

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

MAUREEN GALLAGHER )

)

VS. )

W.C.C. 2005-05180

)

ELECTRIC BOAT )

MAUREEN GALLAGHER )

)

VS. )

W.C.C. 2005-05178

)

NATIONAL GRID USA/NARRAGANSETT  
ELECTRIC )

MAUREEN GALLAGHER )

)

VS. )

W.C.C. 2005-04911

)

USGEN NEW ENGLAND )

DENNIS GALLAGHER )

)

VS. )

W.C.C. 2005-00964

)

USGEN NEW ENGLAND )

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| DENNIS GALLAGHER                           | ) |                   |
|  | ) |                   |
| VS.  | ) | W.C.C. 2004-04966 |
|  | ) |                   |
| USGEN NEW ENGLAND                          | ) |                   |
| DENNIS GALLAGHER                           | ) |                   |
|  | ) |                   |
| VS.  | ) | W.C.C. 2004-04053 |
|  | ) |                   |
| NATIONAL GRID USA/NARRAGANSETT<br>ELECTRIC | ) |                   |
| DENNIS GALLAGHER                           | ) |                   |
|  | ) |                   |
| VS.  | ) | W.C.C. 2004-04052 |
|  | ) |                   |
| ELECTRIC BOAT                              | ) |                   |

AMENDED DECISION OF THE APPELLATE DIVISION

OLSSON, J. In accordance with Rule 1.5 of the Rules of Practice of the Workers' Compensation Court, an amended decision is hereby issued to correct the amount of the counsel fee awarded and to require that USGEN New England provide proof of payment as a condition to reimbursement of those amounts by National Grid USA/Narragansett Electric.

These seven (7) matters were consolidated for trial and remain consolidated before the Appellate Division. USGEN New England (hereinafter "USGEN") has appealed from the

decision and decree of the trial judge, which found USGEN liable for the employee's occupational disease and the payment of workers' compensation benefits resulting therefrom. After thoroughly reviewing the record and considering the arguments of the respective parties, we grant the appeals of USGEN in three (3) of the matters, and grant the appeals of the employee in the two (2) petitions against National Grid USA/Narragansett Electric (hereinafter "Narragansett Electric"), resulting in the entry of new decrees assessing liability against National Grid rather than USGEN.

The employee initially filed original petitions against his last three (3) employers, USGEN, Narragansett Electric, and Electric Boat which were docketed as W.C.C. Nos. 2004-04052, 2004-04053, and 2004-04966. The petitions alleged that the employee developed mesothelioma due to exposure to asbestos while working as a welder resulting in total disability as of April 7, 2004 and continuing. A pretrial order was entered ordering USGEN, the last employer, to pay weekly benefits to Mr. Gallagher. On June 2, 2004, the employee underwent a very extensive surgery involving removal of his left lung which resulted in significant scarring. A petition was filed for disfigurement benefits against USGEN, W.C.C. No. 2005-00964, which was granted at the pretrial conference with an award of \$45,000.00.

Unfortunately, Mr. Gallagher passed away on July 13, 2005. His wife, Maureen Gallagher, filed a petition against each of the employers alleging that his death was the result of his occupational disease and requesting the payment of death benefits. Those petitions are docketed as W.C.C. Nos. 2005-04911, 2005-05178 and 2005-05180. At the pretrial conference, the trial judge entered an order finding USGEN liable for the payment of benefits to the employee's surviving spouse consistent with his earlier finding of direct liability to the employee.

Throughout his career, the employee had worked primarily as a welder for the three (3) aforementioned employers. He was employed at Electric Boat in Groton, Connecticut, from May 24, 1965 to March 14, 1973, welding in and around submarines. He testified that asbestos was used to insulate piping in both the submarines and in the building housing them and the asbestos was visible in the air. His duties included “changing air filters that were loaded with asbestos.” (Ee’s Ex. 1 at 16.) Mr. Gallagher then worked as a foreman for a construction company for over a year until it went out of business in April 1974; however he worked outdoors and had no exposure to asbestos.

In April 1974, the employee returned to work with Electric Boat at Quonset Point in Rhode Island, where he remained until October 1984. During this time he worked as a planner, supervisor, and welder and was again exposed to asbestos in the workplace. He testified the building he worked in had strip heaters with asbestos covering them and the piping was insulated with asbestos. He also used asbestos gloves and asbestos blankets in the course of his job duties.

In October of 1984, Mr. Gallagher went to work for Narragansett Electric at their plant in Providence, Rhode Island. He worked primarily as a mechanic technician welder, which combined both mechanical work and welding to maintain the equipment in the plant. Most of his work was done within asbestos-lined boilers. He also testified that the pipes within the plant were insulated with asbestos.

At least once per year during this time they would overhaul one of the boilers which entailed stripping and bagging the asbestos insulation. When possible, the stripped asbestos was mixed up and reapplied to the piping. Although he was not always involved in stripping the asbestos, the overhauls were often done in areas in which he worked. Mr. Gallagher noted that during these overhauls, he could see the asbestos floating in the air. These overhauls ceased

sometime in the early 1990's, which was around the same time the employee began wearing asbestos-related protective gear.

In 1995, Narragansett Electric hired an outside company, Bechtel, to "repower" the plant in order to replace the boilers as the power source. (Ee's Ex. 1 at 53.) The employee testified that the repowering process entailed stripping the asbestos insulation, replacing it with new non-asbestos insulation, and "capp[ing] off whatever asbestos was there." Id. at 8. The employee worked throughout this process; however, during the asbestos removal and sealing process, areas were tented off from the rest of the plant. When asked if asbestos was airborne during this time, the employee answered "[y]es I'm sure it was . . . They contained it as best they could. But there was always something in the air." Id.

On September 1, 1998, USGEN acquired the plant and kept the employee on in the same position he held with Narragansett Electric. USGEN owned the plant until the employee left in 2004, despite undergoing a number of name changes. The employee acknowledged that USGEN "bought it after . . . it was already repowered, up and running." Id. at 56.

The employee was asked a number of times whether asbestos was still present after USGEN bought the plant. He testified there were old parts of the plant and "there might be some sitting around on beams and stuff that we do have to go into now and then." Id. at 11.

Ultimately, he felt there was "a lot less, but there is still some." Id. He further noted that some boilers which had been lined with asbestos were not removed from the plant but were "sealed up as best they could." Id. at 56. The employee testified that during this time he continued to work in areas which had contained asbestos at one time or another.

The employee began experiencing breathing difficulties and fatigue in December of 2003, which he initially attributed to pneumonia. He sought treatment from his primary care

physician, but did not improve after a course of antibiotics and was referred to Dr. John Pella, who specializes in pulmonary medicine, for evaluation. Dr. Pella began treating the employee on February 27, 2004, and, after obtaining the results of a lung biopsy, diagnosed malignant mesothelioma, a pulmonary disease closely linked with exposure to asbestos. Mr. Gallagher worked for the last time on April 7, 2004, the day before the biopsy. After undergoing an arduous course of treatments and surgeries, the employee succumbed to the disease on July 13, 2005.

The deposition of Dr. Pella was offered in support of the employee's petition. The doctor was familiar with both the employee's work history and exposure to asbestos. Dr. Pella testified that this disease, on average, manifests itself between thirty (30) and thirty-five (35) years after an initial asbestos exposure. The shortest latency period he could recall was about twenty (20) years. Accordingly, he reasoned that any exposure to asbestos from 1998 to 2004, the time during which USGEN owned the plant, would not have been causally related to the employee's mesothelioma. The doctor causally related the disease to the employee's earlier exposure to asbestos. Dr. Pella testified that while individual asbestos fibers are not visible to the naked eye, once the fibers aggregate they become large enough where they can be seen in the air.

In their defense, Electric Boat offered the deposition testimony of Dr. Michael B. Teiger, who is board certified in internal and pulmonary medicine, and practices in Connecticut. He noted that he has treated patients suffering from mesothelioma and has done a substantial number of independent evaluations of asbestos cases for Electric Boat. Dr. Teiger did not personally evaluate the employee; however, he reviewed the depositions of Dr. Pella and Mr. Gallagher, as well as medical records regarding the employee's surgeries and treatment.

Dr. Teiger causally related the employee's mesothelioma to his exposure to asbestos. The doctor testified that the latency period between the exposure and the manifestation of the disease is, on average, thirty-five (35) to forty (40) years, and acknowledged recorded latency periods as short as fifteen (15) to twenty (20) years. Applying this range to the case at hand, Dr. Teiger opined in his report that Electric Boat and Narragansett Electric shared responsibility for the development of the employee's disease. He testified that there was insufficient evidence to causally relate the employee's disease to his employment with USGEN because the exposure would only have been at most five (5) years prior to the manifestation of the disease.

After reviewing the evidence, the trial judge, citing Tavares v. A.C. & S., Inc., 462 A.2d 977 (R.I. 1983), and Gosselin v. Parker Brass Foundry, 83 R.I. 463, 119 A.2d 189 (1955), concluded that USGEN should be held liable for the payment of benefits to the employee. The trial judge found the employee's work with USGEN to be of the same nature and type in which the occupational disease was first contracted, emphasizing that the employee had held the same welding position throughout his time at the plant, regardless of the owner. In accordance with R.I.G.L. § 28-34-8, the trial judge determined that USGEN, as the last employer, was responsible for the payment of compensation benefits resulting from the employee's occupational disease.

USGEN appealed the decrees entered against it in W.C.C. Nos. 2005-04966, 2005-00964, and 2005-04911. The employee, as a precaution against USGEN's success on appeal, filed a claim of appeal in the remainder of the cases involving Electric Boat and Narragansett Electric, specifically W.C.C. Nos. 2004-04052, 2004-04053, 2005-05178, and 2005-05180.

In reviewing this decision we are bound by the provisions of R.I.G.L. § 28-35-28(b), which dictates that "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." Thus, we will not undertake a *de novo*

review and substitute our judgment for that of the trial judge without first determining that the trial judge was clearly wrong. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996).

USGEN claims six (6) reasons of appeal in which it essentially argues that the employee has failed to prove by a fair preponderance of the evidence that his employment with USGEN aggravated the existing occupational disease or that the employment was of the same nature and conditions in which the disease was first contracted. After a thorough review of the record and careful analysis of the applicable law, we find that the trial judge was clearly wrong in his determination that USGEN was liable for payments related to the employee's occupational disease.

Generally, an employee is entitled to workers' compensation benefits when they suffer "a personal injury arising out of and in the course of his or her employment, connected and referable to the employment." R.I.G.L. § 28-33-1. However, an employee may also be eligible to receive benefits when they suffer from an occupational disease, which the Workers' Compensation Act defines as "a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment." R.I.G.L. § 28-34-1(3). The legislature further identified a number of specific occupational diseases, including a "[d]isability arising from silicosis or *asbestosis*." R.I.G.L. § 28-34-2(32) (emphasis added). In this case, the employee's disabling condition qualifies as an occupational disease and is treated as a personal injury under the statute.

Occupational diseases are differentiated because they often develop gradually over time, as opposed to a suddenly occurring personal injury. Tavares v. A.C. & S. Inc., 462 A.2d 977, 979 (R.I. 1983). Also, an occupational disease is incident to a particular *employment* and often arises out of a prolonged exposure to a harmful substance over successive jobs with a number of



different employers. Id. This makes identification of the precise causal exposure, and attendant liability, an extremely difficult task.

Recognizing this difficulty, the Act allows an employee suffering from an occupational disease to receive the total amount of compensation benefits he is due from “the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted.” R.I.G.L. § 28-34-8. To do so, the employee need only prove that “(a) the employee’s work with the last employer caused an aggravation of the prior condition *or* (b) the last employment (no matter how brief) was of the same nature and type in which the disease was first contracted, regardless of whether the last employment aggravated the prior condition.” Tavares, 462 A.2d at 979 (quoting Hudson v. Jackson Plating Co., 105 Mich.App. 572, 578, 307 N.W.2d 96, 98 (1981)) (emphasis added). The employee meets his burden when he offers evidence proving “the nature and conditions of his [last] employment and that these conditions be of a nature that is likely to cause the disease.” Id. at 980. The employee need not prove that the disease causing his disability was *actually contracted* during this last employment. Gosselin v. Parker Brass Foundry, 83 R.I. 463, 466, 119 A.2d 189, 191 (1955).

In these circumstances, the last employer may be required to pay benefits despite having not actually caused the injury. The Act attempts to remedy such inequitable results by “reserving to such employer the right to seek proportionate contribution from previous employers in whose employ the petitioner may have contracted or been exposed to the disease which finally caused his disability.” Id.; *see* R.I.G.L. § 28-34-8.

The petitioner in a workers’ compensation proceeding carries the burden of proving the essential elements of their claim by competent evidence. C.D. Burnes Co. v. Guilbault, 559 A.2d 637, 639 (R.I. 1989). Therefore, to succeed on his original petition for benefits for his disability

resulting from mesothelioma, the employee must present competent evidence demonstrating that his employment with USGEN either caused an aggravation of his underlying occupational disease or was of the same type and nature in which the disease was first contracted.

The employee unquestionably suffered from mesothelioma arising out of his exposure to asbestos while working as a welder. Mr. Gallagher unequivocally testified that he was exposed to asbestos while employed by Electric Boat and Narragansett Electric, and neither employer produced any evidence to contradict his statements. He explained that his employment as a welder required working with and around pipes and boilers insulated with asbestos. He recalled working with asbestos blankets and gloves while employed by Electric Boat. He also described the process by which the asbestos insulation was stripped, bagged and oftentimes reapplied to the piping within the plant while he worked for Narragansett Electric.

It is also undisputed that the employee's disease manifested itself while he worked for USGEN, and that USGEN was his last employer. The trial judge relied on the fact that the employee did the same type of work as a welder for all three (3) employers. In particular, he noted that Mr. Gallagher worked in the same place, doing the same job, for Narragansett Electric and USGEN. Consequently, he determined that the employment with USGEN "was of the same nature and type in which the disease was first contracted." Tavares, 462 A.2d at 979.

Accordingly, he found USGEN was responsible for the total payment of workers' compensation benefits. We find this determination was in error because the employee's testimony as to the presence of asbestos after the 1995 repowering of the plant was mere speculation, and thus was not probative as to the type or nature of the conditions he worked in while with USGEN.

In contrast to the unequivocal nature of the employee's testimony regarding his exposure to asbestos while working for Electric Boat and Narragansett Electric, his testimony regarding

his time with USGEN was entirely speculative. The following excerpts represent the speculative nature of the employee's testimony.

A: There's still old parts in the plant. *There might be [asbestos] sitting around* on beams and stuff that we do have to go into now and then. So I would say, yeah, there's a lot less, but there is still some.

\* \* \*

Q: And the boilers, are they still wrapped in asbestos?

A: The boilers are still hanging there. They're sealed up as best they could. But I'm sure -- as a matter of fact, I was -- *I can almost guarantee it*, if I take you up there and go by some of those beams, the old fixtures, *I bet you still find some*.

\* \* \*

Q: In other areas of the plant where you continue to work up until this year, are there other areas that, as far as you know, that contain asbestos products?

A: The old areas, like I say, *I put dollars to donuts that there's still asbestos in some areas*. Not all. I know that they tried to get it all and contained most of it, but *I wouldn't doubt that there's still some*.

Ee's Ex. 1 at 11, 56-58 (emphasis added).

The Rhode Island Supreme Court has held that evidence will be considered probative and relevant "when it renders the existence of the fact sought to be proven more or less probable than it would have been without the evidence." State v. Wilding, 740 A.2d 1235, 1242 (R.I. 1999).

The employee's proclamations that he could "almost guarantee" that, or there "might be", asbestos in the plant does not make its *actual* existence any more or less probable than had he not testified. (Ee's Ex. 1 at 11, 56-58.) Thus, his testimony is not probative on the issue of whether the conditions while working for USGEN were of the same type or nature in which he first contracted the disease.

The trial judge emphasized the fact that the employee was a welder throughout his twenty (20) year career at the plant, despite changes in ownership. However, in cases of this ilk the petitioner “must submit evidence of the nature and conditions of his employment and that these conditions be of a nature that is likely to cause the disease.” Tavares, 462 A.2d at 980. Mere proof that he held the same position and did the same type of work during the last employment is insufficient. The employee did not contract mesothelioma because he was a welder; he contracted mesothelioma because the conditions in which he was welding exposed him to asbestos. The employee’s speculative testimony does not prove that he was exposed to asbestos while working for USGEN, and thus he failed to prove those conditions were of the same nature and type as those in which he first contracted the disease.

Finally, after a *de novo* review of the remaining evidence, we find the employee failed to prove that his employment with USGEN aggravated his underlying occupational disease. *See Vaz*, 679 A.2d at 881. Both Drs. Pella and Teiger testified that the accepted latency periods associated with asbestos-related mesothelioma established that the employee’s disease was not contracted during his time with USGEN because he only worked for the company for about (5) years prior to the manifestation of the disease. Further, neither the employee’s nor the doctors’ testimony identify any aggravating factors, asbestos-related or not, germane to his employment with USGEN. Thus, the record contains no evidence that his employment with USGEN aggravated his underlying occupational disease.

Since USGEN is not liable under R.I.G.L. § 28-34-8, liability will attach to Narragansett Electric as the last employer whose employment was of the same nature and type in which the disease was contracted. This was established through the uncontradicted evidence that the employee was exposed to asbestos while working for Narragansett Electric. Narragansett

Electric has the right to petition the court for apportionment of the liability among any prior employers which exposed the employee to similar conditions, including Electric Boat. *See* R.I.G.L. § 28-34-8. Thus, we grant the employee's protective appeal of the decision and decree finding Narragansett Electric was not liable for the occupational disease. For the reasons mentioned above, the employee's protective appeal of the decision and decree in favor of Electric Boat is hereby denied and dismissed.

After our thorough review of the record and careful consideration of the parties' arguments, USGEN's appeals of the decrees entered in W.C.C. Nos. 2005-04911, 2005-00964, and 2004-04966 are granted, the trial decrees are vacated, and new decrees shall enter in accordance with our decision denying the petitions. The protective appeals of the employee and his surviving spouse in W.C.C. Nos. 2005-05178 and 2004-04053 are granted, the trial decrees entered in those matters are vacated, and new decrees shall enter assessing liability against Narragansett Electric and ordering reimbursement of all payments made by USGEN. Lastly, the protective appeals filed by the employee and his surviving spouse in W.C.C. Nos. 2005-05180 and 2004-04052 are denied and the decision and decrees regarding Electric Boat are affirmed.

In accordance with our decision, a new decree shall enter in W.C.C. No. 2004-04053 containing the following findings and orders:

1. That the employee has proven by a fair preponderance of the credible evidence that he became disabled on April 8, 2004 due to an occupational disease caused by exposure to asbestos during the course of his employment with National Grid USA/Narragansett Electric.
2. That the employee's occupational exposure to asbestos resulted in the development of malignant mesothelioma.

3. That the employee's average weekly wage was One Thousand Three Hundred Ninety-six and 52/100 (\$1,396.52) Dollars.

4. That at the time of his incapacity, the employee had one (1) dependent, a non-working spouse, Maureen Gallagher.

5. That as a result of the occupational exposure to asbestos, the employee became totally disabled on April 8, 2004.

6. That the employee died as a result of the occupational exposure to asbestos on July 13, 2005.

It is, therefore, ordered:

1. That National Grid USA/Narragansett Electric shall pay workers' compensation benefits for total incapacity to the employee from April 8, 2004 through July 13, 2005, subject to a credit for weekly benefits paid to the employee by USGEN New England pursuant to the pretrial order and trial decree entered in W.C.C. No. 2004-04966.

2. That National Grid USA/Narragansett Electric shall be responsible for all reasonable charges for medical services which were necessary to cure, rehabilitate or relieve the employee from the effects of the occupational disease.

3. That National Grid USA/Narragansett Electric shall reimburse USGEN New England for any payments made to the employee, the medical providers, and the employee's attorney pursuant to the pretrial order and trial decree entered in W.C.C. No. 2004-04966 within fourteen (14) days of presentation to National Grid USA/Narragansett Electric of proof of payment of such sums.

4. That National Grid USA/Narragansett Electric shall reimburse John M. Harnett, Esq., the employee's counsel, the sum of Twenty-Five and 00/100 (\$25.00) Dollars for the cost of filing the appeal.

5. That National Grid USA/Narragansett Electric shall pay a counsel fee in the sum of Three Thousand Five Hundred and 00/100 (\$3,500.00) Dollars to John M. Harnett, Esq., counsel for the employee, for services rendered at the appellate level in this matter and in W.C.C. No. 2005-05178.

In accordance with our decision, a new decree shall enter in W.C.C. No. 2004-04966 containing the following findings of fact and orders:

1. That the employee has failed to prove any direct liability of USGEN New England for his disability on April 8, 2004 resulting from his occupational exposure to asbestos.

It is, therefore, ordered:

1. That the employee's original petition is denied and dismissed.

In accordance with our decision, a new decree shall enter in W.C.C. No. 2005-00964 containing the following findings of fact and orders:

1. That based upon the decision and final decree of the Appellate Division in W.C.C. No. 2004-04966, USGEN New England is not liable for any benefits, including specific compensation for scarring and disfigurement, resulting from the employee's disability on April 8, 2004 due to his occupational exposure to asbestos and development of malignant mesothelioma.

It is, therefore, ordered:

1. That the employee's petition for specific compensation for scarring and disfigurement to the torso is denied and dismissed.

In accordance with our decision, a new decree shall enter in W.C.C. No. 2005-04911 containing the following findings of fact and orders:

1. That the petitioner, Maureen Gallagher, the surviving spouse of the deceased employee, Dennis Gallagher, has failed to prove any direct liability of USGEN New England for the death of Dennis Gallagher on July 13, 2005 due to malignant mesothelioma caused by his occupational exposure to asbestos.

It is, therefore, ordered:

1. That the petition of Maureen Gallagher for benefits pursuant to R.I.G.L. §§ 28-33-12, 28-33-13, and 28-33-16 is denied and dismissed.

In accordance with our decision, a new decree shall enter in W.C.C. No. 2005-05178 containing the following findings of fact and orders:

1. That the employee, Dennis Gallagher, developed an occupational disease due to exposure to asbestos during the course of his employment which resulted in disability beginning April 8, 2004.

2. That the employer, National Grid USA/Narragansett Electric was found liable under the Workers' Compensation Act for the payment of compensation benefits to the employee pursuant to the final decree of the Appellate Division entered in W.C.C. No. 2004-04966.

3. That the employee's death on July 13, 2005 was caused by the occupational disease resulting from his exposure to asbestos during the course of his employment.

4. That Maureen Gallagher is the surviving spouse of the employee, Dennis Gallagher, upon whom she was wholly dependent as defined in R.I.G.L. § 28-33-13(1).

5. That payments have been made by USGEN New England to Maureen Gallagher and her attorney pursuant to the pretrial order and trial decree entered in W.C.C. No. 2005-04911.



It is, therefore, ordered:

1. That the employer, National Grid USA/Narragansett Electric, shall pay to Maureen Gallagher, beginning as of July 14, 2005 and continuing, those benefits provided for in R.I.G.L. §§ 28-33-12 and 28-33-16 as a result of the death of Dennis Gallagher.

2. That National Grid USA/Narragansett Electric shall take credit for payments made to Maureen Gallagher by USGEN New England pursuant to the pretrial order and the trial decree entered in W.C.C. No. 2005-04911.

3. That National Grid USA/Narragansett Electric shall reimburse USGEN New England for all payments made to Maureen Gallagher and her attorney pursuant to the pretrial order and the trial decree entered in W.C.C. No. 2005-04911 within fourteen (14) days of presentation to National Grid USA/Narragansett Electric of proof of payment of such sums.

4. That National Grid USA/Narragansett Electric shall reimburse John M. Harnett, Esq., the employee's attorney, the sum of Twenty-five and 00/100 (\$25.00) Dollars for the cost of filing this appeal.

5. That no additional counsel fee is awarded as the counsel fee awarded in the companion case in W.C.C. No. 2004-04053 includes all services rendered on appeal by the attorney.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, final decrees, copies of which are enclosed, shall be entered on

Connor and Hardman, JJ., concur.

ENTER:

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Olsson, J.

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Connor, J.

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Hardman, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

DENNIS GALLAGHER

)

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VS.

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W.C.C. 2004-04052

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ELECTRIC BOAT

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the claim of appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on October 29, 2007 be, and they hereby are, affirmed.

Entered as the final decree of this Court this                    day of

BY ORDER:

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John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Connor, J.

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Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to John M. Harnett, Esq., and Conrad M. Cutcliffe, Esq., on

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

DENNIS GALLAGHER

)

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VS.

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W.C.C. 2004-04053

)

NATIONAL GRID USA/NARRAGANSETT  
ELECTRIC

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the claim of appeal of the petitioner/employee from a decree entered on October 29, 2007. Upon consideration thereof, the appeal of the petitioner/employee is granted, and in accordance with the Decision of the Appellate Division, the following findings of fact are made:

1. That the employee has proven by a fair preponderance of the credible evidence that he became disabled on April 8, 2004 due to an occupational disease caused by exposure to asbestos during the course of his employment with National Grid USA/Narragansett Electric.

2. That the employee's occupational exposure to asbestos resulted in the development of malignant mesothelioma.

3. That the employee's average weekly wage was One Thousand Three Hundred Ninety-six and 52/100 (\$1,396.52) Dollars.

4. That at the time of his incapacity, the employee had one (1) dependent, a non-working spouse, Maureen Gallagher.

5. That as a result of the occupational exposure to asbestos, the employee became totally disabled on April 8, 2004.

6. That the employee died as a result of the occupational exposure to asbestos on July 13, 2005.

It is, therefore, ORDERED:

1. That National Grid USA/Narragansett Electric shall pay workers' compensation benefits for total incapacity to the employee from April 8, 2004 through July 13, 2005, subject to a credit for weekly benefits paid to the employee by USGEN New England pursuant to the pretrial order and trial decree entered in W.C.C. No. 2004-04966.

2. That National Grid USA/Narragansett Electric shall be responsible for all reasonable charges for medical services which were necessary to cure, rehabilitate or relieve the employee from the effects of the occupational disease.

3. That National Grid USA/Narragansett Electric shall reimburse USGEN New England for any payments made to the employee, the medical providers, and the employee's attorney pursuant to the pretrial order and trial decree entered in W.C.C. No. 2004-04966 within fourteen (14) days of presentation to National Grid USA/Narragansett Electric of proof of payment of such sums.

4. That National Grid USA/Narragansett Electric shall reimburse John M. Harnett, Esq., the employee's counsel, the sum of Twenty-Five and 00/100 (\$25.00) Dollars for the cost of filing the appeal.

5. That National Grid USA/Narragansett Electric shall pay a counsel fee in the sum of Three Thousand Five Hundred and 00/100 (\$3,500.00) Dollars to John M. Harnett, Esq., counsel

for the employee, for services rendered at the appellate level in this matter and in W.C.C. No. 2005-05178.

Entered as the final decree of the Appellate Division this            day of

BY ORDER:

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John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Connor, J.

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Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to John M. Harnett, Esq., and George E. Furtado, Esq., on

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

DENNIS GALLAGHER

)

)

VS.

)

W.C.C. 2004-04966

)

USGEN NEW ENGLAND

)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the claim of appeal of the respondent/employer from a decree entered on October 29, 2007. Upon consideration thereof, the appeal of the respondent/employer is granted, and in accordance with the Decision of the Appellate Division, the following findings of fact are made:

1. That the employee has failed to prove any direct liability of USGEN New England for his disability on April 8, 2004 resulting from his occupational exposure to asbestos.

It is, therefore, ORDERED:

1. That the employee's original petition is denied and dismissed.

Entered as the final decree of the Appellate Division this        day of

BY ORDER:

\_\_\_\_\_  
John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Connor, J.

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Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to John M. Harnett, Esq., and Susan Pepin Fay, Esq., on

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

DENNIS GALLAGHER

)

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VS.

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W.C.C. 2005-00964

)

USGEN NEW ENGLAND

)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the claim of appeal of the respondent/employer from a decree entered on October 29, 2007. Upon consideration thereof, the appeal of the respondent/employer is granted, and in accordance with the Decision of the Appellate Division, the following findings of fact are made:

1. That based upon the decision and final decree of the Appellate Division in W.C.C. No. 2004-04966, USGEN New England is not liable for any benefits, including specific compensation for scarring and disfigurement, resulting from the employee's disability on April 8, 2004 due to his occupational exposure to asbestos and development of malignant mesothelioma.

It is, therefore, ORDERED:

1. That the employee's petition for specific compensation for scarring and disfigurement to the torso is denied and dismissed.

Entered as the final decree of the Appellate Division this            day of

BY ORDER:

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John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Connor, J.

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Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to John M. Harnett, Esq., and Susan Pepin Fay, Esq., on

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

MAUREEN GALLAGHER

)

)

VS.

)

W.C.C. 2005-04911

)

USGEN NEW ENGLAND

)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the claim of appeal of the respondent/employer from a decree entered on October 29, 2007. Upon consideration thereof, the appeal of the respondent/employer is granted, and in accordance with the Decision of the Appellate Division, the following findings of fact are made:

1. That the petitioner, Maureen Gallagher, the surviving spouse of the deceased employee, Dennis Gallagher, has failed to prove any direct liability of USGEN New England for the death of Dennis Gallagher on July 13, 2005 due to malignant mesothelioma caused by his occupational exposure to asbestos.

It is, therefore, ORDERED:

1. That the petition of Maureen Gallagher for benefits pursuant to R.I.G.L. § § 28-33-12, 28-33-13, and 28-33-16 is denied and dismissed.

Entered as the final decree of the Appellate Division this            day of

BY ORDER:

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John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Connor, J.

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Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to John M. Harnett, Esq., and Susan Pepin Fay, Esq., on

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

MAUREEN GALLAGHER

)

)

VS.

)

W.C.C. 2005-05178

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NATIONAL GRID USA/NARRAGANSETT  
ELECTRIC

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the claim of appeal of the petitioner from a decree entered on October 29, 2007. Upon consideration thereof, the appeal of the petitioner is granted, and in accordance with the Decision of the Appellate Division, the following findings of fact are made:

1. That the employee, Dennis Gallagher, developed an occupational disease due to exposure to asbestos during the course of his employment which resulted in disability beginning April 8, 2004.

2. That the employer, National Grid USA/Narragansett Electric was found liable under the Workers' Compensation Act for the payment of compensation benefits to the employee pursuant to the final decree of the Appellate Division entered in W.C.C. No. 2004-04053.

3. That the employee's death on July 13, 2005 was caused by the occupational disease resulting from his exposure to asbestos during the course of his employment.

4. That Maureen Gallagher is the surviving spouse of the employee, Dennis Gallagher, upon whom she was wholly dependent as defined in R.I.G.L. § 28-33-13(1).

5. That payments have been made by USGEN New England to Maureen Gallagher and her attorney pursuant to the pretrial order and trial decree entered in W.C.C. No. 2005-04911.

It is, therefore, ORDERED:

1. That the employer, National Grid USA/Narragansett Electric, shall pay to Maureen Gallagher, beginning as of July 14, 2005 and continuing, those benefits provided for in R.I.G.L. §§ 28-33-12 and 28-33-16 as a result of the death of Dennis Gallagher.

2. That National Grid USA/Narragansett Electric shall take credit for payments made to Maureen Gallagher by USGEN New England pursuant to the pretrial order and the trial decree entered in W.C.C. No. 2005-04911.

3. That National Grid USA/Narragansett Electric shall reimburse USGEN New England for all payments made to Maureen Gallagher and her attorney pursuant to the pretrial order and the trial decree entered in W.C.C. No. 2005-0491 within fourteen (14) days of presentation to National Grid USA/Narragansett Electric of proof of payment of such sums.

4. That National Grid USA/Narragansett Electric shall reimburse John M. Harnett, Esq., the employee's attorney, the sum of Twenty-five and 00/100 (\$25.00) Dollars for the cost of filing this appeal.

5. That no additional counsel fee is awarded as the counsel fee awarded in the companion case in W.C.C. No. 2004-04053 includes all services rendered on appeal by the attorney.

Entered as the final decree of the Appellate Division on this            day of



BY ORDER:

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John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Connor, J.

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Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to John M. Harnett, Esq., and George E. Furtado, Esq., on

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

MAUREEN GALLAGHER

)

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VS.

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W.C.C. 2005-05180

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ELECTRIC BOAT

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the claim of appeal of the petitioner and upon consideration thereof, the appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on October 29, 2007 be, and they hereby are, affirmed.

Entered as the final decree of this Court this            day of

BY ORDER:

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John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Connor, J.

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Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to John M. Harnett, Esq., and Conrad M. Cutcliffe, Esq., on

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