

This increase is effective for January 1973. If you are due an increase under this new rule, your benefit will be refigured and any increase due you will be included in the check you get early in February. If, however, you are a widow age 60 or over getting checks only on your own earnings record and you never applied for widow's benefits, *you should get in touch with your social security office to see if you are now eligible for a higher benefit based on your husband's earnings record.*

Reduced benefits for widowers

If you are a dependent widower who would be eligible for monthly cash benefits at 62 on your deceased wife's social security record, you can now apply for reduced checks as early as 60. The change for widowers is effective January 1973.

Special minimum benefit

The new law provides a special minimum benefit at retirement for people who worked under social security more than 20 years. This change will help people who had low incomes in their working years. The amount of the special minimum depends on the number of years of coverage. For a worker retiring at 65 with 25 years of coverage, the minimum would be \$127.50 a month; with 30 or more years of coverage, the minimum would be \$170. Most people who have worked more than 20 years under social security already receive benefits higher than the special minimum. *If any increase is due you, it will be included in the check you get in early April.*

Figuring men's benefits

Under the 1972 amendments, retirement benefits for men who reach 62 in 1975 or later will be figured the same way as they are for women. The new provision will be put into effect in three annual steps—1973 through 1975. The change will mean higher benefits for most men who reach age 62 in the future and for their dependents and survivors.

Under the old law, if a man and woman of the same age had the same earnings over the years, the woman would generally have a higher benefit rate. Under the new law, a man and a woman who are the same age will have equal benefits if they had equal earnings. The work credits required to qualify for benefits also will be the same for both men and women.

Delayed retirement credit

A worker who doesn't get any benefits before 65 and who delays his retirement past age 65 will get a special credit that can mean a larger benefit. The credit adds to a worker's benefits 1 percent for each year (1/12 of 1 percent for each month) from age 65 to age 72 for which he did not get benefits. The credit applies only where a worker has earnings after December 1970. The increase, which will be effective for January 1973, does not increase benefits of dependents or survivors. *If your benefit will be higher because of this change in the law, you will get the increase in early June.*



MICHIGAN TRIAL LAWYERS ASSOCIATION

1010 Washington Square Building
Lansing, Michigan 48933

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MICHIGAN GOVERNMENT DIRECTORY

77th Legislative Session — 1973-74

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The trial lawyer stands at Stage Center in the 1970's. As a social architect, he has an opportunity to be a central character in this dramatic decade.

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- to preserve the air, water, land, landscape;
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- to extend justice and equality to all people.

The Michigan Trial Lawyers Association is a major force in developing the competence of all trial lawyers and nurturing and guiding the new lawyer in both social responsibility and courtroom skills.

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Dedicated attorneys, working together, can accomplish far-reaching objectives. More than 1,400 practicing lawyers now make up this statewide organization. Every new lawyer-member increases our unity and strength.

Active MTLA membership is open to any person of good moral character who has been admitted to the practice of law in Michigan and who generally represents injured or accused persons. Attorneys who, for the most part, represent the defense in personal injury litigation are ineligible for membership in the association.

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MTLA officers are elected annually. The executive board is the governing body of the association between annual meetings.

Local chapters may be chartered in counties throughout Michigan, subject to certain constitutional requirements. These local units are most effective in achieving goals and needed changes in a given area.

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THE BAR FOR THE CHANGING LAW AND THE CHANGING TIMES



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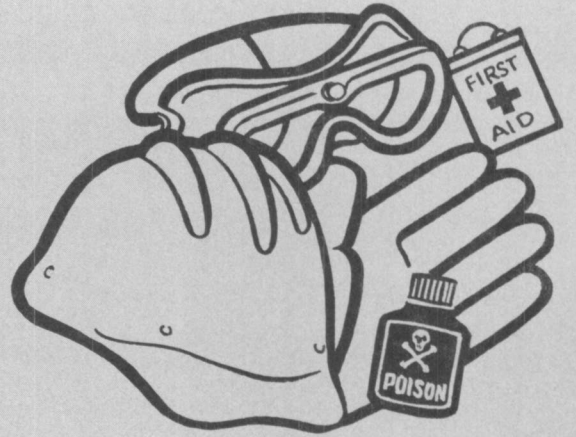
WORK NEVER KILLED ANYONE ? ?

Besides the dangers of faulty machinery, poor lighting and heat regulation, increased tension, cement floors, high noise levels, workers are exposed to a number of toxic chemicals. The following is a list of some occupational causes of pulmonary disease: (not to mention liver, kidney, heart and intestinal disorders)

- Silicosis - inhalation of SiO_2
Mining of coal, lead and zinc.
Working in iron foundry.
Sand blasting.
- Asbestosis - inhalation of asbestos
Mining and processing of asbestos
Boiler manufacturing.
- Bauxite pneumoconiosis - inhalation of aluminum oxide
Mining and manufacturing of aluminum products.
- Talc pneumoconiosis - inhalation of magnesium silicate (talc)
Rubber tire and shoe manufacturing.
- Graphite pneumoconiosis - inhalation of graphite
Mining and processing of graphite.
- Diatomaceous earth - inhalation of diatomaceous dust
Insulation manufacturing and sugar refining.
- Siderosis - inhalation of iron oxide
Foundry workers, electric welders.
- Byssinosis - inhalation of cotton dust
Cotton mill workers.
- Beryllium pneumoconiosis - inhalation of beryllium
Mining and processing of beryllium compounds; radio tube manufacture, atomic energy research.
- Bagasse pneumoconiosis - inhalation of bagasse fibers
Sugar cane workers, bagasse insulation and building
- Farmer's lung - inhalation of fungus products
Farming in association with wet hay.
- Silo fillers' disease - inhalation of nitrogen dioxide
Workers in recently filled silos.



OCCUPATIONAL SAFETY AND HEALTH NEWSLETTER



International Union, UAW, Leonard Woodcock, *President*

August 1972

VOLUME I, NUMBER 4

U.A.W. To Launch Battle Against Safety & Health Hazards In Grey Iron Foundries

A concentrated, two-year "battle plan" to reduce and eventually eliminate "the carnage of death and hazards to life and limb" in the grey iron foundries has been announced by President Leonard Woodcock.

The target program, approved by the UAW International Executive Board, will begin Sept. 1. "The foundry industry was chosen for this major UAW effort because it is the most hazardous industrial occupation in which our members work," Woodcock said. "We want to see preventive measures instituted to reduce and eventually eliminate the carnage of death and hazards to life and limb which characterize too many of the plants in this industry. We expect to work with plant managements and our own members to achieve these objectives."

The program is modeled after a "worst first" plan instituted by the U.S. Dept. of Labor. President Woodcock pointed out that despite many improvements in foundry operations over the last decade, the frequency and severity of injuries in the foundries continue to rise.

Bureau of Labor Statistics figures show a rate of more than 35.9 disabling work injuries per million man-hours worked in grey iron foundries in 1970, well above double the national average of 15.2 injuries for all manufacturing industries in the U.S.

Similarly, the BLS figures show the severity of injuries suffered by workers in grey iron foundries is double the national average — nearly 1639 days of disability per million man-hours worked in grey iron foundries in 1970 as compared with 759 days on the average for all manufacturing industries.

The UAW target program will be directed specifically at the 86 grey iron foundries in the U.S. and Canada in which 60,000 union members are employed, and where the employers have agreed to cooperate.



Leonard Woodcock
President UAW

Under the new program surveys will be conducted by two-man teams to evaluate the degree of existing safety and health hazards occurring in each of the foundries.

In cooperation with local union officials and plant managements, efforts will be made to identify and evaluate hazards to working conditions. Specific recommendations will be made to correct dangerous situations and regular followup will be maintained to see that necessary improvements are made.

(Cont'd on Page 5)

Asbestos Exposure: A Slow Death

According to the 1970 edition of *World Book*, both the Romans and Greeks made use of a rock formation that, after many years of pressure, stress and heat, crystallized into mineral fibers that became known as *asbestos*.

The Romans used it for making lamp wicks; cloth made of asbestos was also used as a funeral cloth for cremations. Marco Polo reported that he had seen asbestos cloth in Siberia.

Asbestos fibers, soft and flexible, can be spun into threads and woven into cloth; remarkably heat resistant, it will not burn; it will disintegrate at extremely high temperatures. Further, it resists acids, alkalis, and other chemicals, and is an excellent nonconductor of electricity.

Despite these notable and useful qualities, asbestos also kills — very slowly. Just how many workers die as a result of asbestos exposure is not known; primarily, such statistics are difficult to assess largely because diseases from asbestos exposure develop slowly, over a period of 20-30 years.

Workers exposed to asbestos face a dual threat: not only are they subject to the lung-scarring pneumoconiosis of their trade, *asbestosis*, but they are endangered by *lung cancer* associated with inhalation of asbestos fibers.

An example of its long-term effects was discovered recently in the case of a dying cancer patient. The cause of his condition was traced back 30 years to an asbestos exposure of only six weeks in the manufacture of brake shoes.

Dr. Irving J. Selikoff, of the Mount Sinai School of Medicine, and a well-known authority on occupational asbestos diseases, made a grim projection of deaths that are likely to occur from asbestos exposure:

“There are now 500,000 American workers currently or previously employed in regular asbestos work.

If our experiences of the past several years is a guide, 100,000 will die of lung cancer; 35,000 of abdominal or chest cancer, and 35,000 of lung scarring, as well as many thousand more of other cancers.”

Asbestos is a unique substance because once it is breathed into the lungs it remains there; the body is unable to do anything to remove it. Lodged in the body, it produces two main effects: (1) it stimulates the formation of scar tissue (fibrosis); and (2) after many years in the lungs, it may stimulate the growth of cancer.

The scars formed in the lungs from *asbestosis* are smaller than those caused by *silicosis*, but they make the lungs stiff and firm, and consequently less air can enter the lungs; this, of course, increases the work load on the heart as it pumps blood through the lungs.

Because the asbestos scars are situated in the delicate walls of the air sacs, they block the transfer of oxygen to the blood stream across the thickened walls; thus, low blood oxygen content is the typical medical finding in *asbestosis*.

As for the second main effect, stimulation of cancer growth, this occurs 20-30 years after exposure and can arise from a single exposure (as noted previously), since the asbestos particles *never* leave the lungs.

Congress stated its purpose for enacting the Occupational Safety and Health Act of 1970 was “..to assure ... every working man and woman ... safe and healthful working conditions ...” To this end, the Occupational Safety and Health Administration recently announced the new asbestos standard summarized on page 3.

Essentially, Congress has said, and the UAW agrees, that no longer should workers risk injury, illness or death in the work place.

Effects Of Silica Dust On The Lungs

An influential factor in contracting silicosis is, of course, the percentage of free silica contained in inhaled dust.

Of equal, if not more, importance is the size of the particles: the smaller they are, the more hazardous their inhalation is likely to be. Passing through airways with little or no difficulty, eventually, these particles reach the air sacs and smaller tubes of the lungs.

It is in the air sacs that the vital transfer of oxygen to the blood occurs. Blood flows around the outside of the sacs, and as one inhales, fresh air penetrates down to the sacs; in the process, oxygen is absorbed and carbon dioxide is discharged.

At the point in the lungs where silica dust is deposited and accumulated, a fibrous tissue develops and grows around the particle. Consequently, the lungs become stiff and cannot expand or contract as before, thus preventing the ready and vital passage of oxygen and carbon dioxide. As this process increases, the amount of normal lung tissue is reduced, and the functional volume of the lungs is seriously reduced.

Shortness of breath develops; chest expansion is decreased; and one's capacity for work is lessened. Naturally, with the lungs not functioning properly, the heart attempts to pick up the load; it begins to work harder to get blood through the lungs and oxygen into the blood.

The overworked heart becomes larger and weaker, and, eventually, it ceases to function; thus, many heart attacks may well be attributed to a lung disease such as silicosis.

Local Union Notes.....

- Significantly new provisions were added to the Ontario Industrial Safety Act in 1971; the Canadian Region had spent many years fighting for their inclusion.
- At its September meeting, the Canadian Council Safety & Health Committee will be asked to approve a Health & Safety Program for the Canadian Region.
- Bert Rovers, of Local 1520, chairs the Council.

Osha Establishes New Standard For Employee Exposure To Asbestos Dust

A new standard for employee exposure to asbestos dust, limiting concentrations to 2 fibers, which are longer than 5 micrometers, per cubic centimeter of air on a time-weighted average, effective July 1, 1976, was announced by the Occupational Safety and Health Administration (OSHA) on June 7.

The current permissible time-weighted average concentration of 5 fibers of asbestos longer than 5 micrometers, established originally in an emergency temporary standard last December 7, will be continued until July 1, 1976.

The standard also establishes a ceiling concentration of 10 fibers, not to be exceeded at any time.

George C. Guenther, Assistant Secretary of Labor for OSHA, said the new standard was adopted after consideration of recommendations from the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health, Education, and Welfare; of the OSHA Advisory Committee on Asbestos Dust, and of comments from interested persons, including presentations in a four-day public hearing.

The new standard provides the following:

Acceptable concentrations—As of July 1, 1976, time-weighted average concentrations of asbestos fibers longer than 5 micrometers will not be allowed to exceed 2 fibers per cubic centimeter of air. The current time-weighted average concentrations of 5 fibers will be permitted until July 1, 1976.

Methods of compliance — Feasible technological controls and appropriate work practices are required as the primary means of compliance. Rotation of employees to reduce their exposures is allowed only in "exceptional circumstances." Personal protective equipment, such as respirators, cannot be relied upon, in large part because such devices are so uncomfortable as to be burdensome except for short periods.

The standard includes these other compliance requirements:

— Hand tools that may produce or release asbestos fibers in excess of the limits must be provided with local exhaust ventilation systems.

— Insofar as practicable, asbestos must be handled, mixed, applied, removed, cut, scored or otherwise worked in a wet state to reduce fiber emissions unless this would diminish the usefulness of the product.

— No asbestos cement, mortar, coating, grout, plaster or similar material containing asbestos can be removed from shipping bags or other containers without being either wetted, enclosed or ventilated.

— Where respirators are permitted, they must be selected from among the types approved by the Bureau of Mines or NIOSH. Extensive details are given on types of respirators and conditions for their use. No employee may be assigned to a task requiring a respirator if a physician determines it would affect his job functioning or his health.

— The employer must provide and require the use of special protective clothing, change rooms, and two separate lockers for the employee's street and work clothes. The employer also must exercise care in laundering and other handling of contaminated clothing.

— External work area surfaces must be kept free of excessive accumulations of asbestos fibers. Waste must be collected in sealed, impermeable bags or other such containers.

Monitoring — Employers must establish monitoring systems to make certain every employee's exposure to asbestos fibers is below the prescribed limits. If the limits are exceeded, the employer must undertake a compliance program. Therefore, the standard also requires monitoring at intervals no longer than 6 months and gives employees or their representatives the opportunity to observe the monitoring and to have access to such records.

Warning signs — Caution signs are to be displayed in areas where asbestos concentrations may exceed the exposure limits. Caution labels must be affixed to all raw materials, mixtures, scrap, waste, debris and other products containing asbestos fibers, or to their containers. However, no label is required where asbestos has been modified by a bonding agent, coating, binder or other material that would prevent release of above-limit concentrations.

Recordkeeping — Employers must maintain records of personal or environmental monitoring, keep them for at least 3 years, and make them available upon request to OSHA or NIOSH. Every current and former employee is given opportunity for reasonable access to any records indicating their exposure to asbestos dust. Any employee found to have been exposed at any time to airborne concentrations in excess of the limits must be notified in writing no later than 5 days after the finding, and informed as to corrective action being taken.

Medical examinations — The employer must provide, or make available at his cost, medical examinations. Within 30 days of an employee's first employment in a job involving asbestos exposure, the employer must provide a comprehensive medical examination, including a chest X-ray and pulmonary tests. By January 31, 1973, and at least annually thereafter, every employer shall provide or make available comprehensive medical examinations to employees in asbestos exposure areas. A similar examination is to be provided within 30 days before or after termination of employment.

Medical records — Employers whose employees have been examined under the standard must maintain complete records of these examinations and retain them for at least 20 years. The contents of the records are to be made available for inspection and copying to the Assistant Secretary of Labor for OSHA, the Director of NIOSH, authorized physicians and medical consultants of either agency, and, upon request of an employee or former employee, to his physician. Any physician who conducts an examination under the standard must furnish the employer all information required by the standard, and any other medical information related to occupational exposure to asbestos fibers.

Affected employment — This general standard covers also employees in construction, ship repairing, shipbuilding, shipbreaking and longshoring who normally are subject to construction and maritime standards.

All parts of the new standard go into effect July 7 of this year except for the reduction from 5 fibers to 2, which takes effect July 1, 1976.

Dust Particles And Lung Disease

There are some dusts present in the atmosphere that perform the beneficial task of screening out some of the harmful sun rays; some dusts, too, are captured, removed, and eliminated or isolated by body mechanisms before any harm is done.

Generally, it is the kind of dust inhaled, and its size, that determines the consequent condition or injury. Most dust particles vary in size, with smaller particles outnumbering the larger ones. A person with normal eyesight can detect dust particles as small as 50 microns in diameter; usually, dust that is respirable size is below 10 microns and cannot be seen without a microscope.

Gravity attracts dust particles; and the particle settling rates for silica dust in still air are shown in the following table:

*Size in Microns	Time to Fall One Foot
0.25 or 1/4	10 hours
0.50 or 1/2	3 hours
1.00 or 1	1 hour
2.00 or 2	15 min.
5.00 or 5	3 min.

*The most dangerous particle size is between 0.50 microns and 5.00 microns. (1 micron = 1/250,000 of an inch).

Particles of free silica below 1 micron, 0.50 or 0.25

for example, are probably the most dangerous; they remain suspended longer, increasing their chances of being inhaled; their size also allows them to penetrate deeper into the lungs in greater concentration.

Lung diseases may develop rapidly or slowly. Chronic pulmonary silicosis, for example, generally appears after long years of silica dust inhalation; it is this type that is found more often in industry. Whether rapid or slow in development, the major symptom is shortness of breath, which becomes progressively worse.

Always have your occupational safety and health representative investigate any excessive concentration of dust; find out what kind it is, and consult the applicable standard to make certain its limits are not being exceeded.

Further, always insist on proper and adequate ventilation and dust handling techniques to eliminate or control excessive concentrations. Any worker exposed to an excessive concentration of dust should insist upon proper protective equipment and devices designed to protect against the hazard.

At best, such equipment or device should be an interim method of protection, while better controls are being perfected; for optimum protection, this equipment or device must be maintained in perfect working order.

Demand it. Your life may depend on it.

Quebec Has Largest Asbestos Deposit

Discovery of huge asbestos deposits in Quebec in 1878 accelerated the widespread commercial use of asbestos; that Canadian province is credited with having the largest known deposit area, estimated at 70 miles long and 6 miles wide.

Canada produces over 40% of the world's asbestos production that exceeds 2,500,000 tons. Although the United States mines only a small quantity of asbestos, it consumes about 25% of the world's supply. China, Rhodesia, Russia, and South Africa also mine asbestos.

Asbestos manufacturing has become an important industry in America; California is the largest producer, followed by other leading states including Arizona, North Carolina, Oregon and Vermont. Reportedly, Russia operated the first factory for making asbestos cloth in the 1700's.

Provincial Health Regulations in Quebec require that asbestos be packed in paper bags (obviously to prevent seepage of fibers); anyone employed where the "air becomes laden with injurious dusts" may only do so where physical and radiological examinations establish that such person is physically fit to work under those conditions.

Further, Quebec employers are obligated to see that all employees who are exposed to injurious dusts, such as asbestos, undergo annual physical examinations to determine their fitness to continue that type of work.

Employees must be given proper and approved protective equipment, and an adequate, regularly inspected ventilation system must be maintained.

Uses Of Asbestos

Basically, the uses of asbestos evolve from its two main groups: (1) fibers that are long enough for spinning; and (2) those that are too short, or nonspinning, fibers.

Spun asbestos is usually blended with cotton or rayon, for added strength, and it is then woven into fabrics. Due to its heat resistancy, this cloth is used for brake lining and clutch facings for automobiles — where friction causes heat. There are approximately a half dozen plants in which UAW members are exposed to asbestos in such operations.

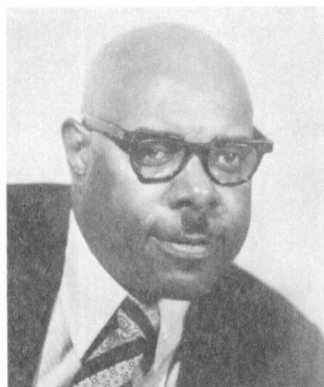
Nonspinning fibers that are too short to be woven into cloth are usually mixed with a binding material and then processed into asbestos sheets. In this form, it is used to insulate pipes, wires, to line stoves, and is also used to coat boilers and furnaces. Actually, molded asbestos is used more in brake lining and other friction materials than spun fibers.

The roof on your home may very well be covered with shingles composed of cement and short-fiber asbestos. Wallboard, fireproofing paints, and tiling are among other uses.

Maintenance men who may have to cut asbestos for pipe lining should be aware that this should not be done with an open saw. Part 1910.93 (c) (ii) and (iii) of the newly announced asbestos standard under OSHA-1970 states: "All hand-operated tools which may produce or release asbestos fibers in excess of the exposure limits ... shall be provided with local exhaust ventilation systems ..."

Moreover, the local exhaust system, too, must be "designed, constructed, installed, and maintained" in accordance with a standard that covers the design and operations of such systems: ANSI Z9.2-1971.

Foundries.. High Risk Areas For Silicosis



Nelson Jack Edwards
Vice-President UAW
and
Director Foundry
Department

Despite years of progressive research and improved mechanization and automation in the Foundry Industry, silicosis is still rated a serious threat to the health of foundry workers. Silicosis is a pneumoconiosis ("dusty lung") that is caused by inhalation of a finely divided mineral dust, silica (silicon dioxide) in its "free state" (not combined with other elements).

There are several areas in foundries where free silica dust may be found in heavy concentration: sand operations, including its delivery, storage, and eventual distribution; sand conditioning for molds and cores; molding and core making operations; shakeouts, and cleaning operations.

In addition, floors, ledges, and sand conveyors or belts are other places where silica dust is likely to be found.

A person who regularly inhales silica dust over a period of time may find that the dust will begin to lodge in the lungs and irritate vital lung tissues. The lungs may become inflamed and tiny swellings may begin to develop all over them; in the midst of each swelling, or *nodule*, there is a speck of silica dust.

Industries and industrial processes that produce dusts are many: mining, quarrying, and sandblasting. Crystalline free silica dust is more often found in foundries, glass manufacturing, and tunnelling in quartz rock.

Free silica is the major constituent of all rock, soil, sand, and clay; it is estimated that 60% of the earth's crust is silica. Silica also gives strength and toughness to some plants, quills of bird feathers, and some living sponges, as well as being the main ingredient in shells of some microscopic forms of life.

Only well-planned and properly equipped maintenance and control programs, diligently pursued, will eliminate or reduce excessive dust concentrations. Clearly, this is a responsibility of management.

A wise and responsible management will recognize its obligation and will make every effort, regardless of cost, to provide its work force an environment that is free from hazards.

(Cont'd from Page 1)

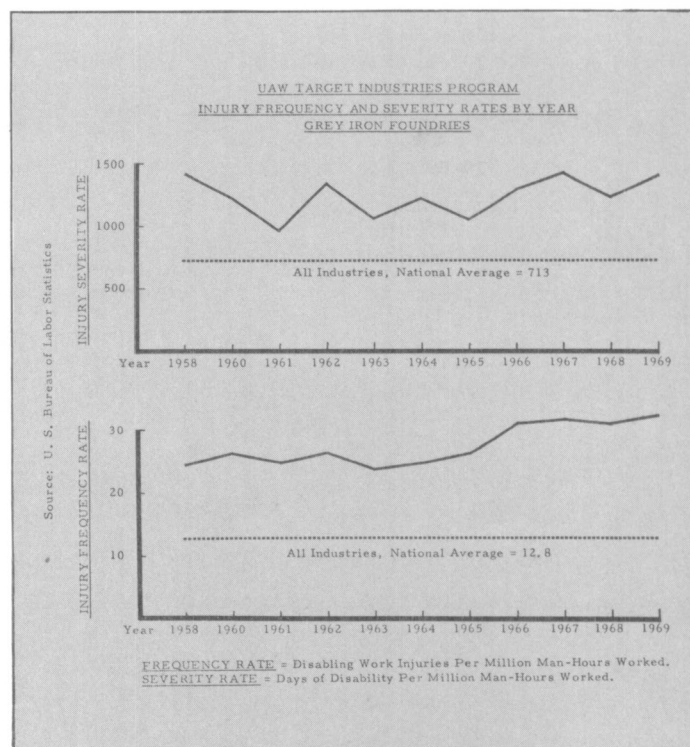
U.A.W. To Launch Battle Against Safety & Health Hazards In Grey Iron Foundries

Fourteen different work assignments in the foundry will be studied: sand utilization including sand handling, sand preparation, molding, foundry clean-up, and core making; casting production including melting, pouring, casting removal and casting cleaning; allied service functions including millwrights, electricians, yard workers, truck drivers, inspectors, crane operators, welders, and other maintenance personnel.

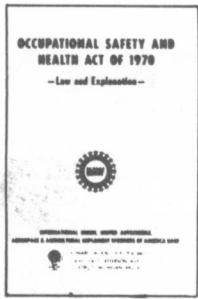
"We will continue our constant work on improving conditions wherever our members are employed," Woodcock said. "This new program, however, represents a concentrated effort at safety and health preventive activities. We are going to make every effort to clean up unsafe and unhealthy working conditions before they wreak additional tolls on human lives and limbs."

Some 2,000 local union safety representatives and 800 UAW International Representatives have received training in the standards and regulations of the Occupational Safety and Health Act and work daily on local plant conditions. Where necessary they secure the assistance of the appropriate state or federal regulatory agency to see that the standards of the law are maintained.

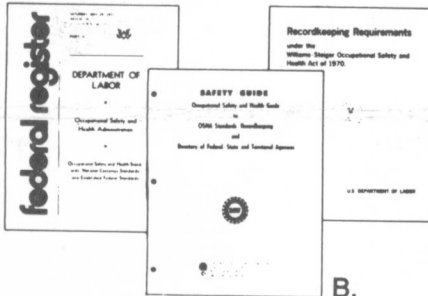
"Our union," Woodcock said, "was pleased with the passage of the Occupational Safety and Health Act of 1970. We recognize, however, that the important protections for workers contained in the law have little meaning if unions do not take an aggressive role in implementing them. The UAW has taken such a role."



SOCIAL SECURITY DEPARTMENT OCCUPATIONAL SAFETY & HEALTH MATERIALS



A.



B.

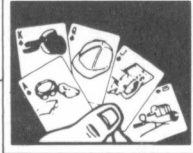


JOB HAZARDS?

get your Local Union Safety Representative by phone, Personal or Mail safety poster.

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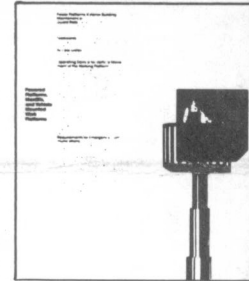
Hear today, gone tomorrow.



workers know the O.S.H.A. bill of rights...



C.



D.

UAW PURCHASING DEPARTMENT
8000 East Jefferson Avenue
Detroit, Michigan 48214

Item	Cost	Item	Cost
A. Occupational Safety & Health Act of 1970 (Law & Explanation)	\$2.50 ea.	C. 7 Different Occupational Safety & Health Posters	\$1.80 3 sets (21 Posters)
B. Safety Directory — Guide Federal Standards, Recordkeeping Requirements, and Up-dating Service	\$2.50 per set	D. Occupational Safety & Health Hazard Guide 24 page, pocket size, two-color, ready reference booklet, 8 3/4" x 3 3/4"	
		1 - 9 booklets	\$.50 ea.
		10 - 24 booklets	\$.45 ea.
		25 or more booklets	\$.40 ea.



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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM KRENTZ, Administrator of
the Estate of Roy P. Stewart, Jr.,
Plaintiff-Appellant,

v.

UNION CARBIDE CORPORATION and
WORTHINGTON CORPORATION,
Defendants-Appellees.

ON APPEAL from the
United States District
Court for the Eastern
District of Michigan,
Southern Division.

Decided August 1, 1966.

Before: WEICK, Chief Judge, O'SULLIVAN, Circuit Judge,
and CECIL, Senior Circuit Judge.

CECIL, Senior Circuit Judge. This appeal arises out of an action brought in the United States District Court for the Eastern District of Michigan, Southern Division, by William Krentz, Administrator of the Estate of Roy P. Stewart, Jr., against Union Carbide Corporation and Worthington Corporation. Jurisdiction of the Court was invoked by virtue of diversity of citizenship (Section 1332(a), Title 28, U.S.C.).

The plaintiff is a resident of the State of Michigan and is the duly appointed and qualified administrator of the Estate of Roy P. Stewart, Jr., deceased. Union Carbide Corporation is a New York corporation and Worthington Corporation is incorporated in Delaware. Both corporations are authorized to do business in the State of Michigan and at the time the cause of action herein accrued, they were doing business in

the Southern Division of the Eastern District of Michigan. We will refer to these corporations as Union Carbide and Worthington. The case was tried to a jury and at the conclusion of the plaintiff's evidence the district judge directed a verdict in favor of the defendants, Union Carbide and Worthington. The plaintiff appealed.

Roy P. Stewart, Jr., the plaintiff's decedent whom we will call the deceased, met his death on June 21, 1961, as a result of a fire or an explosion in Union Carbide's oxygen manufacturing plant at Ecorse, Michigan. This plant went into operation in May of 1960. Prior thereto the combustion department of Great Lakes Steel Corporation posted bids on its bulletin boards throughout the plant notifying its employees of nine available jobs in the new oxygen plant, known as the Linde Plant, a division of Union Carbide. The deceased submitted a bid and was given an examination by Great Lakes Steel to determine whether he was qualified for one of the jobs. The examination was prepared and given by Great Lakes Steel with the assistance and cooperation of the superintendent of the Linde Plant. Union Carbide, through this plant, supplied oxygen to Great Lakes Steel for its manufacture of steel.

The deceased was found to be qualified for one of the nine available jobs and subsequently went to work in the new oxygen plant of Union Carbide. He waived seniority rights at Great Lakes Steel in favor of the better job at Union Carbide. He had worked in this plant about a year before his accidental death. He continued to be a member of United Steel Workers of America, the union representing Great Lakes Steel employees. He was paid his wages by Great Lakes Steel and he punched a Great Lakes Steel time card in a Great Lakes Steel time clock. His time card had to be counter-signed by a Great Lakes Steel foreman in order to receive his pay. He was entitled to all of the fringe benefits provided for in the Union contract with Great Lakes Steel. Any grievances were processed through the Union with Great Lakes Steel. Great

Lakes Steel paid workmen's compensation benefits as a result of his death. The deceased was schooled in the new operation at the Linde Plant by Union Carbide employees. He took orders regarding work and shifts from Union Carbide. He was working in the plant and on the property of Union Carbide. His work of producing oxygen was the work of Union Carbide. The control and supervision of the operation was by Union Carbide employees. Great Lakes determined only the amount of oxygen it required.

The plaintiff brought the action against Union Carbide on the ground of common law negligence. Union Carbide claimed that the deceased was a loaned employee from Great Lakes Steel and as such became an employee of Union Carbide and subject to workmen's compensation benefits under that employment.

The Workmen's Compensation Law of Michigan has the following pertinent sections:

Section 17.145 M.S.A. defines private employer as,

"2. Every person, firm and private corporation, including any public service corporation, who has any person in service under any contract of hire, express or implied, oral or written."

Section 17.147 M.S.A. defines private employee as,

"2. Every person in the service of another, under any contract of hire, express or implied, * * *"

Section 17.144 M.S.A. provides,

"Where the conditions of liability under this act exist, the right to recovery of compensation benefits, as herein provided, shall be the exclusive remedy against the employer."

It is a well established doctrine of Workmen's Compensation Law that an employee of a general employer may be loaned

to a special employer who then becomes liable for workmen's compensation. Such an employee is referred to as a lent employee. The essentials for a lent employee relation are set forth in 1 Larson's Workmen's Compensation Law, Section 48.00, at p. 710,

"When a general employer lends an employee to a special employer, the special employer becomes liable for workmen's compensation only if

- (a) The employee has made a contract of hire, express or implied, with the special employer;
- (b) The work being done is essentially that of the special employer; and
- (c) The special employer has the right to control the details of the work."

In passing on Union Carbide's motion for a directed verdict the trial judge said,

"Since this is an action between employer and employee, and compensation law is involved, the first question that must be determined is whether the deceased made a contract of hire with the alleged special employer, as there can be no compensation liability in the absence of a contract for hire between the employee and the borrowing employer. The employee's consent to the new employment relation may however be implied from the employee's acceptance of the special employer's control and direction.

"In the present case, there is undisputed evidence, in the opinion of this Court, that there was such consent on the part of the employee. He volunteered for the work, took the necessary tests, waived certain seniority rights, reported for work at the plant for about a year up to the time of the accident and acquiesced to the work assigned to him by Union Carbide's employees. There was, therefore, an implied contract for hire, and the Court must then pass to the second and third questions, namely, whether he was at the time of the accident

doing work essentially that of the special employer and whether the special employer assumed the right to control the details of the work.

“In the opinion of the Court, on the undisputed evidence in the case, both questions must be answered in the affirmative. The compressor upon which he worked and the plant in which it was located were property of Union Carbide. The work of producing the oxygen was that of Union Carbide, even though it was for the use of Great Lakes Steel. All the control and supervision of the operation was by Union Carbide employees, with the exception of determining how much oxide was required by the Great Lakes Steel and the payment of wages. On the basis of these indicia, the Court cannot escape the conclusion, based upon the authority of *Denton vs. Yazoo*, 284 U.S. 305, that the deceased was at the time of the accident a lent employee of the Union Carbide and was therefore subject to the State compensation laws and not liable under negligence laws.”

We agree.

Jurisdiction being based on diversity of citizenship, the substantive law of Michigan is controlling, *Erie Railroad Company v. Tompkins*, 304 U.S. 64. It is argued on behalf of the plaintiff that the Supreme Court of Michigan in determining who is an employer has abandoned control as a test and has substituted therefore the test of economic reality which must be determined from all of the facts of the case. It is claimed that under this theory there was a factual question to be submitted to the jury.

The cases¹ cited by counsel for the plaintiff do not persuade us that the Supreme Court of Michigan has changed the law with reference to the doctrine of lent employee. In *Schulte*

¹ *Schulte v. American Box Board Co.*, 358 Mich. 21, 99 N.W.2d 367; *Tata v. Muskovitz*, 354 Mich. 695, 96 N.W.2d 134; *Powell v. Employment Security Commission*, 345 Mich. 455, 75 N.W.2d 874; *Goodchild v. Erickson*, 375 Mich. 289, 134 N.W.2d 191.

the Court held that an employee of a general contractor could sue the owner for common law negligence. The owner whose contract price included the cost of workmen's compensation insurance could not claim the benefits of workmen's compensation as an exclusive remedy. He was in no sense an employer.

In *Tata v. Muskovitz*, the question was whether Muskovitz was liable to Tata's widow for workmen's compensation. Muskovitz was a plumbing contractor who employed Tata to dig trenches for his work in laying pipe. The Court held that Muskovitz was the employer.

Goodchild is another case in which the question involves the payment of workmen's compensation by an employer. While the Court stated that it had abandoned the control test, it said at p. 193 (134 N.W.2d):

“Even if the so called control test were determinative, this passage quoted by Erickson in his brief would require our affirmance of the award he seeks altered. Erickson's own testimony, which indicates that he retained substantial control over his employee Goodchild while the latter was helping unload the van fails to meet the Arnett (*Arnett v. Hayes Wheel Co.*, 201 Mich. 67, 166 N.W. 957) test since Erickson did not ‘resign full control of the servant for the time being.’”

The *Powell* case, which called forth the learned discussion on control as applied to remedial social legislation of the Honorable Talbot Smith, then a Justice of the Supreme Court of Michigan and now a Judge of the United States District Court for the Eastern District of Michigan, involved the question of whether one Rebecca Cohen was an employee or an independent contractor. Rebecca Cohen did retouching of negatives for the H. A. Powell Studios. She did this work in her home and when she was relieved of her employment after a busy season she sought compensation under the Michigan Employment Security Act. (Section 17.501 M.S.A.) The

Supreme Court held that she was an independent contractor and not an employee. This led to the dissent of Mr. Justice Smith which the Court ultimately adopted in abandoning control as the exclusive test for the determination of an employer-employee relationship for the purposes of remedial social legislation.

It is to be noted that in the *Tata* and *Goodchild* cases the actions were to establish employee-employer relationships for the purpose of allowing participation in the benefits of the Workmen's Compensation Law. In the *Powell* case the right to participate in the benefits of the Employment Security Act was involved. These legislative acts are what we understand Mr. Justice Smith and the Supreme Court of Michigan to refer to as "remedial social legislation". In the case at bar it is conceded that the widow of the deceased was entitled to the benefits of the Workmen's Compensation Law from Union Carbide. Counsel for plaintiff do not seek to establish an employee relationship with Union Carbide but rather to establish that there was no such relationship. They apply the process of reasoning that was used in the cited cases to attempt to establish the contrary. The negative purpose here is to clear the way for a common law negligence action against Union Carbide. Such an action seems to us to be unrelated to remedial social legislation.

We do not find that the Supreme Court of Michigan has overruled the principle announced in the cases on the doctrine of lent employee. In *Janik v. Ford Motor Co.*, 180 Mich. 557, 561, 147 N.W. 510, 512, the Court said,

"The rule is long settled that a servant in the general employment of one person may also become the special servant of another, with all the mutual rights and obligations of master and servant between them for the time of, and in relation to, the special service in which the servant is temporarily engaged. If an employer loans a servant to another for some special service, the latter with respect to that service may become liable as a master

for the acts of the servant without any actual contract of employment between them or payment for service.”

In *Arnett v. Hayes Wheel Co.*, 201 Mich. 67, 69, 166 N.W. 957, 959, the Court quoting from 26 Cyc. p. 1522, stated the rule as follows:

“A person who avails himself of the use, temporarily, of the services of a servant regularly employed by another person may be liable as master for the acts of such servant during the temporary service. The test is whether in the particular service which he is engaged or requested to perform he continues liable to the direction and control of his original master or becomes subject to that of the person to whom he is lent or hired, or who requests his services. It is not so much the actual exercise of control which is regarded as the right to exercise such control. To escape liability the original master must resign full control of the servant for the time being, it not being sufficient that the servant is partially under the control of a third person. Subject to these rules, the original master is not liable for injuries resulting from acts of the servant while under the control of a third person; but on the other hand the original master is liable, and the third person is not liable where the control of the servant is retained by the original master.”

In this case the general employer continued to pay the wages of the lent employee.

See also *Rockwell v. Railway Co.*, 253 Mich. 144, 234 N.W. 159; *Lewis v. Summers*, 295 Mich. 20, 294 N.W. 82; *Tuttle v. Embury-Martin Lumber Co.*, 192 Mich. 385, 158 N.W. 875; *Buskirk v. Ide*, 302 Mich. 154, 4 N.W.2d 504. The doctrine of lent employee has been followed in the Sixth Circuit, *Fries v. United States*, 170 F.2d 726, 731. The leading case in the United States Supreme Court is *Denton v. Yazoo & M. V. R. Co.*, 284 U.S. 305. Other Supreme Court cases are *Standard Oil Company v. Anderson*, 212 U.S. 215; *Linstead v. Ches. &*

Ohio Ry. Co., 276 U.S. 28. The general principles relating to liability of general and special employers in the case of a lent employee is stated in 35 Am. Jur., *Master and Servant*, Section 18, pp. 455-456.

The facts as to the relationship of the deceased with Great Lakes Steel and Union Carbide are undisputed. Under those facts the trial judge was justified in granting a directed verdict for Union Carbide on the ground of the lent employee doctrine. There is ample authority both in the State of Michigan and in the Federal Courts to sustain the application of this doctrine to the facts of this case.

Other assignments of error on this appeal relate to the directed verdict in favor of Worthington. Worthington manufactured and sold the oxygen booster compressor, which is the subject of this action, to Union Carbide in May, 1960. The compressor was manufactured on specifications prepared by Union Carbide and installed under supervision of Worthington in the Linde Plant of Union Carbide at Ecorse, Michigan. At the time of the installation, Worthington supplied Union Carbide with a manual of instructions. This manual was used in instructing the personnel who used and maintained the compressor. No other instructions or warnings relative to the use and maintenance of the compressor were given by Worthington.

The compressor had three cylinders, each of which had two suction valves and two discharge valves. The valves consisted of a valve guard, a valve seat and six stainless steel strips or feathers. It is not unusual for these feathers to break occasionally. When this happens it is necessary to remove the broken pieces from the cylinders and valve parts. The accident was apparently caused by operating the compressor with broken pieces of feathers in the cylinders.

About one month after the compressor was installed, Union Carbide experienced an excessive breakage of feathers in both suction and discharge valves. This led to an inspection by both Worthington and Union Carbide and ultimately resulted

in reboring the vertical cylinder and installing oversize piston rings. This corrected the problem of excessive breakage of feathers and the compressor functioned properly thereafter. The accident happened about one year later.

The plaintiff, in his complaint, charged Worthington with negligence in several respects, relating to construction, use of materials, design, replacement of parts and failure to warn the decedent and persons working with the compressor of its inherent dangers. The plaintiff further charged Worthington with breach of express and implied warranty that the compressor and the valves of the cylinders connected therewith were suitable and reasonably fit for the use intended.

Among the assignments of error in the trial of the action against Worthington are claims that the Court erred in holding that expert witness John A. Hinckley was not qualified to testify regarding the design of the oxygen booster compressor and in ruling as a matter of law that Worthington was not negligent in the design of the compressor.

The question which led to the trial judge's ultimate ruling and which is the subject of these assignments of error is, "Can you tell us, Doctor, whether or not this compressor could feasibly be designed to eliminate broken feathers from getting into the cylinder?" The trial judge gave very careful consideration to the qualifications of the witness and heard extensive arguments from counsel on the admissibility of testimony of the witness concerning the design of the compressor. We conclude that the trial judge ruled correctly on the qualifications of the witness and that he did not abuse his discretion in refusing to let the witness testify on the subject of design. The qualification of an expert witness is largely discretionary with the trial judge. *Empire Oil & Refining Co. v. Hoyt*, 112 F.2d 356, C.A. 6; *Grand Trunk Western R. Co. v. H. W. Nelson Co.*, 116 F.2d 823, C.A. 6, cert. den. 297 U.S. 717; *Lee Shops, Inc. v. Schatten-Cypress Company*, 350 F.2d 12, C.A. 6, cert. den. 382 U.S. 980; *Bonner v. Polacari*, 350 F.2d 493, C.A. 10; *Trowbridge v. Abrasive Co. of Philadelphia*, 190 F.2d

825, C.A. 3; *Berolzheimer v. Heil Company*, 340 F.2d 122, C.A. 7; *McEwen v. Bigelow*, 40 Mich. 215.

We recently had occasion to pass on the question of negligence in design as a matter of law. *Gossett v. Chrysler Corporation*, 359 F.2d 84. We stated the rule at p. 87 as follows:

"It is the duty of a manufacturer to use reasonable care under the circumstances to so design his product as to make it not accident or foolproof, but safe for the use for which it is intended. This duty includes a duty to design the product so that it will fairly meet any emergency of use which can be reasonably anticipated. The manufacturer is not an insurer that his product is, from a design viewpoint, incapable of producing injury. 76 A.L.R.2d Section 1(b)." (p. 94)

See also *Evans v. General Motors Corporation*, 359 F.2d 822, C.A. 7; *Davlin v. Henry Ford & Son*, 20 F.2d 317, C.A. 6 (Mich.). What we said in *Gossett v. Chrysler* with reference to defects and negligence in manufacture is applicable here.

"There was no defect in the latch as produced and there was no negligence in its manufacture. It was manufactured strictly in accordance with the design. It functioned perfectly for the purpose for which it was intended. It was only when it was misused that it did not function properly." p. 88

We find no error in the ruling of the trial judge that as a matter of law there was no actionable negligence on the part of Worthington in the design of the oxygen booster compressor.

Another assignment of error is that the trial judge erred in ruling as a matter of law that Worthington was not negligent in failing to give adequate instructions and warnings regarding the dangers involved in operating the compressor after broken feathers had been replaced.

We find no merit to this assignment of error. Dr. Hinckley testified that the most probable cause of the accident was a

piece of a broken feather in a cylinder. The compressor was started, after a feather had broken, without removing all of the pieces. The record shows that Martin Corcoran, Superintendent of the Union Carbide Plant at Ecorse, and other personnel of Union Carbide had full knowledge of the operation of the compressor and knew of the danger of operating it with a piece of broken feather in a cylinder. Employees of Union Carbide were warned through the manual furnished by Worthington that, "The running of a unit with a broken valve strip in a valve is dangerous practice and should be avoided."

At about nine or ten o'clock on the night of June 20th, Mr. Corcoran received word by telephone that the compressor was not functioning properly. He ordered it shut down and immediately went to the plant. It was determined that the trouble was caused by broken feathers. This trouble was corrected and the compressor was placed back in operation about midnight. On the following day, the day of the accident, further difficulty was experienced. Mr. Corcoran and other employees were there. Again the trouble was caused by broken feathers. Apparently all of the broken pieces were not recovered before the compressor was put back in operation. If there was any negligence which caused the accident it was on the part of the employees of Union Carbide in operating the compressor without recovering all of the pieces of broken feathers. Further warning of what Union Carbide employees already knew would have been futile.

Finally it is claimed on behalf of the plaintiff that the Court erred in ruling as a matter of law that there was no evidence of a breach of an implied warranty by Worthington.

We find no evidence to support plaintiff's claim of a breach of implied warranty. There is no claim and no evidence that any defective material or parts were used in the manufacture of the compressor and no evidence that it was not manufactured in accordance with plans, specifications and design. The real basis of the complaint is that the compressor was not designed so that broken feathers would not get into the cylinders. We have passed on this question of design, ante.

It was established that the accident was most probably caused by operating the compressor with a piece of broken feather from a valve being left in the cylinder. Worthington did not warrant that the feathers would not break. In fact it was recognized in the manual of operation furnished by Worthington that strips or feathers in valves would break.

“Caution: Whenever a valve with a broken strip is removed from a cylinder for repairs, all pieces of the broken strip must be found and removed from the cylinder bore and cylinder valve part, as such pieces may ultimately get in other valves and cause further breakage.

“* * * The running of a unit with a broken valve strip in a valve is dangerous practice and should be avoided.”
Manual of Operation.

We accept plaintiff's theory that privity of contract is not required in Michigan to maintain an action for breach of implied warranty. Finding no evidence of breach of implied warranty we do not reach that question.

The judgment of the District Court is affirmed.



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