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From the January 01, 1993 North Carolina Lawyers Weekly.

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## Trial Reports

### Tort

#### **Workplace Injury, Death - Hamlet Settlement - State's Largest Mass Tort - Woodson Claims - Emotional Distress - Workers' Compensation - Bankruptcy Complication**

**Type of claim:** Suits for wrongful death and personal injury brought by 102 victims of the 1991 fire at the Imperial Foods plant in Hamlet.

#### ADVERTISEMENT

**Principal injuries (in order of severity):** Death, various injuries, emotional distress.

**Special damages:** n/a

**Tried or settled:** Settled in consolidated agreement

**County where tried or settled:** Wake County

**Case name and number:** XXX v.

Imperial Foods (Suits filed in various jurisdictions)

**Date concluded:** December 1992

**Name of judge:** Superior Court Judge Fetzer Mills, Industrial Commissioner J. Randolph Ward, U.S. Bankruptcy Judge James Wolfe

**Amount:** \$16.1 million total. Individual payments ranged from a high of \$1 million to the family of a Lance Foods employee who was stocking snack machines when the fire broke out, to \$875 for another victim's emotional distress.

**Insurance carriers:** Crum & Forster/U.S. Fire (primary commercial liability carrier for Imperial Foods); Liberty Mutual (workers' compensation policy that also included \$100,000 in liability coverage); American International Group (excess liability policy with coverage of up to \$1 million).

**Expert witnesses and areas of expertise:** n/a

**Attorney(s) for plaintiffs:** 34 separate law firms from various states represented the plaintiffs. The plaintiffs' litigation committee was led by Jay Trehy of Blanchard, Twiggs, Abrams & Strickland, Raleigh, and Charles Becton of Fuller, Becton, Billings & Slifkin, Raleigh.

**Other useful information:** The Hamlet fire occurred Sept. 3, 1991, when fluid from a hydraulic line being repaired sprayed into burners beneath a deep-fat fryer. Fire and toxic smoke engulfed the building. Some workers were apparently trapped behind padlocked exit doors. Later reports revealed other safety violations at the plant.

Eventually, 102 claims were brought. All of the plaintiffs had workers' compensation claims. Most of them also asserted claims under Woodson v. Rowland, the 1991 Supreme Court decision that held employers liable in tort for workplace conditions known to be "substantially certain" to cause injury or death. Most of the suits were filed in Superior Court.

The state Department of Labor fined Imperial Foods \$800,00 for safety violations, which pushed the company into bankruptcy. Bankruptcy Judge Wolfe agreed to lift the automatic stay so that the parties could try to settle the claims.

A "power adjustment" was made of all the claims, considering such objective factors as income, earning history, nature of the injury and number of dependents. The offer was contingent on global acceptance. Liberty Mutual, which had already paid more than \$2 million in workers' comp benefits, agreed to waive its subrogation lien.

The plaintiffs' team used the latest in litigation technology, including networked computers, batch faxes, client databases and electronic transmission of documents.

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