

WAYNE AUSTIN, Employee v. CONTINENTAL GENERAL TIRE, SELF-INSURED,
Employer

No. 73A01

(Filed 9 November 2001)

**Workers' Compensation--asbestosis--statutory compensation--
removal from employment**

The decision of the Court of Appeals in a workers' compensation asbestosis case is reversed for the reasons stated in the dissenting opinion in the Court of Appeals that an employee must be "removed" from his employment as a prerequisite to receiving the 104 weeks of compensation provided by N.C.G.S. § 97-61.5, that an employee who is no longer employed at the time he is diagnosed with asbestosis thus may not proceed with a workers' compensation claim under this statute, and that N.C.G.S. § 97-64 provides plaintiff's sole remedy for his alleged asbestos-related disorder.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 141 N.C. App. 397, 540 S.E.2d 824 (2000), affirming an opinion and award entered by the North Carolina Industrial Commission on 18 December 1998. Heard in the Supreme Court 18 October 2001.

Wallace and Graham, P.A., by Mona Lisa Wallace and Richard L. Huffman, for plaintiff-appellee.

Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by J.A. Gardner, III, and Jeff Kadis, for defendant-appellant.

Parker, Poe, Adams & Bernstein, L.L.P., by Josephine H. Hicks and Anna L. Baird, on behalf of North Carolina Citizens for Business and Industry, amicus curiae.

The Jernigan Law Firm, by Leonard T. Jernigan, Jr., on behalf of Workplace Injury Litigation Group, Inc., amicus curiae.

Johnston, Allison & Hord, PA, by James W. Allison, on behalf of Carolinas AGC, Inc., amicus curiae.

Teague, Campbell, Dennis & Gorham, L.L.P., by Thomas M. Clare and Tracey L. Jones, on behalf of N.C. Association of Defense Attorneys, amicus curiae.

PER CURIAM.

For the reasons stated in the dissenting opinion by Judge Greene, we reverse the decision of the Court of Appeals and remand this case to that court for further remand to the North Carolina Industrial Commission for proceedings not inconsistent with this opinion and Judge Greene's dissent below.

REVERSED AND REMANDED.

Justice EDMUNDS did not participate in the consideration or decision of this case.