

**BEFORE THE SAFETY AND HEALTH REVIEW BOARD
OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA**

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

CUMULUS FIBRES, INC.

RESPONDENT.

DOCKET NO. OSHANC 2001-4058
OSHA INSPECTION NO. 304637580
CSHO ID NO. P2687

ORDER DENYING PARTY STATUS

THIS MATTER is before the undersigned on the motion of the Estate of Lynette Michelle Washington for party status and to obtain a copy of the complainant's unredacted investigative file.

The complainant is represented by Linda A. Kimbell and the respondent is represented by Brian J. McMillan. The Estate of Lynette Michelle Washington is represented by Averill C. Harkey and the guardian ad litem is Carmen Washington.

It appears from the file that Lynette Michelle Washington was an employee of the respondent on June 21, 2001, when she was killed in an industrial accident while working at respondent's facility in Charlotte. A subsequent investigation of her death by the complainant resulted in the issuance of the citations which are the subject of this matter. The respondent has denied the existence of the violations alleged in the citations.

The Estate's motions, including factual and legal arguments, are expressed in two letters by Mr. Harkey to the Safety and Health Review Board, which letters are dated October 25, 2001 and November 7, 2001. The complainant's response is contained in two responsive letters of Ms. Kimbell dated November 2, 2001 and November 16, 2001.

It appears from the Estate's submittals in this matter that the primary reason for its motions is to gain information "to determine the viability of a third party products liability claim and/or a possible "Woodson claim". While participation in this matter

may practically provide information for use in other proceedings, the sole purpose of this matter is to determine if the respondent violated any of the provisions of the Occupational Safety and Health Act of North Carolina.

Legal persons in addition to the complainant and respondent are at times permitted to participate as parties or interveners, pursuant to the Safety and Health Board rules. The purpose of these rules is to allow these persons whose continued safety or health while working in respondent's facility may be affected by the outcome of this proceeding, to participate in the proceeding and have a voice in the resolution of this matter.

The Estate of Lynette Michelle Washington has made no showing that its participation in this matter can assist in the determination of the issues in this matter as required for intervention or that it has any continuing legal interest in the safety and health of the other employees of the respondent, as required to attain party status.

It is extremely unfortunate that Ms. Washington lost her life while in the respondent's employ. However, her death does affect her position legally. She will not be returning to work and her young heirs have no knowledge that will bear on the outcome of this matter. Thus, the participation of the Estate in this matter will be of no assistance to the determination of the issues in this proceeding.

The Estate has remedies outside this matter to obtain the information it desires. The Estate can file an independent action to assert its claims against the respondent and/or the purveyors of the respondent's equipment. This is acknowledged in Mr. Harkey's letters. Moreover, the North Carolina Rules of Civil Procedure provide for prelitigation discovery.

In summary, the undersigned concludes that the complainant's response to the Estate's motions is legally correct and persuasive.

IT IS ORDERED that the Estate's motions for party status and to obtain a copy of the complainant's investigative file are denied.

This 5th day December, 2001.

RICHARD M. KOCH
HEARING EXAMINER