

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

640
NO. 2009-WC-~~006540~~-COA

FILED

RAYMOND D. LANGFORD

OCT 26 2009

APPELLANT

VERSUS


**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

SOUTHLAND TRUCKING, L.L.C., AND
MISSISSIPPI ASSOCIATED GENERAL CONTRACTORS
WORKERS' COMPENSATION FUND, INC.

APPELLEES

APPELLANT'S REPLY BRIEF

(ORAL ARGUMENT REQUESTED)

William T. Reed
Attorney for Appellant
OSWALD & REED
3106 Canty Street, Markland Bldg.
Post Office Box 1428
Pascagoula, Mississippi 39568-1428
Telephone: (228) 769-1027
Facsimile: (228) 769-9019
STATE ID No. (W.T.REED) 

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2009-WC-006540-COA

RAYMOND D. LANGFORD

APPELLANT

VERSUS

SOUTHLAND TRUCKING, L.L.C., AND
MISSISSIPPI ASSOCIATED GENERAL CONTRACTORS
WORKERS' COMPENSATION FUND, INC.

APPELLEES

APPELLANT'S REPLY BRIEF

The most egregious result of the Administrative Law Judge's adoption of the Employer and Carrier's Brief as her Opinion is only highlighted and made more obvious by the Employer/Carrier's Brief herein. Every factual determination, every inference, every interpretation of the evidence is made by the Employer/Carrier in its own favor and adopted by the Administrative Law Judge.

The Employer/Carrier's Brief, at Page 4, while questioning the way the Crete Brite was poured quotes from the testimony of the Employer/Carrier's witness, Mr. Mitchell, and quotes him as saying that about a quart of the Crete Brite spilled on the container and the concrete slab. The Employer/Carrier relies upon the opinion of their expert, Robert Babcock, to opine that there was virtually no possibility the exposure to hydrogen fluoride or hydrogen

chloride gas occurred while pouring the Crete Brite from one container to the other.

Mr. Babcock's experiment was conducted inside a ventilated hood (Depo. P. 4), and he was not told that Mr. Langford was diagnosed as having chemical pneumonitis (Depo. P. 10). Babcock acquired a total of four quarts of Crete Brite (Depo. P. 11), his testing was performed under controlled conditions in a laboratory (Depo. P. 12), and Mr. Babcock was testing only for any hydrogen chloride or fluoride gases. (Depo. P. 16)

Mr. Babcock was then read from Mr. Langford's Deposition (Babcock Depo. P. 18-19) as to how the accident occurred and he stated "I did not consider the situation in which liquid Crete Brite splashed up ^{what testing?} into his face and he breathed a liquid droplet."

The correct dilution of Crete Brite is one ounce to one hundred twenty ounces of water. In other words, Mr. Babcock's scientific experiment did not attempt to replicate the event and exposure that occurred and the experiment was conducted solely to test for gases.

In paragraph B, Page 5, of the Employer/Carrier's Brief the Employer/Carrier again visits claimant's taking Crete Brite for his own use. The Administrative Law Judge, by adopting the Employer/Carrier's Brief failed to evaluate the Claimant's testimony at a time when we was in intensive care and fighting for his life.

In paragraph C, pages 7 and 8, the Employer's Carrier's Brief erroneously assumes that the claimant had previously inhaled undiluted Crete Brite. There is no evidence that he or his co-employees had previously suffered similar inhalation. Paragraphs D, Pages 8, 9, and 10, are again factual determinations made by the Employer/Carrier going through the medical records and pitting those records against his testimony while he was in the Intensive Care unit for over a month.

The Employer/Carrier's reliance on the opinions of its hired experts is nothing more than their reliance on Dr. Babcock's opinion which totally ignores the facts of the case. Drs. Georges, Babcock, and Jones' opinions are all based upon exposure to hydrogen chloride and fluoride gases. None attempt to account for actual inhalation of undiluted Crete Brite itself. These experts were not treating physicians, never saw the claimant, and had no evidence of the claimant or his condition other than what was supplied to them by the Employer/Carrier.

This Claimant has not had a fair hearing. He is entitled to have this Workers' Compensation case decided by a Judge who, at the very least, evaluates the Record, evaluates the testimony, and evaluates the medical testimony before making a decision.

There is no evidence that the Administrative law Judge ever made any independent evaluation of the relevant portions of this


case. She adopted the Employer/Carrier's one sided Brief, much of which has no support in the Record.

Respectfully submitted, this the 26th day of Oct., 2009.

RAYMOND D. LANGFORD, Claimant

By: 

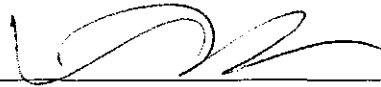
WILLIAM T. REED, Attorney

OSWALD & REED
3106 Canty Street, Markland Building
Post Office Box 1428
Pascagoula, Mississippi 39568-1428
Telephone: (228) 769-1027
Facsimile: (228) 769-9019
STATE ID No. (W.T.REED) 

CERTIFICATE OF SERVICE

I, William T. Reed, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing **APPELLANT'S REPLY BRIEF** to Honorable Ronald T. Russell, BRYANT, CLARK, DUKES, BLAKESLEE, RAMSAY & HAMMOND, Post Office Box 10, Gulfport, MS 39501-0010.

This the 26th day of October, 2009.



WILLIAM T. REED