

HOME OFFICE LEGAL
September 12, 1958

HOME OFFICE CLAIMS
PAUL N. CARMICHAEL

RE: LINK VS. HUSSMAN REFRIG. CO. C42-180812

You have asked our opinion as to the advisability of pursuing the same procedure in this case as in King v. ~~Donnelly~~, 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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ABEX-063

SCF-ABEX-0705