

Serial: 172085

IN THE SUPREME COURT OF MISSISSIPPI

No. 2011-M-00874

UNION CARBIDE CORPORATION, ET AL.

FILED

Petitioners

OCT 06 2011

v.

SUPREME COURT CLERK

THOMAS BROWN, JR.

Respondent

EN BANC ORDER

The matter before us is Union Carbide Corporation's M.R.A.P. Rule 48B motion to disqualify Circuit Judge Eddie H. Bowen in Cause No. 2006-196, currently pending in the Circuit Court of Smith County. We have received responses and supplemental responses to the motion from both Thomas Brown, Jr., and Judge Bowen.

Brown sued Union Carbide and others for injuries he claims resulted from exposure to asbestos. During jury selection, Judge Bowen stated to counsel in his chambers:

The Court is going out there to face the jury venire and will dismiss jurors that have been listed within the first degree [of consanguinity] as being screened for asbestos or asbestos cases or anything else dealing with asbestos.

Judge Bowen then preemptively struck—for cause—all prospective jurors with family members who had asbestos claims.

After two weeks of trial, Judge Bowen commented to the attorneys that his own father had been tested for asbestosis. According to Union Carbide's motion, defense counsel requested the identity of Judge Bowen's father, but their request was "rebuffed" and met with "swift dismissal." Although this exchange took place off the record, neither Judge Bowen nor the plaintiff deny that it occurred; and both had ample opportunity to do so in their

responses and supplemental responses to the Union Carbide's motion. We also note that Union Carbide requested the court reporter transcribe side-bar conferences between Judge Bowen and counsel, but Judge Bowen denied the request. And in his response to Union Carbide's motion, Judge Bowen does not explain why he refused to provide the information, stating instead that "the parties had ample resources and ample time to find whether this judge's father or his mother had an asbestos claim."

Union Carbide conducted its own investigation and learned that Judge Bowen's father had filed two asbestos lawsuits, one of which remains pending; and that both Judge Bowen's father and mother had settled asbestos claims with Union Carbide and other defendants based on a diagnosis of asbestosis – which is the same disease claimed in this case. Also, Judge Bowen's father submitted a claim to the bankruptcy trustee for Johns Manville, the asbestos supplier for Union Carbide's co-defendant in this case.

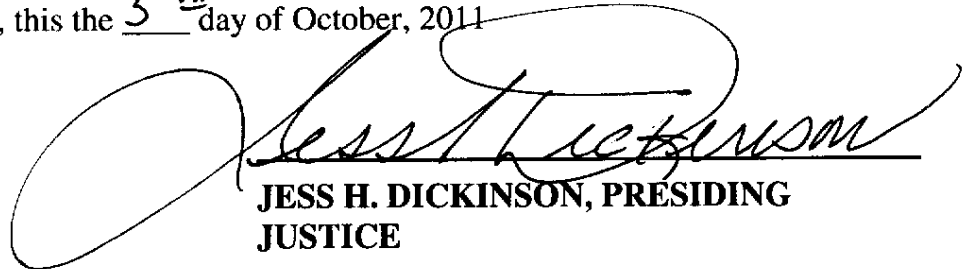
Upon discovery of this information, Union Carbide filed a motion in the trial court requesting Judge Bowen to recuse himself from the case. Judge Bowen did not rule on the motion within thirty days, as required by URCCC 1.15, so Union Carbide filed this motion we now consider.

Based on the particular facts of this case, including: (1) Judge Bowen's reluctance to provide information about his father's claim; (2) Judge Bowen's decision to preemptively strike all jurors with family members who had asbestos claims; (3) the history of asbestos claims filed by Judge Bowen's father and mother; and (4) the settlement release signed by Judge Bowen's father with Union Carbide; we find that a reasonable person, knowing all of

the circumstances, would harbor doubts about Judge Bowen's impartiality in this particular case. See Code of Judicial Conduct Canon 3(E)(1); *Hill v. Mills*, 26 So.3d 322, 334(Miss.2010). Therefore, the Court finds that Union Carbide's Petition should be granted. It is, therefore,

ORDERED that Judge Bowen shall immediately recuse himself from further proceedings in Smith County Circuit Court Cause No. 2006-196, and all matters pending therein shall continue to be stayed until such time as a judge is appointed to preside.

SO ORDERED, this the 5th day of October, 2011



JESS H. DICKINSON, PRESIDING
JUSTICE

TO GRANT: WALLER, C.J., CARLSON AND DICKINSON, P.JJ., LAMAR, KITCHENS AND CHANDLER, JJ.

NOT PARTICIPATING: RANDOLPH, PIERCE AND KING, JJ.