

FILE NAME: Norfolk & Southern - WC Case - Ancel Wheeler (NS)

DATE: 1951

DOC#: NS011

DOCUMENT DESCRIPTION: Legal - Complaint and Summons of Ancel Wheeler vs. Norfolk & Western

DISTRICT COURT OF THE UNITED STATES

FOR THE

SOUTHERN DISTRICT OF OHIOWestern DIVISIONCIVIL ACTION FILE NO. 2740
Cincinnati

ANCEL WHEELER

Plaintiff

NORFOLK & WESTERN RAILWAY CO.,
A Corporation

Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Philip A. Cohen plaintiff's attorney, whose address is 6 E. Fourth Street, Cincinnati 2, Ohio, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Howard E. Parker

Clerk of Court

By /s/ Charles (Illegible)

Deputy Clerk.

Date: October 18, 1951
Sufficient funds on deposit with
Clerk to cover service of this writ.

/Seal of Court/

NOTE.-This summons is issued pursuant to Rule 4 of the Federal
Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANCEL WHEELER,)
Plaintiff ()
-vs-) Civil Action
NORFOLK & WESTERN RAILWAY (File No. 2740
CO., a Corporation,)
Defendant ()

COMPLAINT

Plaintiff avers:

1. This action arises under and the jurisdiction of this Court is based upon the provisions of the Act of Congress of April 22, 1908, 35 Stat. 65, Chap. 149 and amendments thereto, commonly known as the Federal Employers' Liability Act, 45 U.S.C. Secs. 51 et seq., as hereinafter more fully appears.

2. The defendant is a railroad corporation duly organized and existing under and by virtue of the laws of the State of Virginia, doing business within the jurisdiction of this Court as an interstate common carrier by railroad. During all of the times herein mentioned, defendant owned and operated an engine shop at Portsmouth, Ohio.

3. On and prior to January 9, 1951, plaintiff was employed by the defendant in defendant's engine shop at Portsmouth, Ohio, and his duties consisted chiefly of repairing defendant's interstate engines by removing and replacing asbestos on the boilers and in grinding, mixing and repairing asbestos for that purpose.

4. Defendant caused and permitted said work to be carried on in a small room with inadequate openings and improper ventilation and in such a manner as to cause the air to be laden with asbestos dust and failed to provide plaintiff with any mask, filter or other means of preventing such dust from being inhaled by plaintiff.

5. By reason of defendant's negligence in thus causing and permitting said work to be done in a small room with inadequate openings and improper ventilation and in such a manner as to cause the air to be laden with asbestos dust, and in fa

to provide plaintiff with a mask, filter or other means to prevent the inhalation of such dust, plaintiff was caused to inhale large and excessive quantities of asbestos dust and to suffer great physical and mental pain and eventual total physical disability, and to suffer from asbestosis and diaphragmatic striction and pleural effusion.

6. Prior to these injuries plaintiff was a strong, able-bodied man, capable of earning and actually earning substantial wages. By these injuries he has been made incapable of any gainful activity, has suffered great physical and mental pain, has lost and will continue to lose earnings he would otherwise have acquired, and has incurred and will incur expense for medicine, medical attendance and hospitalization.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of One Hundred Fifty Thousand Dollars (\$150,000.00).

Cohen & Baron
Cohen & Baron
6 E. Fourth St.,
Cincinnati 2, Ohio

Philip A. Cohen
Philip A. Cohen
6 E. Fourth St.,
Cincinnati 2, Ohio

Fuerst & Fuerst
Fuerst & Fuerst
543 Society for Savings Bldg.
Cleveland 14, Ohio

Attorneys for Plaintiff

Pursuant to provisions of Rule 38 of
Civil Procedure, plaintiff hereby demands
a trial by jury.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANGEL WHEELER,

Plaintiff

-vs-

NORFOLK & WESTERN RAILWAY
CO., a Corporation,

Defendant

Civil Action

File No. 2740

COMPLAINT

Plaintiff avers:

1. This action arises under and the jurisdiction of this Court is based upon the provisions of the Act of Congress of April 22, 1906, 35 Stat. 65, Chap. 149 and amendments thereto, commonly known as the Federal Employers' Liability Act, 45 U.S.C. Secs. 51 et seq., as hereinafter more fully appears.

2. The defendant is a railroad corporation duly organized and existing under and by virtue of the laws of the State of Virginia, doing business within the jurisdiction of this Court as an interstate common carrier by railroad. During all of the times herein mentioned, defendant owned and operated an engine shop at Portsmouth, Ohio.

3. On and prior to January 9, 1951, plaintiff was employed by the defendant in defendant's engine shop at Portsmouth, Ohio, and his duties consisted chiefly of repairing defendant's interstate engines by removing and replacing asbestos on the boiler and in grinding, mixing and repairing asbestos for that purpose.

4. Defendant caused and permitted said work to be carried on in a small room with inadequate openings and improper ventilation and in such a manner as to cause the air to be laden with asbestos dust and failed to provide plaintiff with any mask, filter or other means of preventing such dust from being inhaled by plaintiff.

5. By reason of defendant's negligence in thus causing and permitting said work to be done in a small room with inadequate openings and improper ventilation and in such a manner as to cause the air to be laden with asbestos dust, and in failing to provide plaintiff with a mask, filter or other means to prevent the inhalation of such dust, plaintiff was caused to inhale large and excessive quantities of asbestos dust and to suffer great physical and mental pain and eventual total physical disability, and to suffer from asbestosis and diaphragmatic striction and pleural effusion.

6. Prior to these injuries plaintiff was a strong, able-bodied man, capable of earning and actually earning substantial wages. By these injuries he has been made incapable of any gainful activity, has suffered great physical and mental pain, has lost and will continue to lose earnings he would otherwise have acquired, and has incurred and will incur expense for medicine, medical attendance and hospitalization.

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513 Society for Savings Bldg.
Cleveland 14, Ohio

Attorneys for Plaintiff

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