of the Complaint are denied.

Answering the Fifth Claim For Relief of the Complaint, this answering defendant says and alleges:

FIRST DEFENSE

The Fifth Claim For Relief of the Complaint fails to state a claim against this defendant upon which relief may be granted.

SECOND DEFENSE

The allegations in Paragraphs 25, 26 and 27 of the Fifth Claim For Relief of the Complaint are denied.

Answering the section entitled "Damages", this defendant says and alleges:

FIRST DEFENSE

The section entitled "Damages" of the Complaint fails to state a claim against this defendant upon which relief may be granted.

SECOND DEFENSE

The allegations in Paragraphs 28 and 29 of the section entitled "Damages" of the Complaint are denied.

As additional Defenses to all claims contained in the Complaint, this answering defendant says and alleges:

THIRD DEFENSE

On information and belief, it is alleged that the plaintiff's employer, Babcock & Wilcox, Inc., at the time of his alleged exposure to asbestos, was negligent in that it failed to properly and safely equip plaintiff with the necessary protection. That it provided the orders and directions under which plaintiff worked involving any asbestos that may have been in his work area. That it allowed asbestos products to be used by plaintiff and others on its premises in a manner so as to create a condition of danger for the plaintiff. That although it knew or should have known in the exercise of ordinary care of the general warnings pertaining to asbestos and particularly warnings contained on, shipped with and generally noted by this answering defendant and others, it still failed to pass on these warnings to plaintiff and others. That it failed to provide a safe place for plaintiff to work. That it failed to provide suitable training and education for its employees, including the plaintiff, and also for its sub-contractors and contractors about the premises or it failed to enforce such safety training and it failed to require the plaintiff and other employees to keep the premises clean and dust free and in normal good housekeeping and cleanliness.

That any one of the foregoing acts of negligence constituted intervening and insulating negligence which is another and alternate bar to this action.

FOURTH DEFENSE

That on information and belief the employer of the defendant, Babcock & Wilcox, Inc., was negligent in the form and manner set out above, which is incorporated herein, and if this defendant was negligent in any regard, which is denied, the aforementioned negligence of plaintiff's employer, Babcock & Wilcox, Inc., was at least a proximate cause of any injury done to plaintiff by asbestos and such negligence of Babcock & Wilcox, Inc. joined and concurred with any denied negligence of this defendant in producing any injuries and damages sustained by plaintiff. That under the provisions of N.C.G.S. 97-10.2(e) this defendant is entitled to have submitted to the jury an issue as to whether the negligence of the employer joined and concurred with the negligence of this defendant, if any, in producing the damages to plaintiff and if such issue should be answered in the affirmative this defendant is entitled to have the verdict reduced by the amount of any Worker's Compensation payments or like payments made to the plaintiff or made on his behalf.

FIFTH DEFENSE

Any claim that the plaintiff may have is barred by the North Carolina General Statutes setting up Statutes of Limitations, including but not limited to N.C.G.S. Sections 1-15, 1-50, 1-52, 1-53, 1-56, and all sections of Chapter 25 of the General Statutes and any and all other applicable statutes of this and other jurisdictions that may be applicable providing for specific time periods in which a claim must be asserted or an action filed involving the matters in suit herein.

Further, this action is barred by the provisions of the North Carolina Product Liability Act for the following reasons:

1. This action was instituted more than six years after the date of initial purchase for use of the produce alleged in plaintiff's complaint to have caused injury and damage to plaintiff, and this action is therefore barred by the provisions of G.S. 1-50 as amended by such Act.

2. Bodily harm to plaintiff became apparent more than three years prior to the commencement of this action and any cause of action which might have accrued to plaintiff as a result of the matters

alleged in plaintiff's Complaint accrued more than 13 years prior to the commencement of this action, and this action is therefore barred by the provisions of N.C.G.S. 1-52.

SIXTH DEFENSE

If the plaintiff was damaged as alleged in the Complaint, which is denied, that plaintiff was at the least guilty of contributory negligence in that he failed to properly protect himself from the asbestos. That in the exercise of due and ordinary care and the following of safety standards and rules, which he should have known, he should not have remained in and about the asbestos without safety precautions that were available, such as masks and other safety appliances. That he should have made sure that the area was dust free before he worked in it and he failed to do so. That he assumed any and all risks himself in working in and around the product complained of. That he and his fellow employees subjected the product to abnormal use so as to make it dangerous. That in the exercise of ordinary care he should have known of the dangers involved in working around such materials and failed to protect himself from such dangers and failed to obey safety rules. That he failed to obey and heed warning labels, signs and other written materials available to him and subject to his notice warning him of how to use and be safe around the products complained of.

SEVENTH DEFENSE

If this defendant acted or failed to act in any respect as alleged in plaintiff's Complaint, which is again denied, then this defendant alleges that such conduct on its part was not a proximate cause of any injuries or damages alleged by plaintiff but that such injuries and damages were caused solely and proximately by separate intervening acts or failures to act on the part of persons other than this defendant, and even if plaintiff should be adjudged entitled to recover from such persons, plaintiff is entitled to recover nothing from this defendant.

EIGHTH DEFENSE

If it should be determined that this defendant was in any respect negligent, as alleged in plaintiff's Complaint, which is again denied, this defendant alleges that such negligence in no way caused any damage or injury to plaintiff in that the alleged but denied negligence of this defendant was passive and negative in character whereas the negligence of other persons or entities was the active, positive and sole producing cause of the injury or damage sustained by plaintiff, thereby insulating the alleged but denied negligence of this defendant, and the doctrine of insulated negligence is hereby pleaded in bar of any right to recover herein.

WHEREFORE, having fully answered the Complaint, this answering defendant respectfully prays the Court that this action be dismissed as to it; that this Answer be served upon Babcock & Wilcox, Inc. and that an issue be submitted to the jury as to the negligence of Babcock & Wilcox, Inc. which would bar any recovery for monies paid in connection with Worker's Compensation; and that it have such other and further relief as the Court deems just and proper.

CROSSLEY & JOHNSON

By s/ John F. Crossley

Attorneys for Johns-Manville Sales Corporation

222 Princess Street - P. O. Box 740
Wilmington, North Carolina 28401
Telephone: (919) 762-9711

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Answer was served on counsel of record by forwarding a copy of the Answer to each of them, postage prepaid, as follows:

Mr. Frank B. Gibson
Murchison, Fox & Newton
16 North Fifth Avenue
Wilmington, N. C. 28401

Mr. Gerard H. Davidson, Jr.
Smith, More, Smith, Shell & Hunter
P. O. Box 21927
Greensboro, N. C. 27420

Mr. John H. Hasty
723 Law Building
Charlotte, N. C. 28202

Mr. John A. J. Ward
Ward and Smith, PA
P. O. Box 867
New Bern, N. C. 28560

This 6th day of January, 1981.

s/ John F. Crossley

John F. Crossley

STATE OF NORTH CAROLINA
New Hanover
County of _____

JOSEPH W. HOLLAND,

Plaintiff

80-CVS-2893

File # _____
Film # _____
In the General Court of Justice
Superior Court Division

JOHNS-MANVILLE SALES CORPORATION:

RAYBESTOS-MANHATTAN, INC.;

ASBESTOS FABRICATORS, INC; and

PORTER HAYDEN, Defendants.

CIVIL SUMMONS

STATE OF NORTH CAROLINA

TEACHCOCK & WILCOX, INC. d/b/a Teachco, Inc. 1001 S. 1st St. Suite 100
Vance Street
Wilmington, NC 28406

(ANSWER BEING SERVED ON YOU BY ASBESTOS FABRICATORS, INC. IN ACCORDANCE WITH NCGS 97-10.2(e)).

YOU ARE HEREBY SUMMONED AND NOTIFIED to appear and answer to the above entitled civil action as follows: A written Answer to the Complaint must be served upon the plaintiff or his attorney within THIRTY DAYS after the service of this Summons and a copy thereof must be filed at the office of the undersigned Clerk. If you fail to do so, the plaintiff will apply to the Court for the relief demanded in the Complaint.

Issued at 11:35 o'clock a.m., this 4 day of February, 1981

Name and Address of Plaintiff's Attorney
Defendant's

John H. Hasty
HASTY, WAGGONER, HASTY, KRATT & McDONELL
Suite 723, Law Building
Charlotte, NC 28202
(704) 332-6141

Clive Pope
Deputy/Assistant Clerk of Superior Court

RETURN OF SERVICE

I certify that this Summons was received on the _____ day of _____, 19____, and together with the Complaint was served as follows:

On _____ on the _____ day of _____, 19____, at the following place: _____ By: _____
(fill in address where copy was delivered or left)

() delivering copies to him personally. () leaving copies at the defendant's dwelling house or usual place of abode with _____ who is a person of suitable age and discretion and who resides in the defendant's dwelling house or usual place of abode.

On _____ on the _____ day of _____, 19____, at the following place: _____ By: _____
(fill in address where copy was delivered or left)

() delivering copies to him personally. () leaving copies at the defendant's dwelling house or usual place of abode with _____ who is a person of suitable age and discretion and who resides in the defendant's dwelling house or usual place of abode.

If not served on defendant, state reason and give his name: _____

Fee \$ _____ Sheriff of _____ County, N. C.
Paid _____ By: _____ Deputy
By _____ Date: _____

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
80-CVS-2893

JOSEPH W. HOLLAND,

Plaintiff,

vs.

JOHNS-MANVILLE SALES
CORPORATION, RAYBESTOS-
MANHATTAN, INC., ASBESTOS
FABRICATORS, INC.,
PORTER-HEYDEN,

Defendants.

ANSWER

The Defendant, Asbestos Fabricators, Inc., in answer to the Complaint of the Plaintiff, alleges and says:

FIRST DEFENSE

That the Complaint and each of the claims for relief contained therein do not state a claim against the Defendant, Asbestos Fabricators, Inc. upon which relief may be granted. This defense is asserted under the provisions of Rule 12 of the North Carolina Rules of Civil Procedure.

SECOND DEFENSE AND ANSWER TO THE COMPLAINT SECTIONS, JURISDICTION AND FIRST CLAIM FOR RELIEF

1. As to the allegations contained in paragraph 1 of the Complaint, the answering Defendant is without sufficient information or belief and therefore denies the same.
2. As to the allegations of paragraph 2 of the Complaint, it is admitted that Asbestos Fabricators, Inc. is a North Carolina corporation doing business in Mecklenburg County, North Carolina, however, as to the remaining allegations contained in paragraph 2, the answering Defendant is without sufficient information or belief and therefore denies the same.
3. As to the allegations contained in paragraph 3, it is admitted that the answering Defendant sells certain building materials containing asbestos, however, it does not manufacture, import, convert, compound or otherwise mine or produce asbestos. Except as herein admitted, the remaining allegations of paragraph 3 are denied.
4. As to the allegations contained in paragraph 4 of the Complaint, this Defendant is without sufficient information or belief and therefore denies the same.
5. As to the allegations contained in paragraph 5 of the Complaint, it is specifically denied that the Plaintiff was ever exposed to any asbestos products which were sold by the answering Defendant to Babcock & Wilcox, Inc. As to the remaining allegations of paragraph 5, the answering Defendant is without sufficient information or belief and therefore denies them as well.
6. As to the allegations contained in paragraph 6 of the Complaint, it is admitted that the answering Defendant is in the business of selling certain building materials containing asbestos; however, it is specifically denied that it produces, manufactures, mines, processes, imports or converts or compounds any of this material.
7. The allegations contained in paragraphs 7, 8, 9, and 10 of the Plaintiff's Complaint are denied.

8. The allegations contained in paragraph 11 and graphs thereof are denied.

THIRD DEFENSE AND ANSWER TO SECOND CLAIM FOR RELIEF

1. As to the allegations contained in paragraph 12 of the Plaintiff's Complaint, the answering Defendant's answers are the same as in the answers to the First Claim for Relief.
2. The allegations contained in paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, of the Second Claim for Relief in the Plaintiff's Complaint are specifically denied.

FOURTH DEFENSE AND ANSWER TO THE THIRD CLAIM FOR RELIEF

1. As to the allegations of paragraphs 17 of the Complaint, the answering Defendant answers them the same as the answers to the allegations in the First and Second Claims for Relief.
2. The allegations contained in paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, of the Plaintiff's Complaint are specifically denied.

FIFTH DEFENSE AND ANSWER TO FOURTH CLAIM FOR RELIEF

1. As to the allegations of paragraph 22, the answering Defendant answers these allegations the same as its answers to the allegations in the First, Second and Third Claims for Relief.
2. The allegations contained in paragraph 23 and 24 of the Plaintiff's Complaint are specifically denied.

SIXTH DEFENSE AND ANSWER TO FIFTH CLAIM FOR RELIEF

1. As to the allegations contained in paragraph 25 of the Complaint, the answering Defendant answers them the same as in answer to the allegations contained in the First, Second, Third and Fourth Claims for Relief.
2. The allegations contained in paragraphs 26 and 27 of the Complaint are specifically denied.

SEVENTH DEFENSE AND ANSWER TO PLAINTIFF'S COMPLAINT SECTION ENTITLED "DAMAGES"

1. The allegations contained in paragraphs 28 and 29 of the Plaintiff's Complaint are specifically denied.

EIGHTH DEFENSE AND BAR TO PLAINTIFF'S CLAIMS FOR RELIEF AGAINST THE DEFENDANT ASBESTOS FABRICATORS, INC.

The answering Defendant is informed and believes and therefore states that the Plaintiff's employer, Babcock & Wilcox, Inc. at and during the time during which the Defendant was exposed to asbestos was in that:

1. It failed to provide the Plaintiff with any protective clothing or respiratory protection system.

That it directed and provided the methods under which the Plaintiff worked with any asbestos material which may have been in his work area.

That it allowed asbestos products to be used by the Plaintiff and other employees on its premises in the performance of their work in a manner so as to create a condition of danger for the Plaintiff.

CERTIFICATE OF SERVICE

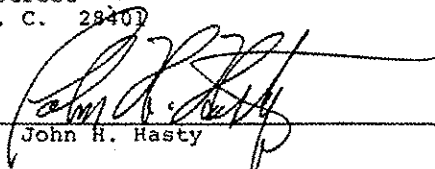
I hereby certify that the foregoing Answer was served on the following individuals by mailing a copy thereof to them in an envelope addressed to them with proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Postage Services on the 3 day of February, 1981.

Mr. Frank B. Gibson
Murchison, Fox & Newton
16 North Fifth Avenue
Wilmington, N. C. 28401

Mr. Gerard H. Davidson, Jr.
Smith, Moore, Smith, Schell & Hunter
P. O. Box 21927
Greensboro, N. C. 27420

Mr. John A. J. Ward
Ward and Smith, P. A.
P. O. Box 867
New Bern, N. C. 28560

Mr. John P. Crossley
Crossley & Johnson
222 Princess Street
Wilmington, N. C. 28401


John H. Hasty

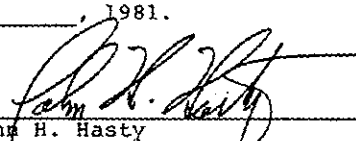
FIFTEENTH DEFENSE AND BAR TO THE PLAINTIFF'S CLAIMS

1. That each and every claim and cause of action set forth in the Plaintiff's Complaint, together with any and all claims that the Plaintiff may have against this answering Defendant are barred by the Statutes of Limitation including but not limited to G.S. §1-15, G.S. §1-50, G.S. §1-52, G.S. §1-53, G.S. §1-56, G.S. §25-2-607, G.S. §25-2-725 and other provisions of the North Carolina Uniform Commercial Code and the provisions of the North Carolina Products Liability Act, together with all other applicable statutes providing for specific time periods in which claims might be asserted or actions filed involving the matters in controversy herein.

WHEREFORE, this Defendant prays the Court as follows:

1. That the Plaintiff's Complaint and all causes contained therein be dismissed as to it.
2. That the Plaintiff have and recover nothing of this Defendant.
3. That this Defendant recover its costs of the Plaintiff.
4. That this Defendant have a trial by jury.
5. That if liability to the Plaintiff be determined against this Defendant, that this Defendant receive a credit on any judgment equal to that amount of money paid by Plaintiff's employer by virtue of the Workers Compensation Act.
6. For such other and further relief as to the Court may seem just and proper.

This the 3 day of Feb, 1981.



John H. Hasty
Attorney for Defendant
Asbestos Fabricators, Inc.
HASTY, WAGGONER, HASTY, KRATT &
MCDONNELL
Suite 723, Law Building
Charlotte, North Carolina 28202
(704) 332-6141

the injury and damage complained of by the Plaintiff and such intervening and insulating negligence by persons other than this Defendant is hereby pleaded in bar of any right to recover of it herein.

TWELFTH DEFENSE AND BAR TO THE PLAINTIFF'S CLAIMS

1. This Defendant has entered into no agreement or contract with the Plaintiff and has not sold or delivered any asbestos materials to the Plaintiff and by reason thereof, there is no privity of contract between the Plaintiff and this Defendant.
2. By reason of there being no privity of contract between the parties, the Plaintiff is not entitled to recover anything of this Defendant.

THIRTEENTH DEFENSE AND BAR TO THE PLAINTIFF'S CLAIMS

1. This answering Defendant has entered into no agreement and has taken part in no consertive action with either of the other Defendants or any group thereof for the production, manufacture or sale of asbestos materials to the Plaintiff or for the use of the Plaintiff or the Plaintiff's employer, Babcock & Wilcox, Inc.
2. This Defendant has done no act and has not counselled, procured or agreed to assist in any way any of the other named Defendants to do any act complained of in the Plaintiff's Complaint and by reason thereof is not a joint tortfeasor with either of the other Defendants.
3. In the event that, by reason of the acts complained of in the Complaint, the other Defendants may be found to be liable to the Plaintiff, this Defendant is not jointly and severally liable with them and the Plaintiff is not, by reason thereof, entitled to recover of it.

FOURTEENTH DEFENSE AND BAR TO THE PLAINTIFF'S CLAIMS

1. All asbestos products distributed by this Defendant to the Plaintiff's employer, Babcock & Wilcox, Inc., was acquired by it from the manufacture and distributed by it to Babcock & Wilcox, Inc. in a sealed package clearly marked as asbestos material containing warnings as to its use and handling.
2. If the Plaintiff or his employer, Babcock & Wilcox, Inc., or the Plaintiff's fellow workmen used any asbestos product distributed or sold to the Plaintiff's employer by this Defendant, which is again expressly denied, the Plaintiff or his employer used the asbestos product distributed by this Defendant and manufactured by other Defendants in a manner contrary to the expressed warnings printed on the containers containing the product.
3. If the Plaintiff, his employer, Babcock & Wilcox, Inc., or his fellow workmen used the asbestos product distributed by this Defendant, which is again expressly denied, the Plaintiff, his employer or his fellow workmen failed to use said asbestos product in a manner in which said product was designed to be used and in a place and under safety conditions for which said product was designed to be used.
4. If the Plaintiff, his employer, Babcock & Wilcox, Inc., or his fellow workmen used the asbestos product distributed by this Defendant and manufactured by other defendants, which is again expressly denied, the Plaintiff, his employer, Babcock & Wilcox, Inc., or his fellow workmen altered and modified said asbestos product contrary to the express instructions and specifications, and without the express consent of this Defendant.
5. If the asbestos products distributed by this Defendant, and manufactured by other defendants, were the proximate cause of the Plaintiff's injuries, which is again expressly denied, said asbestos products were improperly altered or modified by the Plaintiff or persons or parties other than this Defendant and without this Defendant's express consent and in a manner contrary to specific warnings contained on the said asbestos products, and by reason of the things and matters alleged in this defense all causes of action by the Plaintiff against this Defendant are barred.

- A. He failed to properly protect himself from exposure to asbestos as he should have done in the exercise of due and ordinary care.
- B. He should not have remained in and about asbestos without taking safety precautions which were available to him, such as masks and other safety appliances, which in the exercise of due and ordinary care, he should have.
- C. He did not follow established safety standards and rules for the handling of asbestos, as published warnings upon the material revealed and which, in the exercise of ordinary care, he knew or should have known.
- D. He should have made certain that his work area was free from asbestos particles and dust before working in it, and he failed to do so.
- E. He failed to heed or obey and follow the instructions and warning labels placed upon the asbestos materials and failed to follow established procedures in the use and fabrication of asbestos materials and by doing so, he assumed any and all risks himself in working around the asbestos products complained of.
- F. He, in the exercise of ordinary care, knew or should have known of the dangers involved in working around such asbestos materials and failed thereafter to protect himself from such dangers and failed to abide by established safety rules in the handling and fabrication of asbestos materials.
- G. He, in the exercise of ordinary due care, knew or should have known that smoking tobacco made him 94% more susceptible to injury from asbestos, yet he continued to heavily smoke cigarettes during the period of time which he was exposed to asbestos materials.

2. That the Plaintiff's conduct and negligence, as hereinabove set forth, was one of the contributing and proximate causes of his injury and damage as alleged in the Complaint and by reason of such contributory negligence, he is barred from recovery against this answering Defendant.

ELEVENTH DEFENSE AND BAR TO THE PLAINTIFF'S CLAIMS

1. If this answering Defendant acted or failed to act in any respect as alleged in the Plaintiff's Complaint, all of which is again specifically denied, then this Defendant alleges that any such act or failure to act on its part was not a proximate cause of any of the injuries or damages complained of by the Plaintiff.

2. That any such injuries or damages which have been caused to the Plaintiff, which are again specifically denied, were solely and proximately caused by separate intervening acts or failures to act on the part of persons other than this answering Defendant in addition to those alleged to have intervened by acts of the Plaintiff's employer and even if Plaintiff should be adjudged entitled to recover from such other intervening persons or firms, the Plaintiff is entitled to recover nothing of this Defendant.

3. Any such acts or failures to act attributed to this Defendant, as alleged in the Complaint, all of which are again specifically denied, were passive and negative in character and such acts or failures to act or negligence as set forth in the Complaint attributable to other persons or firms was the active positive and sole proximate cause of

- D. That it knew, or should, through the exercise of reasonable care, have known of the dangers involved in the handling of asbestos materials and it did not inform the Plaintiff and other employees as to these dangers.
- E. That it knew, or through the exercise of ordinary care, should have known, by reason of the general warnings printed on and shipped with any asbestos materials which the answering Defendant sent to it, of the dangers involved in working with asbestos and it failed to pass these warnings on to the Plaintiff and other employees.
- F. That it failed to provide a safe place for the Plaintiff to work.
- G. That it failed to provide the Plaintiff and other of its employees with suitable training and education concerning the use of asbestos.
- H. That it failed to keep the premises in which the Plaintiff worked dust free of asbestos materials.

2. That the above alleged negligent acts on the part of the Plaintiff's employer were not foreseen, nor through the exercise of normal care, could they have been foreseen by the answering Defendant.

3. If the answering Defendant has been negligent, or by reason of any of the other Claims for Relief as alleged in the Complaint, is liable to the Plaintiff, all of which are again expressly denied, such negligence or acts, were not the proximate cause of the Plaintiff's injury because this answering Defendant was insulated by the intervening negligence of the Plaintiff's employer, Babcock & Wilcox, Inc. The answering Defendant specifically pleads the intervening and insulating negligence of Babcock & Wilcox, Inc. as a bar to any recovery by the Plaintiff against this answering Defendant.

NINTH DEFENSE AND BAR TO THE PLAINTIFF'S CLAIMS

1. If this answering Defendant should be found to be negligent or liable to the Plaintiff by reason of any of the claims set forth in the Complaint, all of which is again expressly denied, the negligence of the Plaintiff's employer, Babcock & Wilcox, Inc., as set forth in the Eighth Defense, aforesaid, was at least one of the proximate causes of any injury which the Plaintiff may have received by reason of asbestos and such negligence of Babcock & Wilcox, Inc. joined in and concurred with any negligence on the part of this Defendant in producing any of the injuries or damages sustained by the Plaintiff.

2. Pursuant to the provisions of North Carolina General Statutes §97-10.2(e), this Defendant is entitled to have submitted to the jury an issue as to whether the negligence and actions of the Plaintiff's employer, Babcock & Wilcox, Inc., joined in and concurred with any negligence or actions of this Defendant, if any, in producing any damage to the Plaintiff.

3. If any such issue should be answered in the affirmative, i.e. (that the negligence and actions of the Plaintiff's employer did join in and concur with those of this Defendant), this answering Defendant is entitled to have the verdict reduced by the amount of any workers compensation payments or like payments made to the Plaintiff or made on his behalf.

TENTH DEFENSE AND BAR TO THE PLAINTIFF'S CLAIMS

1. If the Plaintiff has been injured and damaged as alleged in the Complaint, which is again specifically denied, the Plaintiff, through his own actions, has been contributorily negligent in that: