

1956

## Edward Lee Holland v. The Industrial Commission of Utah et al : Brief of Plaintiff

Utah Supreme Court

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Gordon Hoxsie; Attorney for Plaintiff;

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# In the Supreme Court of the State of Utah

EDWARD LEE HOLLAND,

Plaintiff,

— vs. —

THE INDUSTRIAL COMMISSION OF  
UTAH and COLUMBIA-GENEVA  
STEEL, DIVISION U. S. STEEL COR-  
PORATION,

Defendants.

**FILED**

MAR 23 1956

Clerk

Supreme Court

No. 8412

## BRIEF OF PLAINTIFF

On Writ of Review Issued to State Industrial  
Commission

GORDON HOXSIE,

P. O. Box 818, Dragerton, Utah

Attorney for Plaintiff

Filed the ..... day of March, 1956.

By.....Clerk

By.....Deputy Clerk

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# In the Supreme Court of the State of Utah

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**EDWARD LEE HOLLAND,**

Plaintiff,

— vs. —

**THE INDUSTRIAL COMMISSION OF  
UTAH and COLUMBIA-GENEVA  
STEEL, DIVISION U. S. STEEL COR-  
PORATION,**

Defendants.

**No. 8412**

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## BRIEF OF PLAINTIFF

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### STATEMENT OF FACTS

This is a proceeding for review of the action of the State Industrial Commission in denying an award to Edward Lee Holland on his alleged industrial accident at Defendant's Geneva Coal Mine at Horse Canyon near Columbia, Utah, on July 6, 1954. The plaintiff contends on said date as a result of an accident arising out of or in the course of his employment for defendant, he sus-

tained a back injury while trying to keep a damaged stopper machine from falling on a fellow workman. The accident was reported to Defendant's agent, Mr. Wadleigh. The Plaintiff with minor pains worked approximately ten days thereafter then consulted Dr. William R. Ploss of Dragerton, Utah, who failed to diagnose his case or solve his pain problems although treatment, including hospital confinement, was given. Thereafter Plaintiff was sent by Dr. Ploss to an Urologist at Provo, Utah, without relief. Thereafter the Plaintiff was sent to Dr. Paul Pemberton of Salt Lake City, Utah, by Dr. Ploss. Dr. Pemberton immediately diagnosed the plaintiff's case as a ruptured disc, which could have been caused by the accident at the mine on July 6, 1954. Dr. Pemberton removed the disc and fused two other discs of the plaintiff.

All the witnesses at the hearing, including the Defendant's employees and agents supported the plaintiff's testimony. No witness testified contrary hereto.

## THE INDUSTRIAL COMMISSION'S DECISION

The decision of the Commission after setting forth the time and date of the hearing and the allegations of the plaintiff as to the injury and accident on July 6, 1954, and his leaving work on July 21, 1954, and his reporting to Dr. Ploss on July 24, 1954, stating Dr. Ploss is a member of the medical staff of the U.M.W.A. Welfare Fund, and Dr. Ploss sent the Plaintiff to Salt Lake City, Utah, where Dr. Paul Pemberton operated for a ruptured disc then proceeds to argue that since the plaintiff testified that he reported to Dr. Ploss that he got hurt in the mine

and since the hospital record did not corroborate this statement and since Dr. Ploss, the Welfare Fund physician, works in the same hospital at Dragerton that Dr. McClintock, the industrial surgeon for the defendants, uses for industrial patients,

That it can be reasonably assumed that the U. M. W. A. Welfare Fund and its medical staff will promptly refer all cases to Dr. McClintock if they are reported as industrial cases. Surely, the decision further argues, the Welfare Fund is not seeking to increase an already heavy burden by voluntarily accepting industrial cases. In fact, the entire record negates applicant's testimony to such an extent that his credibility is highly questionable.

The decision then concludes that the Plaintiff did have a disc removed by Dr. Pemberton but we cannot find that the disc was the result of an accident arising out of or in the course of employment by defendant as alleged or at all. Therefore plaintiff's claim is denied.

## STATEMENT OF POINTS RELIED ON

Point Number 1: That the Commission erred in its conclusion that Plaintiff's injury and disability was not the result of an accident arising out of or in the course of his employment.

Point Number 2: That the Commission abused its discretion in entering its decision denying an award to the plaintiff, and that its decision and order were against the law and contrary to the evidence introduced, and

that in reaching such decision, the said Commission did not regularly pursue its authority.

## PLAINTIFF'S ARGUMENT

Point Number 1: That upon reading the decision of the Commission dated June 21, 1955, it appears that the Commission based its decision on the facts set forth in paragraph five of said decision which reads as follows, to-wit:

It can be reasonably assumed that the U. M. W. A. Welfare Fund and its medical staff will promptly refer all cases to Dr. McClintock if they are reported as industrial cases. Surely the Welfare Fund is not seeking to increase an already heavy burden by voluntarily accepting industrial cases. In fact, the entire record negatives applicant's testimony to such an extent that his credibility is highly questionable.

The Plaintiff respectfully points out that the statements contained in said paragraph are nowhere contained in the evidence presented at the hearing of the above entitled claim held in Price, Utah, on April 1, 1955, at ten-thirty o'clock A.M., in the courtroom of the courthouse, and at best merely represented assumptions of fact made by the Commission. That at least three witnesses testified as to the accident on July 6, 1954, and as to Plaintiff's injury. Surely the plaintiff should not lose his claim because he falsely evaluated the serious-

ness of the injury for ten or more days and because Dr. Ploss failed to correctly diagnose the cause of Plaintiff's pains or because a hospital record may have failed to indicate whether Plaintiff said he was hurt in the mine and that was the cause of his pains. When all the testimony indicates the high probability that the plaintiff's disc injury was caused by his accident of July 6, 1954 and no evidence was submitted to controvert the same, plaintiff contends the Commission should have made Findings in his favor.

Point Number 2: That said decision is contrary to the evidence presented at said hearing. No evidence was submitted against the plaintiff's claim. That in view of the fact that the Commission has based its decision on assumptions of fact known only to Dr. Ploss, the Plaintiff feels that the testimony of Dr. Ploss would be necessary to either confirm or deny same. The plaintiff further contends that he should be given the opportunity to present testimony by Dr. Pemberton who operated upon him for a ruptured intervertebral disc. Though said testimony did not appear material at the time of the hearing, the Plaintiff feels that same would be material to his claim after reading said decision of the Commission. That said decision is further contrary to the evidence introduced at said hearing in view of the fact that the Defendant presented no evidence whatsoever that the Plaintiff was not hurt while in their employ. In fact the only testimony given by any Company official was that given by Dwight W. Wadleigh, Mine Foreman for the Defendant, who testified that he saw the Plaintiff shortly after his fall at which time Plaintiff

informed Mr. Wadleigh that he had hurt himself in falling from a scaffolding. In view of all these facts and arguments Plaintiff contends the Commission's decision was made arbitrarily and contrary to the law and the evidence.

We submit that the Commission's Decision should be reversed and that the Court should direct the Commission to enter an award or take further evidence to determine the extent of Plaintiff's injury and disability.

Respectfully submitted,

GORDON HOXSIE,  
P. O. Box 818, Dragerton, Utah  
Attorney for the Plaintiff.