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Workers' Compensation - A Departure from Precedent or Past Error Corrected - Rutledge v. Tultex Corp./Kings Yarn

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WORKERS' COMPENSATION—A DEPARTURE FROM PRECEDENT OR PAST ERROR CORRECTED?—Rutledge v. Tultex Corp./Kings Yarn, 308 N.C. 85, 301 S.E.2d 359 (1983).

INTRODUCTION

Under the North Carolina Workers' Compensation Act employers must compensate their employees who are unable to earn wages when disability results from accidental injuries or occupational diseases. Employee disability or death under the Act is only compensable when it bears a causal relation to the employment. Causation has been particularly difficult to prove for North Carolina textile workers suffering from chronic obstructive pulmonary disease or byssinosis. This problem arises because the disease may result from occupational factors, non-occupational factors or both.

2. Id. § 97-2(6) (Supp. 1983).
3. Id. § 97-52 (1979).
5. North Carolina Case law uses the terms "chronic obstructive lung disease," "chronic obstructive pulmonary disease" and sometimes "byssinosis" interchangeably to describe lung impairment of the textile worker. In a Yale University study on the epidemiology of lung impairment in textile workers, the authors argue that the distinction between these terms is merely one of semantics. These are actually two stages of the same disease syndrome, byssinosis. (There is no distinction between chronic obstructive pulmonary disease and chronic obstructive lung disease. Both are terms to describe the same level of impairment.) There is little doubt that both are caused by exposure to respirable cotton dust in textile mills. Bouhuys, et al, Epidemiology of Chronic Lung Disease in a Cotton Mill Community, Service Vol. 5 of Traumatic Medicine and Surgery for the Attorney 607, reprinted from Lung—And International Journal on Lungs, Airways, and Breathing, 154(3): 167-86 (1977).

Components of the disease may be the inhalation of cotton dust, an occupational factor, and chronic bronchitis, emphysema, asthma or cigarette smoking, non-occupational factors. Any combination of these components may contribute to the disease’s development, and it is virtually impossible to distinguish the effects of byssinosis from other lung problems even through biopsy or autopsy.

The problem faced by the North Carolina courts in these lung disease cases has been whether to compensate the worker for the entire disability or to apportion damages and compensate only the portion resulting from the employment. Recent North Carolina cases have applied the apportionment rule. In Rutledge v. Tultex Corp./Kings Yarn the North Carolina Supreme Court once again confronted the causation issue involved in a byssinosis case. The court held that chronic obstructive lung disease may be an occupational disease making the entire disability compensable if the worker’s exposure to cotton dust significantly contributed to or was a significant causal factor in the disease’s development.

This note examines Rutledge in view of the North Carolina Workers’ Compensation Act and North Carolina precedent interpreting the Act in the occupational disease area. It focuses on whether the standard adopted by the court is consistent with precedent and the purposes of the Act. Finally, it considers the effect of this standard on the byssinosis victim in proving the necessary causation for a compensable occupational disease.

THE CASE

Plaintiff worked in four textile mills holding various positions.

6. For a discussion of the manufacture of cotton and the development of byssinosis see 4A ATTORNEY’S TEXTBOOK ¶ 205E.01.
7. See supra note 5. For a discussion of dual causation of occupational disease see 1B LARSON, WORKMEN’S COMPENSATION LAW ¶ 41.64 (1983) [hereinafter referred to as LARSON].
11. Id. at 101, 301 S.E.2d at 369.
from 1953 until her retirement in 1979.\(^1\) From October, 1976, until January, 1979, she worked as a winder and then as a spinner in defendant’s North Carolina mill where she was exposed to respirable cotton dust.\(^3\) Plaintiff smoked cigarettes for approximately twenty-nine years at a rate of one pack per day.\(^4\) In 1969 or 1970, she developed a cough related to her presence at work.\(^5\) Her shortness of breath became severe in December, 1976, causing her to miss work on several occasions.\(^6\) In 1979 plaintiff retired and filed a claim with the North Carolina Industrial Commission alleging that she had contracted an occupational disease due to her exposure to cotton dust in her employment.\(^7\)

At the hearings before the Industrial Commission, Dr. Charles D. Williams, Jr., a specialist in pulmonary disease and a member of the Commission’s Occupational Disease Panel,\(^8\) testified as to plaintiff’s condition. Dr. Williams testified that plaintiff suffered from chronic obstructive pulmonary disease with elements of pulmonary emphysema and chronic bronchitis.\(^9\) This condition disabled plaintiff from performing all but sedentary work because of her reaction to cotton dust and other irritants.\(^10\) Dr. Williams’ testimony indicated that plaintiff’s exposure to cotton dust in her employment was “probably” a cause of her lung impairment but that cigarette smoking also may have caused the impairment.\(^11\)

After hearing evidence for claimant and defendant, Deputy Commissioner Denson made findings that plaintiff failed to prove her employment caused her impairment and she contracted chronic obstructive pulmonary disease as a result of any exposure while

\(\textit{\textbf{References:}}\)

12. \textit{Id.} at 87, 301 S.E.2d at 361, 362. The plaintiff worked in the following textile mills: (1) United Merchants in Buffalo, S.C., from 1953 until 1971 as a weaver; (2) Milliken at Union, S.C., from 1971 to 1973 as a dry cleaner; (3) Aleo Manufacturing in Rockingham, N.C., from 1975 to 1976 as a weaver; and (4) for defendant from October, 1976 to January, 1979 as a winder and then as a spinner.

13. \textit{Id.} at 87, 301 S.E.2d at 362.

14. \textit{Id.} at 87, 301 S.E.2d at 361.

15. \textit{Id.} at 87, 301 S.E.2d at 362.

16. \textit{Id.}


19. \textit{Id.} at 92, 301 S.E.2d at 364.

20. \textit{Id.} at 87, 301 S.E.2d at 362.

21. \textit{Id.} at 101, 301 S.E.2d at 369.
working for the defendant. The Full Commission adopted his findings and entered an Opinion and Award denying compensation. The court of appeals determined that the Industrial Commission erred in requiring plaintiff to show that her last employment caused her disease. This error, however, was considered harmless by the court because there was insufficient evidence before the Commission to prove that plaintiff contracted an occupational disease.

On appeal, the North Carolina Supreme Court agreed that the Industrial Commission applied the wrong legal standards in the decision. However, the court ruled that the court of appeals erred in concluding there was no evidence that plaintiff contracted an occupational disease. Over the dissent of Justice Meyer, the court held that plaintiff's chronic obstructive pulmonary disease could be an occupational disease if the employment exposed her to a greater risk of contracting the disease than the public generally. Also, the exposure to cotton dust in the employment must have "significantly contributed to or was a significant causal factor in the disease's development." This standard would support an award for total disability compensation even though non-occupational factors also significantly contributed to the disease's devel-

22. Id. at 88, 301 S.E.2d at 362.
23. Id.
24. Id.
25. Id.
26. Id. at 90, 301 S.E.2d at 363. The court held that a claimant need not show that conditions of employment with defendant caused or significantly contributed to her disease. To receive compensation for an occupational disease plaintiff need show (1) that she has a compensable occupational disease, and (2) that she was last injuriously exposed to the hazards of such disease in defendant's employment. "Last injuriously exposed" means "an exposure which proximately augmented the disease to any extend, however slight." Id. at 89, 301 S.E.2d at 362.
27. Id. at 90, 301 S.E.2d at 363.
29. Id. at 101, 301 S.E.2d at 369. The court defined significant as "having or likely to have influence or effect: deserving to be considered: important, weighty, notable." Id. at 101, 301 S.E.2d at 370.
The supreme court then remanded the case to the Industrial Commission to determine whether plaintiff contracted an occupational disease using the standard adopted by the court.

**BACKGROUND**

To understand the impact of *Rutledge* on occupational disease claims in North Carolina, the history and purposes of the North Carolina Workers' Compensation Act must be examined. The development of occupational disease legislation and interpretation of this legislation must be particularly scrutinized to understand the causation issue involved in byssinosis cases.

**A. Disability Compensation in North Carolina**

Disability compensation under the Act is determined by the worker's incapacity to earn wages. The purpose of disability compensation is to provide financial assistance for employees whose means of sustenance have been reduced or destroyed. Disability compensation is not designed to compensate for pain and suffering nor is the Workers' Compensation Act designed to provide general health insurance benefits. Thus, if there is no loss of wage

30. *Id.* at 107, 301 S.E.2d at 373.
31. *Id.* at 108, 301 S.E.2d at 373. After *Rutledge* was remanded to the Industrial Commission, the parties settled the case. Thus, the Industrial Commission never determined whether plaintiff's chronic obstructive pulmonary disease was an occupational disease.
33. N.C. GEN. STAT. §§ 97-2(9) (1979). This section defines disability as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." Although this provision specifically addresses "incapacity because of injury," it is also applicable to occupational disease claims via N.C. GEN. STAT. § 97-52 (1979). This provision defines disablement or death from occupational disease as the "happening of an injury by accident."
35. *Id.* There are provisions in the North Carolina Workers' Compensation Act Designed to compensate loss of body members (N.C. GEN. STAT. § 97-31(17) (1979)) or disfigurement (N.C. GEN. STAT. § 97-31(22) (1979)) even though there is no loss of earning capacity. These are not disabilities under the Act. For a discussion of wage loss provisions versus provisions for medical incapacity see 2 LARSON § 57.
36. 203 N.C. 233, 236, 25 S.E.2d 865, 867.
earning capacity, there is no disability recovery under the Act. 37

To establish a compensable disability under the Act, the claimant must prove a causal relation between the employment and the injury 38 or disease. 39 The hazards and conditions of employment need not be the exclusive cause of the disability to be compensable under the Act. 40 Problems arise when disability is caused by both occupational and non-occupational factors. This problem is particularly prevalent in occupational disease claims. 41

B. Occupational Disease Claims in North Carolina

The original North Carolina Workers’ Compensation Act 42 had no provision for occupational diseases resulting from employment. 43 In 1935, the General Assembly added an occupational disease provision to the Act. 44 This provision limited recovery to a list


38. Vause v. Vause Farm Equip. Co., 233 N.C. 88, 91, 63 S.E.2d 173, 175 (1951)("the injury must spring from the employment or have its origin therein").

39. Duncan v. City of Charlotte, 234 N.C. 86, 91, 66 S.E.2d 22, 25 (1951). This case established that the addition of occupational disease coverage to the Act did not relax the necessity to prove causation between employment and injury or disease. In fact, it is this requirement of causal relation that keeps the Workers' Compensation Act from becoming general health insurance coverage.


41. For a discussion of dual causation in occupational disease claims see 1B Larson § 41.64.

42. 1929 N.C. Pub. Laws, ch. 117.

43. Id. Occupational disease coverage has always lagged far behind accident coverage under workers' compensation acts in the United States. For an explanation see 1B Larson § 41.30.

44. 1935 N.C. Pub. Laws, ch. 123 The original Act covered only “injury by accident” and did not specifically cover occupational diseases. 1929 N.C. Pub. Laws, ch. 120. The North Carolina General Assembly amended the Act in 1935 to include coverage for occupational diseases in response to the Supreme Court decision in McNeely v. Asbestos Co., 206 N.C. 568, 174 S.E.2d 509 (1934). In the case, a worker developed pulmonary asbestosis due to his exposure to asbestos dust in his employment. Id. at 574, 174 S.E.2d at 512. McNeely sued in a common law action for negligence. Id. at 569, 174 S.E.2d at 509. The court found that the asbestosis resulted from an injury by accident within the meaning of the Workers' Compensation Act. Id. at 574, 174 S.E.2d at 512. This left McNeely without
of scheduled occupational diseases.45
The current occupational disease section also contains a list of scheduled occupational diseases.46 Subsection thirteen, however, broadens the scope of recovery by including compensation for:

[a]ny disease, other than hearing loss covered in another subdivision of this section, which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment.47

In Booker v. Duke Medical Center,48 the North Carolina Supreme Court first interpreted this subsection and defined its scope. The court allowed a lab technician suffering from serum hepatitis to recover under the subsection.49 In reaching the decision, the Court found that the disease was characteristic of the employment because there was a recognizable link between the occupation and an increased risk of contracting the disease.50 The disease was “peculiar to” the employment because the conditions of employment resulted in a “hazard which distinguishes it from the usual run of occupations and is in excess of that attending employment in general.”51

a remedy because he could not file a claim within the time period allowed for recovery. See Note, Workmen’s Compensation—Development of North Carolina Occupational Disease Coverage, 7 Wake Forest L. Rev. 341, 344 (1971).

45. Id. For a discussion of the development of occupational disease compensation in North Carolina see supra note 44.


47. N.C. Gen. Stat. § 97-53(13)(1979). This is the provision as amended in 1971. Prior to the amendment, subsection thirteen provided compensation for: infection or inflammation of the skin, eyes, or other external contact surfaces or oral or nasal cavities or any other internal or external organ or organs of the body due to irritating oils, cutting compounds, chemical dust, liquids, fumes, gases or vapors, and any other materials or substances.


48. 297 N.C. 458, 256 S.E.2d 189 (1979). The court stated that the purpose of the amendment was to bring North Carolina in line with the majority of states providing comprehensive coverage for occupational diseases. For further explanation of this case and its effect on occupational disease legislation see Note, Redefinition of Occupational Disease and the Applicable Compensation Statute, 16 Wake Forest L. Rev. 288 (1980).

49. Id. at 480, 156 S.E.2d at 203.

50. Id. at 472, 256 S.E.2d at 198.

51. Id. at 473, 256 S.E.2d at 199.
Additionally, the Booker court recognized the final requirement necessary to establish a compensable occupational disease under subsection thirteen-causation. The disease must be incident to or the result of the particular employment to be compensable under the Act. The court realized that proof of this causal connection must be based on circumstantial evidence and listed three factors that could be considered by the fact finder:

1. the extent of exposure to the disease or disease causing agents during employment;
2. the extent of exposure outside of employment; and
3. the absence of the disease prior to the work related exposure as shown by the employee’s medical history.

While the court defined the elements of an occupational disease under subsection thirteen, it failed to address the difficult problem of dual causation in occupational disease cases.

C. Apportionment of Disability Compensation

When disability is the result of occupational and non-occupational factors, the courts face the problem of whether to allow compensation for the entire disability or only the portion resulting from the employment. Apportionment of damages refers to prorating liability between the employer and employee when a pre-existing condition is a causal factor in the resulting disability.

The North Carolina Workers’ Compensation Act contains an apportionment provision. In Schrum v. Catawba Upholstering Co., this provision was interpreted to limit this apportionment provision to prevent double compensation when the claimant has suffered a prior compensable injury. Thus, the provision is inapplicable to prior personal disabilities unrelated to employment.

52. Id at 475, 256 S.E.2d at 200.
53. Id.
54. Id. at 476, 256 S.E.2d at 200.
55. There are actually three forms of apportionment: (1) between successive employers or carriers when final disability is traceable under two or more of them; (2) between an employer and a second injury fund; and (3) between employer and employee himself, when a prior personal disability contributes to the final disabling result. 2 Larson § 59.20.
57. 214 N.C. 353, 199 S.E. 385 (1938).
58. Id. at 355, 199 S.E. at 387.
1. The Aggravation Principle

In Anderson v. Northwestern Motor Co., the North Carolina Supreme Court stated:

[w]hen an employee afflicted with a pre-existing disease or infirmity suffers a personal injury by accident arising out of and in the course of his employment, and such injury materially aggravates or aggravates the pre-existing disease or infirmity and thus proximately contributes to the death or disability of the employee, the injury is compensable, even though it would not have caused death or disability to a normal person.

This is known as the aggravation principle. The plaintiff in Anderson was denied compensation under this principle even though the accident aggravated or accelerated his pre-existing condition because there was no loss of wage earning capacity. In Self v. Starr-Davis Co., this principle was applied to an occupational disease claim for death benefits. The deceased suffered from asbestosis caused by his employment. The deceased also suffered from a malignant brain tumor unrelated to his employment. The court of appeals awarded compensation finding that the decedent's death was aggravated or accelerated by the presence of asbestosis, an occupational disease. The important distinction made by the court was that death was aggravated or accelerated by the occupational disease and not the tumor.

Total disability benefits have also been awarded to claimants suffering only partial disability when factors such as age, education and work experience combine with the injury or occupational disease to render the claimant unable to earn wages. In Mabe v. North Carolina Granite Corp., the North Carolina Court of Appeals upheld an award for total disability when a claimant suffered only forty percent incapacity due to an occupational disease, silicosis. When the occupational disease was considered with factors of

60. Id. at 374, 64 S.E.2d at 265.
61. Id. at 376, 64 S.E.2d at 268.
63. Id. at 695, 187 S.E.2d at 467.
64. Id.
65. Id. at 699, 187 S.E.2d at 470.
67. Id. at 255, 189 S.E.2d at 806.
The claimant was totally incapacitated to earn wages. Similarly, in *Little v. Anson County Schools Food Service*, the North Carolina Supreme Court remanded the case to the Industrial Commission to consider whether factors of age, education and work experience rendered claimant totally incapacitated for work when considered with her fifty percent incapacity due to injury. The court stated:

[when] pre-existing conditions such as an employee's age, education and work experience are such that an injury causes him a greater degree of incapacity for work than the same injury would cause in some other person, the employee must be compensated for the incapacity which he or she suffers, and not for the degree of disability which would be suffered by someone with superior education or work experience or who is younger or in better health.

The theory behind these decisions is that an employer takes an employee as he is.

The cases involving the aggravation principle indicate that the employer must compensate the employee for the entire disability when a pre-existing condition combines with an occupational disease or injury by accident causing loss of wage earning capacity. However, the courts had little opportunity to apply this principle to occupational disease claims until the byssinosis victim came to the forefront in North Carolina.

2. Apportionment of Damages in Lung Disease Claims

The North Carolina Supreme Court considered apportionment of disability compensation involving chronic obstructive lung disease or byssinosis in several recent decisions. The court held in

68. *Id.* at 256, 189 S.E.2d at 806. Plaintiff was 61 years old, had a fifth grade education and his occupational skills extended only to hard labor which he was no longer able to perform.
69. *Id.* at 255, 189 S.E.2d at 805.
70. 295 N.C. 527, 246 S.E.2d 743 (1978).
71. *Id.* at 533, 246 S.E.2d 743 (1978). Plaintiff was over 50 years old, was somewhat obese, had an eighth grade education, was an unskilled laborer and had a pre-existing arthritic condition.
72. *Id.* at 532, 246 S.E.2d at 746 (emphasis added).
each of these cases that compensation must be denied for the portion of the disability due to non-occupational factors. Compensation could only be awarded for the portion of the disease caused by the employment.

In the landmark case of *Morrison v. Burlington Industries*, the court addressed the dual causation issue and apportionment of damages in an occupational disease case. Claimant suffered from chronic obstructive lung disease which resulted in total incapacity to earn wages. A doctor testified at the hearings before the Industrial Commission that fifty to sixty percent of the claimant’s disability was caused by occupational factors while forty percent was caused by non-occupational factors. The Industrial Commission found that claimant was totally incapacitated for work but that she suffered only fifty-five percent partial disability. As a result, claimant received an award for fifty-five percent permanent partial disability.

The supreme court affirmed the decision of the Industrial Commission. The court held that “when a pre-existing, non-disabling non-job-related disease or infirmity eventually causes an incapacity for work without any aggravation or acceleration of it by a compensable accident or by an occupational disease, the resulting incapacity so caused is not compensable.”

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75. Id.


77. Id. at 2, 282 S.E.2d at 461.

78. Id. at 7, 282 S.E.2d at 462.

79. Id. at 6, 7, 10, 282 S.E.2d at 463, 465.

80. Id. at 6, 282 S.E.2d at 463.

81. The court of appeals reversed the decision of the Industrial Commission holding that a worker’s incapacity to work could not be apportioned to other pre-existing illnesses. *Id.* at 2, 282 S.E.2d at 461.

82. Id. at 18, 282 S.E.2d at 470.
Decisions subsequent to *Morrison* affirmed the apportionment rule applied in the case. In *Hansel v. Sherman Textiles*, decided the same day as *Morrison*, the plaintiff's byssinosis was partly responsible for her disability, and asthma, chronic bronchitis and cigarette smoking were also partly responsible. The supreme court remanded the decision to the Industrial Commission to make further findings of fact concerning the percentages of disability caused by occupational and non-occupational factors. Again, Justice Exum disagreed with the court's application of the aggravation principle though concurring in the result.

In *Walston v. Burlington Industries*, the court affirmed the apportionment rule once again. Plaintiff's doctor was unable to assign percentages regarding occupational and non-occupational factors contributing to her lung disease. The court found the evidence insufficient to show that plaintiff suffered from an occupational disease or that occupational factors aggravated or accelerated any pre-existing condition. The decision of the Industrial Commission denying compensation was affirmed.

Within this background of case law concerning occupational disease, apportionment and aggravation, the North Carolina Supreme Court once again addressed the difficult causation issue facing the byssinosis victim in *Rutledge v. Tultex Corp./Kings*.

83. *Id.* at 19, 24, 282 S.E.2d at 462, 473. Justice Exum felt that the aggravation principle was incorrectly applied by the majority. The question is not how the occupational disease and the other infirmities are medically connected. The question is how they are connected vis-a-vis the worker's incapacity to work . . . . The aggravation principle means . . . that if the occupational disease in combination or interaction with pre-existing infirmities not in themselves sufficient to cause any incapacity for work, so aggravates the worker's physical condition that he is then totally incapacitated for work, he is entitled to an award for total incapacity.

*Id.* at 24-25, 282 S.E.2d at 474.


85. *Id.* at 54, 283 S.E.2d at 107.

86. *Id.* at 58-59, 283 S.E.2d at 109.

87. *Id.* at 60, 283 S.E.2d at 110. Justice Exum called for the application of the significant contribution standard later adopted in *Rutledge*. *Id.* at 63, 283 S.E.2d at 111-112.


89. *Id.* at 678, 285 S.E.2d at 827.

90. *Id.* at 679, 285 S.E.2d at 827.

91. *Id.* 680, 285 S.E.2d at 828.
ANALYSIS

In Rutledge v. Tultex Corp./Kings Yarn, the North Carolina Supreme Court held that chronic obstructive pulmonary disease may be an occupational disease if:

1. the employment exposed the worker to a greater risk of contracting the disease than the public generally; and
2. the worker's exposure to cotton dust significantly contributed to or was a significant causal factor in the disease's development.

In the majority opinion Justice Exum distinguished Morrison v. Burlington Industries and subsequent apportionment cases on evidentiary grounds. However, Justice Meyer in the dissent asserted that the majority specifically overruled Morrison and adopted a new standard of review.7

By the majority's own admission, the standard adopted in Rutledge would make the disease fully compensable even though other non-occupational factors also significantly contributed to or were significant causal factors in the disease's development. The decision is significant because it liberalizes the law on occupational disease claims, making causation easier to prove for victims of occupational disease.

A. Causation: Significant Contribution versus Apportionment

In Morrison, the North Carolina Supreme Court held that when a claimant's total incapacity to earn wages was partially caused by an occupational disease and partially caused by other physical infirmities "not caused, accelerated or aggravated by an occupational disease," only the portion caused by the occupational

93. Id.
94. Id. at 101, 301 S.E.2d at 369.
95. 304 N.C. 1, 282 S.E.2d 458 (1981), discussed in Rutledge at 308 N.C. 95, 301 S.E.2d at 366.
97. 308 N.C. 85, 109, 301 S.E.2d 359, 374.
98. Id. at 107, 301 S.E.2d at 373.
disease was compensable.99 This decision significantly narrowed the aggravation principle by apportioning damages between pre-existing conditions and occupational conditions rather than awarding full disability compensation. Proof of causation became more difficult because the worker had to prove the percentage of disability caused by an occupational disease.

In the dissenting opinion Rutledge, Justice Meyer charged that the majority reversed the apportionment principle established in Morrison. He asserted that the dissenters in Morrison encouraged adoption of the significant contribution standard which formed the basis of the Rutledge decision.100

In Rutledge, Justice Exum denied the allegation that the majority reversed Morrison and distinguished the case on the evidence presented.101 He drew a distinction between the cases by emphasizing that Mrs. Morrison’s occupational disease was byssinosis while Mrs. Rutledge’s disease was chronic obstructive pulmonary disease.102 However, for purposes of compensation, this argument may only be an exercise in semantics.103 Although the etiology of lung disease in textile workers is still debated, there is much support for the position that byssinosis and chronic obstructive pulmonary disease are actually two stages of one disease syndrome, byssinosis.104 Byssinosis may be defined as a dust-induced disease characterized by initial acute responses followed by a stage of chronic lung disease characterized by chronic airway obstruction.105 While chronic lung impairment may include factors that are both occupational and non-occupational there can be little doubt that exposure to respirable cotton dust contributes to the disease’s development.106 Thus, a serious question remains concerning the impact of the Rutledge decision on Morrison and the apportionment rule.

99. 304 N.C. at 18, 282 S.E.2d at 470.
100. 308 N.C. at 111, 301 S.E.2d at 375. Justice Exum wrote the dissenting opinion in Morrison, the concurring opinion in Hansel and the majority opinion in Rutledge.
101. 308 N.C. at 97, 301 S.E.2d at 367.
102. Id. See supra note 5.
104. Id. at 618.
105. Id.
106. Id.
In his treatise on Workers’ Compensation laws in the United States, Professor Larson contends that the Rutledge decision effectively overruled Morrison and its progeny. An analysis of the dissenting opinion in Morrison lends credence to this argument.

The dissenters in Morrison believed that the majority incorrectly applied the aggravation principle in that case. The dissenters argued that the occupational disease need not be the sole cause of the worker’s incapacity to work in order to support an award for full compensation. When pre-existing infirmities interacted with the disease to produce total incapacity for work, the occupational disease should be fully compensable. The dissenters considered the significant contribution standard to be the correct legal principle applicable in the case. By applying the significant contribution standard in Rutledge, the majority actually adopted the dissenting opinion in Morrison.

In practical application, the Rutledge decision renders the Morrison apportionment rule ineffective. The significant contribution standard eases the burden on an occupational disease claimant seeking compensation for lung impairment. When the claimant need only show that exposure to cotton dust significantly contributed to the development of lung disease, there is no longer a need to meet the more difficult standard of proving the specific percentage of impairment caused by occupational exposure to disease causing agents. Given the choice of the two standards, the Rutledge standard is preferable from the perspective of a claimant attempting to prove an occupational lung disease.

Decisions subsequent to Rutledge indicate that the North Carolina courts will continue to apply the significant contribution standard without addressing the apportionment rule. In Dowdy v. Fieldcrest Mills, the North Carolina Supreme Court found that the plaintiff suffered from chronic obstructive pulmonary disease under the significant contribution standard. In dicta, the court refused to recognize a distinction between byssinosis and

107. 1B Larson § 41.64(c) (Supp. 1983).
108. 304 N.C. at 25, 282 S.E.2d at 474.
109. Id. at 24, 282 S.E.2d at 473.
110. Id.
111. Id. at 43, 282 S.E.2d at 484.
113. Id.
chronic obstructive pulmonary disease for purposes of compensation:

[w]e think it unimportant here to determine whether byssinosis is a particular type of chronic obstructive lung disease or a separate disease often found in conjunction with or evolving from chronic obstructive lung disease. For purposes of awarding workers' compensation benefits, there is no practical difference between chronic obstructive lung disease and byssinosis.114

Since the only distinction drawn between Rutledge and Morrison by the Rutledge majority rested upon mere labelling of the diseases, Dowdy would seem to be a significant departure. If the court now accepts the contention that the diseases are essentially the same for purposes of compensation, the apportionment rule is effectively overruled as contended by Professor Larson.

B. The Effect of Rutledge on Proving a Lung Disease Claim

The Rutledge decision is particularly significant in proving causation in byssinosis claims. Under the apportionment rule medical experts must assign percentages to disability caused by the employment.115 Due to the nature of the disease this is a difficult, if not impossible, task to accurately perform. The percentage of disability caused by the inhalation of cotton dust is virtually impossible to accurately prove because the effects of cotton dust, cigarette smoking, asthma and other lung impairments are indistinguishable.116 Medical experts continue to disagree on the etiology of byssinosis.

Furthermore, disability claims in lung disease cases must of necessity be proven by circumstantial evidence including the degree of exposure to cotton dust in employment, the degree of exposure to other disease causing agents outside employment, and the existence of a pre-existing condition.117 However, exposure to each of these factors has been shown to effect individuals differently and there is no method for determining the extent of damage

114. 308 N.C. at 712, 304 S.E.2d at 222.
115. See Rutledge v. Tultex Corp./Kings Yarn, 308 N.C. at 94, 301 S.E.2d at 366.
116. ATTORNEY'S TEXTBOOK ¶ 205E.20, 205E.30; see supra note 5. See also 1B LARSON § 79.51(d).
caused by each. Medical histories are inadequate because each individual history varies, sometimes significantly. Thus, the assignment of percentages may be arbitrary when based upon these factors and may fail to reflect actual disability.

This causation problem is not limited to byssinosis claims but exists in many occupational disease cases. Accidents usually arise from a sudden identifiable event. Unlike accidents, many occupational diseases develop gradually making the origin of the disease unclear. Medical experts differ on the development and causation involved in many diseases. Also, non-work-related factors may be involved in the etiology of a number of diseases.

The effect of the Rutledge decision is to ease the burden of proof concerning this difficult causation issue for lung disease claimants. The significant contribution standard removes a very difficult burden of proof placed on the claimant by the apportionment rule. However, the standard does not remove the element of causation necessary to any occupational disease claim. The claimant must prove that occupational factors significantly contributed to the development of the disease. Significant, as defined by the majority in Rutledge, means "having or likely to have influenced or effect: deserving to be considered: important, weighty, notable." The result is that more byssinosis victims will be able to recover for total disability when occupational and non-occupational factors contribute to the development of disabling disease.

C. The Aggravation Principle

The argument that Rutledge was a departure from North Carolina precedent is credible when examined in light of the apportionment cases, Morrison, Hansel and Walston. However, when these cases are considered in connection with prior case law, it becomes clear that the apportionment rule established in Morrison was the actual departure from precedent.

Under the aggravation principle, claimants were allowed total disability compensation when death or disability was aggravated or

118. See supra notes 5 and 108.
119. Id.
120. 1B LARSON § 41.30 et seq.
121. Id. see also Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).
122. 3 LARSON § 79-51(d).
123. 308 N.C. at 101, 301 S.E.2d at 370.
accelerated by an accident or occupational disease.124 Disability was determined by the employee’s inability to earn wages including factors of age, education and work experience. The measure of disability was not determined by a “normal” person standard. Thus, when a pre-existing condition combined with an occupational disease or injury to produce disability, the entire resultant disability was compensable.125

Morrison severely limited the scope of the aggravation principle. Instead of placing the emphasis on aggravation or death or disability, the emphasis was placed on medical aggravation of a pre-existing condition.126 The medical relationship between pre-existing conditions and the occupational disease became the factual determinant in Morrison. The relationship stressed by the cases invoking the aggravation principle emphasized the effect of a pre-existing condition and occupational disease or injury on the ability of the claimant to earn wages.127

The significant contribution standard adopted in Rutledge abandons the technical distinctions and interrelationships between pre-existing conditions and occupational disease introduced in Morrison. This decision once again focuses disability compensation on the disease, the resultant disability and the ability or inability of the claimant to earn wages. Thus, although Rutledge was a departure from the rule established in Morrison, the significant contribution standard is actually more in line with prior North Carolina case law.

D. Policy Considerations

In his dissenting opinion, Justice Meyer argued that the legislative intent of the North Carolina Workers’ Compensation Act was defeated by the significant contribution standard.128 The Act was intended to provide compensation only for those disabilities caused by the employment.129 The philosophy behind this princi-

124. See supra notes 62-72 and accompanying text.
125. See supra notes 66-74 and accompanying text.
127. See supra notes 62-72 and accompanying text.
ple was that industry must only pay for its own wreckage.\textsuperscript{130} Considering this philosophy in isolation, the apportionment rule limiting liability of the employer was consistent with this philosophy. However, there were other policy considerations behind the Act.

The Workers' Compensation Act was also designed to ensure a speedy and reliable remedy for employees.\textsuperscript{131} At its inception, the Act was designed to ease the burdens of the common law system on the parties. Thus, the Act contained mutual concessions on the part of employer and employee. The employer agreed to pay some claims where there was no pre-existing liability at common law in exchange for paying smaller awards. The employee agreed to accept smaller awards in exchange for simplicity and speed in the decision making process.\textsuperscript{132} To this end, the Act should be liberally construed to prevent a narrow, technical interpretation from precluding recovery.\textsuperscript{133} In other words, the Act is intended to strike a workable balance between the employer and employee.

The significant contribution standard strikes this balance between employer and employee in a manner consistent with the purposes of the Act. The standard removes an unbearable burden of proof placed on the claimant by the apportionment rule. At the same time, the standard does not increase the burden on industry to the extent that minor factors contributing to the development of occupational diseases mandate recovery. The claimant must still prove that the occupational factors significantly contributed to the development of the disease. The element of causation required by the Act is preserved without allowing a difficult and unworkable standard to defeat recovery. This is consistent with the liberal construction theory applied by the North Carolina courts in workers' compensation claims.

\textbf{CONCLUSION}

\textit{Rutledge v. Tultex Corp.} /\textit{Kings Yarn} was indeed a departure by the North Carolina Supreme Court from the precedent established in \textit{Morrison, Hansel} and \textit{Walston}, the apportionment cases. \textit{Rutledge} has rendered the apportionment approach to lung disease

\begin{itemize}
  \item \textsuperscript{130} \textit{Id.}
  \item \textsuperscript{131} Barnhardt \textit{v. Yellow Cab Co.,} 266 N.C. 419, 427, 146 S.E.2d 479, 484 (1966).
  \item \textsuperscript{132} Vause \textit{v. Vause Farm Equip. Co.,} 233 N.C. 88, 91, 63 S.E.2d 173, 176 (1951).
  \item \textsuperscript{133} Stevenson \textit{v. City of Durham,} 281 N.C. 300, 188 S.E.2d 281 (1972).
\end{itemize}
claims useless and has in effect overruled those decisions. However, a thorough examination of the North Carolina Workers' Compensation law on occupational disease indicates that *Morrison* and its progeny were departures from North Carolina practice and precedent. The significant contribution standard established in *Rutledge* once again places the emphasis upon the worker's resultant disability rather than on complex interrelationships between pre-existing conditions and work related exposure.

The apportionment rule places too severe a burden upon occupational disease claimants seeking compensation for lung disease. The apportionment rule is difficult to administer due to the disputed origin of many occupational diseases. Many medical experts may be reluctant to assign percentages to disability, particularly in byssinosis cases where the effects of occupational and non-occupational factors are virtually indistinguishable. At best, assignment of percentages to disability in these cases is speculative and arbitrary. Protracted litigation would result in the attempt to assign percentages to disability.

By adopting the significant contribution standard *Rutledge*, the North Carolina Supreme Court recognized the difficulties created by the apportionment rule. To cure the inequities the rule created, the court adopted a feasible alternative. The court has found a workable standard which preserves the purpose and focus of the Workers' Compensation Act. Considering the nature of byssinosis, the etiology and the unknown elements of the disease, this standard is the better alternative. Thus, even though this decision was a departure from precedent, the North Carolina Supreme Court has corrected the error committed when the apportionment rule was established.

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