IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
MAR 19 1969
M.
James R. Cooney, Clerk, U. S. Court
By Virginia K. Sipes DEPUTY

CLAUDE J. TOMPLAIT §

VS. § CIVIL ACTION NO. 5402

COMBUSTION ENGINEERING, INC., ET AL §

REPLY TO PLAINTIFF'S MOTION TO TAKE JUDICIAL KNOWLEDGE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant, Fibreboard Paper Products Corporation, and files this, its reply to the plaintiff's motion to take judicial knowledge of the fact that various states of the United States have enacted Workmen's Compensation Laws covering employees who contracted asbestosis in the course of their employment in the various years as shown in the motion, and for such reply would show the Court:

1.

The motion and the proposed order of the Court is misleading, in that the Director of the Workmen's Compensation Board or Industrial Commission of the various states has merely answered a questionaire as to whether "asbestosis is covered under your Workmen's Compensation Act." The second question posed is: "When were the provisions for covering asbestosis under the Workmen's Compensation Act enacted?" Many of the replies to letters submitted in support of the motion state that "injury" is defined in our Act to include disease without specific enumeration. Other replies are that the statute was enacted to cover all "occupational diseases." For example, Wisconsin replies: "Our Act defines injury as 'mental or

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physical harm caused by accident or disease.'" Ohio states that asbestosis does fall within the coverage of the Act as an occupational disease by virtue of a certain amendment to the Act, but asbestosis is not referred to by name.

2.

A brief research on the subject from a publication published in 1943, Schneider's Workmen's Compensation, states that thirty (30) of the fifty-three (53) American Workmen's Compensation Acts now provides compensation for either a designated varying number or all occupational diseases. Two of the states fall in both of the two latter classifications because their acts originally designated a specific list of such diseases and then after some experience added a catch-all clause apparently intended to include all occupational diseases not theretofore designated.

The states which designate a varying number of occupational diseases are: Arkansas, Delaware, Idaho, Kentucky, Michigan, Minnesota, Maryland, Nebraska, New Jersey, New York, North Carolina, Ohio, Puerto Rico, Pennsylvania, Rhode Island, Washington, West Virginia, Wisconsin, Arizona, Georgia, New Mexico, Oregon, Utah and Virginia.

Accordingly, while this defendant has no objection to stipulating to the pertinent provisions of the Workmen's Compensation Law of any particular state, it will be decidely incorrect for the Court to take judicial notice of the fact that asbestosis is specified as covered in a Workmen's Compensation Act unless the specific Act is produced as is the case with the Workmen's Compensation Act in Texas. For example, in Texas asbestosis is a specific occupational disease by name. Most

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of the states apparently will hold that "asbestosis" is covered under the terms of their Workmen's Compensation Act, but the occupational disease of asbestosis is not specifically mentioned in the Act.

Accordingly, the motion in its present form should be denied. Counsel for this defendant will not require the taking of the deposition of the Directors of the Industrial Accident Boards throughout the fifty (50) states, but will require that the Act of the particular state be produced to show that asbestosis is specifically mentioned as an occupational disease in that particular state.

From the text, apparently the following states are the ones which have special provisions which relate exclusively to pneumonocosis, silicosis and asbestosis: Idaho, Illinois, Indiana, Maryland, Massachusetts, Michigan, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Washington, West Virginia, Wisconsin, Arizona, Oregon, Utah and Virginia. Three pages from the text are attached to this reply for the Court's information.

Respectfully submitted;

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BY _____
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Sec.
(f) Actinomycosis
(g) Dermatitis
(h) Hernia
(i) Pneumoconiosis
(j) Silicosis
(k) Smallpox
(l) Tuberculosis
(m) Notice, Failure to Give
(n) Statutory Construction
1040. Wyoming
Statutory Synopsis
(a) General

§ 924. Classification of Occupational Disease Acts

Thirty[1] of the fifty-three[2] American Workmen's Compensation Acts now provide compensation for either a designated varying number[3] or all[4] occupational diseases. Two of the states[5] oddly fall in both of the two latter classifications because their acts originally designated a specified list of such diseases and then after some experience added a catch-all clause apparently intended to include all occupational diseases not theretofore designated. The remaining twenty-three[6] American Acts cover principally indus-

1. Arkansas, California, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Indiana, Kentucky, Longshoremen's, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Philippine Islands, Puerto Rico, Rhode Island, United States, Washington, West Virginia, Wisconsin.

2. Alaska, Hawaii, Puerto Rico, Philippine Islands, Longshoremen's, United States Employees and all American states except Mississippi.

3. Arkansas, Delaware, Idaho, Kentucky, Michigan, Minnesota, Maryland, Nebraska, New Jersey, New York, North Carolina, Ohio, Puerto Rico, Pennsylvania, Rhode Island, Washington, West Virginia, Wisconsin.

4. California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Longshoremen's, Massachusetts, Missouri, North Dakota, United States Employees' Act.

5. New York, Ohio.

6. Alabama, Alaska, Arizona, Colorado, Florida, Georgia, Kansas, Louisiana, Maine, Montana, Nevada,

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trial injuries accidentally sustained and are generally construed not to include occupational diseases. Another group[7] within the twelve mentioned in footnote four includes not only all occupational diseases and diseases which result from accidents, but also diseases which arise out of and in the course of the employment and which are neither occupational nor due to an accident; such, for example, as exposure to an unhealthful condition in the employment which is not peculiar to nor incident to all similar employments and is not due to some break, accident, or mishap in the cause; as, for example, tuberculosis due to work in a damp, dark, wet place, or pneumonia caused by non-accidental conditions but distinctly arising out of exposure in the employment and directly caused thereby,[8] or coccidioidal granuloma[9] contracted by a traveling salesman whose work necessitated travel through the San Joaquin Valley, California and Arizona, where the germs exist in a mold or fungus in the soil and are blown about by the wind in dust. Other groups within the foregoing classification are the states whose occupational diseases acts are completely separate[10] workmen's compensation acts, with their own practice and procedure separate and apart from their other workmen's compensation acts. Then there is the

New Hampshire, New Mexico, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Wyoming.

7. California, Hawaii, North Dakota, Philippine Islands, United States, Wisconsin; 21 Boston U. L. Rev. 375; 20 Boston U. L. Rev. 770.

8. 25 Marquette Law Review 52.

Pa.—Jankaitus v. Harleigh Brookwood Coal Co., 134 Pa. Super 125, 4 A. (2) 161 (1939);

Parks v. Miller Printing Mach. Co., 336 Pa. 455, 9 A. (2) 742 (1939).

Mo.—Joyce v. Lusa-Stevenson, 346 Mo. 68, 139 S. W. (2) 918 (1939).

N. Y. — Goldberg v. 954 Marcy Corp., 276 N. Y. 313, 12 N. E. (2) 311 (1938).

Ohio—Indus. Com. v. Brumm, 130 Ohio 248, 198 N. E. 863 (1935);

Tex.—Maryland Cas. Co. v. Clark, (Tex. Civ. A.), 140 S. W. (2) 890 (1940).

Fed.—Lux v. Western Cas. Co., 107 F. (2) 1002 (1939).

9. Cal.—Pacific Employers' Ins. Co. v. Indus. Acc. Com., 16 Cal. (2) 622, 122 P. (2) 570 (1942). See 15 Marquette Law Review 251.

10. Illinois, Indiana, Pennsylvania.

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group which have special provisions which relate exclusively to pneumonocosis, silicosis and asbestosis,[11] and the group whose acts contain a definition of occupational diseases[12] and the final group, which has by legislative resolution appointed committees to investigate the occupational diseases question to determine whether such act should be adopted in their respective states.[13]

§ 925. General

Workmen's Compensation Laws are based in part on the theory that there is no sound reason why the worker should bear that part of the cost of the finished product of an industry which is represented by his wage loss due to industrial accidents in that industry. The same reason applies to wage loss due to diseases arising out of and caused by conditions of the worker's employment, whether or not those diseases[1] are strictly what are known as occupational diseases.

The more the practitioner analyzes the compensation laws of the different states, the more impressed is he with the tremendous impact of the legislative mind, or the popular mind, upon the judicial mind, in its struggle to create new rights for old wrongs suffered by the common man in his relationship with his employer.

These administrative acts have been enacted to overcome the subtleties and technicalities of the common law which may have expressed reason for the rule of law established for the time in which it was interpreted, but the reason for the rule of law having changed, should not the law change with it? For both judges and lawyers must ever remember that the law of stare decisis is invoked by a changing world only to keep society firm and steadfast while it explores new horizons of social consciousness. The law of precedent is a help only as it puts its old wine of wisdom

11. Idaho, Illinois, Indiana, Maryland, Massachusetts, Michigan, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Washington, West Virginia, Wisconsin.

12. Connecticut, Illinois, Indiana, Michigan, Ohio, Rhode Island, Washington.

13. Nevada, Oregon, Virginia.

1. See discussion in note 8 of preceding section.

See 13 Wisconsin Law Review.

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CHAPTER 16

OCCUPATIONAL DISEASES

§ 924. Classification of Occupational Disease Acts

p 497, n 1. There should be added to the list of cases given in this footnote the following: Georgia, New Mexico, Oregon, Utah, Virginia. The first word in this section should now be changed to thirty-four.

p 497, n 3. Arizona, Georgia, New Mexico, Oregon, Utah and Virginia should now be added to the list of states in this footnote.

p 497, n 6. There should now be eliminated from the list of states in this footnote Arizona, Georgia, New Mexico, Oregon, Utah and Virginia.

p 499, n 11. Arizona, Oregon, Utah, Virginia.

§ 925. General

p 479. Legal Aspects of Occupational disease (Medicolegal symposium) Rocky Mt. L. Rev. 18:240-278 (1946).

p 500, n 2. Klug v. Indus. Com., 381 Ill. 608, 46 N. E. (2) 38 (1943).

§ 926. Occupational Diseases Defined

p 502, n 1. Minnesota and Nebraska should now be added to the list of states given in this footnote. See 1943 amendments, S. S. Vol. 3, Minnesota pocket part, p 11. Nebraska pocket part, p 4.

p 502, n 1a. The new Georgia Occupational Disease Amendment of 1946 defines an occupational disease (Secs. 114-303) to mean "only such listed disease which is due to causes and conditions which are characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease, excluding all ordinary diseases of life to which the general public are exposed."

p 503, n 3a. "Under the statute, to be occupational, a disease must be one which gradually develops from, and bears a direct causal connection with the conditions under which work is performed, and which results from an exposure occasioned by and naturally incidental to a particular employment." Star Publishing Co. v. Jackson, — Ind. App. —, 58 N. E. (2) 202 (1944).

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