

## **BLACK LUNG AT CENTER OF COURT CASE MAN ALLEGES HE WAS FORCED TO FALSIFY DATA; CITES DEPRESSION, ANXIETY**

Publication: THE CHARLESTON GAZETTE

Published: Thursday, February 16, 2006

Page: 3A

Byline: KEN WARD JR.

kward@wvgazette.com

Reggie Philyaw worked for Eastern Associated Coal Corp. for 28 years.

For much of that time, Philyaw says, he helped the company fake the tests that are meant to protect miners from dangerous levels of coal dust.

Now, Philyaw says the experience caused his mental breakdown, and he is suing Eastern over his depression and anxiety disorder.

Eastern is fighting the suit, and a Raleigh County judge tossed Philyaw's case out of court.

On Wednesday, the state Supreme Court heard arguments in an effort by Philyaw's lawyer to reinstate the case.

At the same time, the justices were reminded of the coal industry's most deadly workplace danger, and the federal government's troubled efforts to reduce the risks.

Every year, more than 1,000 U.S. coal miners still die from black lung disease, according to government data.

"When mine regulations were first passed, no one took the respiratory dust standards particularly seriously," said **Richard Neely**, a former justice who is representing Philyaw. "There was a lot of cheating going on."

Black lung, or coal workers' pneumoconiosis, is a debilitating and often fatal lung disease caused by breathing coal dust.

In 1969, Congress placed strict limits on airborne dust and ordered coal operators to take periodic tests inside mines.

The law has reduced black lung among the nation's miners. But at least partly because of

industry cheating on dust sampling, the law has fallen far short of its goal of eliminating the disease.

In 1998, a series in the Louisville Courier-Journal documented that federal regulators knew for years about widespread cheating, but did little about it.

Seven years earlier, then-Labor Secretary Lynn Martin accused about half of the nation's coal mines of tampering with the cassettes used to collect dust samples.

That announcement came four months after Peabody Coal, Eastern's parent company, agreed to plead guilty to three counts of tampering with dust tests, pay a \$500,000 fine, and show MSHA how its employees had tampered with the cassettes.

In his suit against Eastern, Philyaw says that, prior to Peabody's plea agreement, he was a target of the federal criminal investigation into dust sample cheating.

"In the late 1980s, Mr. Philyaw was required to 'blow out' the dust sample 'disks' that were sent back to MSHA for analysis through the federal mails," Neely wrote in a court brief.

"These dust disks were easily tampered with, and at that time everyone, including Mr. Philyaw, did not take terribly seriously the mine safety dust requirements," he wrote. "And this conspicuous policy of non-enforcement is reflected in MSHA's own lack of commitment to dust sampling: MSHA left everything to the mine owner and the equipment MSHA employed was an invitation to manipulation."

MSHA improved the sampling disks, but Eastern still required Philyaw "as a condition of his employment, to violate the federal law," Neely wrote.

Eastern required Philyaw to follow miners who wore the disks around, and ensure that they worked in areas where they would not be exposed to much dust, Neely wrote.

In court papers, Neely alleged Philyaw now suffers from mental and emotional problems because he was forced to falsify the dust tests.

In response, Eastern lawyers argue Neely has not provided evidence of any wrongdoing by the company within the two-year statute of limitations.

They also say Philyaw cannot prove that Eastern ordered him to falsify dust samples or lose his job.

During Wednesday's arguments, Justice Brent Benjamin pressed Neely on that issue. Benjamin

agreed with Eastern lawyers, who said in court papers that Neely's only evidence was Philyaw's "subjective fear of reprisal."

Neely pointed to a letter to Philyaw from an Eastern lawyer who said that if Philyaw believes he violated any laws the company would not provide him with a lawyer.

"It was a backhanded way of saying, you better lie to the grand jury," Neely said.

To contact staff writer Ken Ward Jr., use e-mail or call 348-1702.