

1980 Appellate Decision against RTV

EXHIBIT

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• “The appellants contend that the record is insufficient to establish a definitive link between the decedent’s cause of death carcinoma-lung cancer, and his harmful mineral exposure admittedly causing pneumoconiosis. (Cf. *Milner v. National Cabinet Co.*, 8 N.Y.2d 277, 284 N.Y.S.2d 129, 108 N.E.2d 811.)

• Asbestos content as high as 60%

• “The record as a whole contains substantial evidence supporting the award...”

Workers' Compensation Case *Dooley v. Gouverneur*
(77 A.D. 2d 702, 430 N.Y.S. 2d 399 (3rd Dept. 1980))

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SHEPARD v. SHEPARD
Civil Serv. Div., 430 N.Y.S.2d 399

77 A.D.2d 702

In the Matter of the Claim of Elaine
BONEY, Respondent,
v.
GOVERNOR TALK COMPANY et
al., Appellants,
Special Disability Fund, Respondent.

Workers' Compensation Board
Respondent
Supreme Court, Appellate Division,
Third Department
July 10, 1980.

Appeal was taken from Workers' Compensation Board's decision awarding death benefits. The Supreme Court, Appellate Division, held that evidence sufficiently supported Board's finding to effect that decedent's death due to lung cancer was causally related to his compensable pneumoconiosis.

Decision affirming.

Workers' Compensation 00-1508

In workers' compensation proceeding wherein death benefits were awarded, evidence sufficiently supported Workers' Compensation Board's finding to effect that decedent's death due to lung cancer was causally related to his compensable pneumoconiosis.

Sugarman, Wallace, Mambino & Schoonveld, Syracuse (James G. Stevens, Jr., Syracuse, of counsel), for appellants.
Robert Abrams, Asst. Gen. (Thomas E. Wefinski, Majestik, of counsel), for respondent Workers' Compensation Board.

Before GREENBLATT, J. P., and KANE, MAIN, MIKOLL and MERLIHY, JJ.

MEMORANDUM DECISION.

Appeal from a decision of the Workers' Compensation Board, filed December 1, 1978.

The appellants contend that the record is insufficient to establish a definitive link between the decedent's cause of death carcinoma-lung cancer, and his harmful mineral exposure admittedly causing pneumoconiosis. (Cf. *Milner v. National Cabinet Co.*, 8 N.Y.2d 277, 284 N.Y.S.2d 129, 108 N.E.2d 811.)

The board found:

Upon review of the record the Board Panel finds, based on the testimony of Mr. Kirta, that tests performed on samples of asbestos indicate a 28-5% asbestos content and as high as a 60% content, and on the basis of Dr. Milner's testimony that decedent's underlying lung condition, pneumoconiosis, is a predisposing factor for lung cancer and Dr. Maxon's testimony that there is a definite relationship between asbestos and lung cancer, that the decedent's death on 5/5/76 is causally related to his compensable occupational asbestos.

The record as a whole contains substantial evidence supporting the award of death benefits.

Decedent's interment, with costs to the Workers' Compensation Board against the employer and its insurance carrier.



77 A.D.2d 702

In the Matter of Thomas SHEPARD,
Appellant,
v.

Judy Van Bee Cohen SHEPARD,
Respondent.

Supreme Court, Appellate Division,
Third Department,

July 10, 1980.

Appeal was taken from order entered by the Family Court, Chemung County.

27 YEARS AGO - SAME STORY