



INDUSTRIAL ACCIDENT BOARD
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MAY 28 1954

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
Eq. No. 66024

RICHARD J. ROTHWELL'S
(DEPENDENTS) CASE

Richard J. Rothwell	Employee
Helen V. Rothwell	Claimant
A. W. Bancroft Co.	Employer
Utica Mutual Cas. Co.	Insurer

DECREE

This case came on to be heard at this sitting and was argued by counsel, and thereupon and in consideration thereof, it is ORDERED ADJUDGED and DECREED that the said Richard J. Rothwell received personal injury on or about March 19, 1952, arising out of and in the course of his employment by the A. W. Bancroft Company and that said injury caused his death on December 3, 1952, for which compensation at the rate of forty-five (\$45.00) dollars per week is due his widow, Helen V. Rothwell, for her own use and benefit and for the benefit of the five dependent children of the claimant and the deceased employee; that said compensation at the rate of forty-five (\$45.00) dollars per week is due from April 25, 1952, and continuing thereafter subject to all the provisions of the Workmen's Compensation Act, and the amount due to April 23, 1954 is four thousand six hundred eighty (\$4680.00) dollars, which sum shall be paid by the insurer, the Utica Mutual Casualty Company together with the further sum of three hundred (\$300.00) dollars under G. L. c. 152, s. 33; and together with the further sum of seventy-five (\$75.00) dollars costs, to be paid to Helen V. Rothwell, the claimant, and Laurence Locke, Esquire, her attorney, to cover the cost of review including reasonable counsel.

fee, and that said insurer, Utica Mutual Casualty Company, pay fifty (\$50.00) dollars each to James Stewart Rooney, M. D., and Harriet L. Hardy, M. D., under G. L. c. 152, s. 9A; and further that said insurer Utica Mutual Casualty Company, pay five hundred (\$500.00) dollars, into the special fund in the custody of the State Treasurer pursuant to the provisions of G. L. c. 152, s. 65N, sending check in payment therefor to the Industrial Accident Board, Attention of its Bookkeeper, to enable deposit of said sum in said fund through fiscal records, and together with the further sum of six dollars and seventy five cents as civil costs under St. 1939, c. 213, s. 1 and 2 and together with the further sum of one hundred and seventy five dollars an amount sufficient to relieve the claimant of the reasonable cost of attorneys' fees, briefs, and other necessary expenses that result from this certification or appeal (St. 1949, c. 372), all of which amounts shall be paid by the Utica Mutual Casualty Company forthwith.

By the court, (Morton, J.)

Thomas F. Brophy
Asst. Clerk

Entered May 25, 1954.

Copy,
Attest:-

Richard A. McLaughlin

Asst. Clerk.

MASSACHUSETTS GENERAL HOSPITAL
Boston 14

IN BOSTON
GENERAL HOSPITAL
SAGER MEMORIAL
PHILLIPS HOUSE
SQUERMAN MEMORIAL FOR CHILDREN
HALL-HERSCHE HOSPITAL
HUNTINGTON MEMORIAL HOSPITAL
VINCENT MEMORIAL HOSPITAL

DEAN A. CLARK, M.D.
GENERAL DIRECTOR

IN WAVERLEY
MCLEAN HOSPITAL
W. FRANKLIN WOOD, M.D.
DIRECTOR
IN LINCOLN
STORROW HOUSE
(CONVALESCENTS)

December 11, 1952

RECEIVED
DEC 11 1952

DEC 21 1952

Mr. Laurence Locke
c/o Samuel B. Horvitz
6 Beacon Street
Boston, Massachusetts

Dear Mr. Locke:

We have been able to study the postmortem tissues in the case of Mr. Richard Rothwell in part. It will be some time before the final studies are complete. However, we are at this point able to demonstrate the so-called asbestos bodies in the lung indicating exposure and reaction to exposure. It is our opinion at this time that Mr. Rothwell's illness and death were directly related to his exposure to asbestos in his work.

Sincerely yours,

Harriet L. Hardy

Harriet L. Hardy, M.D., Associate Physician
Occupational Medical Clinic

HLL:jma

WORKMEN'S COMPENSATION ACT
INDUSTRIAL ACCIDENT BOARD
Boston, Massachusetts

SS

Ag. No. 23695 and 23696

Richard J. Rothwell (dec'd)
A. W. Bancroft Company
Utica Mutual Casualty Company

Employee
Employer
Insurer

Armstrong Cork Company
Travelers Insurance Company

Employer
Insurer

REPORT OF MEMBER OF THE INDUSTRIAL ACCIDENT BOARD (MR. GOLDEN)

The Member of the Industrial Accident Board, having heard the parties in the above-named case, under the provisions of G. L. (Ter. Ed.), Chapter 1 Sections 9 & 8, at a Room of the Board, 18 Tremont Street, on Tuesday, May 1953, and on Friday, July 31, 1953, reports as follows.

APPEARANCES: L. Locke, Esquire, for Claimant.
A. J. McLaughlin, Esquire, for Utica Mutual Insurance Company.
B. Plunkett, Esquire, for Travelers Insurance Company.

A claim for compensation received by the Board from the claimant on March 25, 1953 sets forth that on April 1, 1952 this employee, while employed for A. W. Bancroft Co., insured by Utica Mutual Insurance Company, suffered injury to chest and lungs - asbestosis, resulting in death on December 3, 1952.

A request for hearing on this matter was received by the Board on September 3, 1952.

A claim for compensation received by the Board from the claimant on March 25, 1953 sets forth that as result of work for Armstrong Cork Company, insured by Travelers Insurance Company, this employee on April 26, 1952 suffered injury to chest and lungs - asbestosis, resulting in death on December 3, 1952.

A request for hearing on this matter was received by the Board on September 3, 1952.

QUESTIONS: (Raised by Utica Mutual Insurance Company)

Whether this employee suffered a personal injury arising out of and in the course of his employment while working for their insured and, if so, whether his death was causally related thereto?

(Raised by Travelers Insurance Company)

Whether this employee suffered a personal injury arising out of and in the course of his employment while working for their insured and, if so, whether his death was causally related thereto?

Rothwell (dec'd)

WITNESS:

Helen V. Rothwell

Dr. Harriet L. Hardy

John J. Hughes

Dr. James Stewart Rooney

TESTIMONY ON PAGE:

2,3,4,5,12

5,6,7,8,9,10,11

12,13,14,15

15,16,17

Rothwell (dec'd)

REPORT OF EVIDENCE

All the material evidence is reported herewith:

The Utica Mutual Casualty Insurance Company is designated as the First Insurer and the Travelers Insurance Company is designated as the Second Insurer.

HELEN V. BATHWELL, the claimant, questioned by her attorney, testified she is now 40 years of age, she is the widow of Richard J. Rothwell, they were married December 25, 1911 at Star of the Sea Church, East Boston. There are five children of this marriage under the age of 18 at present. Joyce was born January 13, 1938 Mildred was born May 31, 1939, James was born on August 8, 1941, Harold was born December 25, 1942 and Theresa was born July 6, 1943. Her husband's last employer was the Armstrong Cork Company. She has not got the date he worked for the Armstrong Cork Company. (IT WAS AGREED he worked there from March 20, 1952 to April 25, 1952.) Asked if at any time while working for this company her husband told her the nature of his work, witness replied, yes. He told her he was a pipe cutter and heat and frost insulator and asbestos worker - it was known under all these names. As to working for this employer he worked for A.W. Bancroft Company. She knows he worked there over a year. (IT WAS AGREED he worked for this concern from December 17, 1950 to March 19, 1952.) Asked, did you ever tell you at any time that he worked for the A. W. Bancroft Company what nature or title of his occupation was (objection noted by counsel for Utica, question allowed in, insurer's exception is saved) witness replied, yes. Asked, what was the nature of his occupation there according to what he told you, witness replied, just a pipe cutter, the same work he also had done that type of work before he worked for the A.W. Bancroft Company. Asked, for how many years before had he done it, witness replied, practically all the time we were married except during the depression; we were married 22 years; about 16 years. Asked, did he describe any of the details or conditions of his work during the time that he worked for the A. W. Bancroft Company, witness replied, yes. Asked, what did you tell us what your husband told you about the nature of his work that he did while in the employ of the A.W. Bancroft Company (objection noted by Utica - counsel for Utica stated he is making a general objection to cover anything which the decedent's witness as to his employment while employed by A.W. Bancroft Company - his exception is saved) witness replied, I know that sometimes the asbestos came around a cylinder form, they have to cut it, and sometimes came loose and they have to sort of make what he called mud and pack it a boiler and cover it with canvas and do the pipes. Asked, did he tell you anything at all about the condition or conditions under which he worked, witness replied, sometimes had to climb ladders and stairs, sometimes he worked under the ceilings, sometimes on the floor, sometimes he worked in what he called tight corners. Asked, when he cut the asbestos tubing did he ever tell you what it was like when he cut it, witness replied, he brought home some one time and I could see what it was like it was hard on the top, soft in the center and soft of powdery when you cut it. Witness always did the family wash. She did observe the condition of his work clothes when he came home from work. Asked to tell what she observed about the condition of his work clothes while working for the A. W. Bancroft Company, witness replied, the same as always. Asked to tell what that was, witness replied, I just had to take his overalls before I washed them and had to take them outdoors and shake them hard and get all the stuff out of them in his pockets. She had to shake loose little feathery stuff, this was in the pockets and in the cuffs and just all over. The work shirts would be covered also, it clung to everything. Asked, what was the condition of your husband's face and hands when he came home from work, was it clean or what, witness replied, just clean. The first phys-

Rothwell (dec'd)

change she noted in her husband's condition was he got out of breath. She first noticed that around January 1952. Asked, and had you not change in his physical condition before January 1952 from the condition he was in when you first got married, witness replied, yes, definitely. She noticed that he started to lose weight. He started to lose weight before Christmas 1951. She had not noticed any change in his physical condition prior to that. Asked, nothing at all, witness replied, except in that morning he had to clear his throat, he had a dryness in his throat. Asked to tell when she first noticed this clearing of the throat and dryness of the throat on awakening in the morning, witness replied, about a year or so. That was a year or so before December 1951. Her testimony is that the first physical change or symptom she noted in her husband was this clearing of his throat on awakening in the morning and the dryness in his throat, the second thing she noticed was the loss and the third thing was that he got short of breath and this in January 1952. She knows where her husband was working in January 1952 it was at Fort Kent, Maine. She was not with him at that time. He came home for Washington's Birthday which was in February. Prior to that was at Fort Kent and came home for Christmas. She saw him at Christmas then over Washington's Birthday weekend. Asked, at the time you saw him over Washington's Birthday did he tell you anything about the condition of his health during those two days, witness replied, (objection by Utica, exception is saved) yes. Her husband had called her and always called her - he called her every week on Thursday. Asked, did he tell you anything about his health in these telephone conversations at Christmas and Washington's Birthday of 1952 (general exception by Utica to the conversations, exception is saved) witness replied, he was not feeling well. Asked, did he tell you in what way he was feeling well, witness replied, not too much. Asked, when he came home and saw you over Washington's Birthday did he tell you anything about the condition of his health during those two months before he was noted by counsel for Utica and Travelers, their exceptions are noted, witness replied, he was sick at Fort Kent, he had been sick. Asked, when he told you he had been sick at Fort Kent, did he tell you how he had felt and what he had felt when he was sick, witness replied, I can't remember clearly. Asked, do you know from what your husband told you the reason he left the Bancroft Company (objection by Utica and Travelers, exceptions are saved for both) witness replied, he told me that there was about four inches of water there supposed to be working, he said he told Mr. Bancroft this and just could not work there, so he just left. He then obtained a job with the Armstrong Cork Company. Asked, did your husband, while he was working for the Armstrong Cork Company at sometime before he was brought in this case, did he tell you then what was he doing in the employ of the Armstrong Cork Company, witness replied, yes. Asked, and what did he tell you, witness replied, he was a wash worker. Asked, and did he tell you anything about the circumstances, nature or details of that work for this particular company, witness replied, he did tell me he had a job to do to clean up this housing project. This was located in Rosindale. Her husband was the insulating in this project. She does not know what the insulating was. Asked if he told her what insulating material he was working with, witness replied, no, I don't know the material he was working with at the time. While working for the Armstrong Cork Company she also washed his work clothes and shirts and slacks. Asked, and did you have any while he worked for the Armstrong Cork Company to observe anything about the condition of these work clothes as to dust, witness replied, I do remember. Her husband left the employ of Armstrong Cork Company on April 25, 1952. During the time he worked for the Armstrong Cork Company he lived at home. Asked, tell the condition of his health while he served it during the period from March 20th to April 25th while he was for the Armstrong Cork Company, witness replied, seemed to get worse, not better. Asked to tell what symptoms she observed about him during the period he worked for Armstrong Cork Company, witness replied, he was

Bethwell rec'd

starting to get irritable and he never was irritable, that was a change, and he was tired and was not eating good, he just did not look good, that is all I can tell you (objection noted by Travelers to the statement 'he just did not look good', exception is saved). When he came home from Port Kent they were living in Wilmington and her husband went to Dr. Gerald Pagan of Clark Street, Wilmington. They were not living in Dorchester when he worked for the Armstrong Cork Company. Her husband saw the doctor either on the 22nd of February or the day before, it was in that vicinity. Asked if Dr. Pagan continued to be her husband's doctor until the time he went to the Massachusetts General Hospital, witness replied, not in entirety, no. At some time he saw Dr. Edward Hogan of 6 Lyndhurst Street, Dorchester. He saw him in May. Asked, had he been under the care of Dr. Pagan from February until May, witness replied, more or less, I mean the doctor came a couple of times to the house and he went the office a couple of times. Asked, do you know why your husband left the employ of the Armstrong Cork Company (objection noted by Travelers, exception is saved) witness replied, yes. Asked, at some time before you husband stopped work at the Armstrong Cork Company did he have a consultation in your presence with some physician, witness replied, yes. That was with Dr. Hogan. Following that consultation with Dr. Hogan her husband stopped work at the Armstrong Cork Company. Then at some time he went under the care of the Massachusetts General Hospital. A friend, George Baylan, Jr., referred him to the Massachusetts General Hospital. She said: he first went to the Massachusetts General Hospital on June 23, 1952.

Counsel for the claimant offered the record of Massachusetts General Hospital for this record. Counsel for the Travelers objected to its admission in its entirety, specifically objecting to the history and any diagnosis based on the history, his exception is saved; counsel for Utica objected to the admission of this record, his exception is saved. The record of Massachusetts General Hospital - Unit ~~XXXXXX~~ - is made part of this record by reference and may be found in the Board file. Counsel for Travelers requested his exception be saved to his request for some part of this record to be deleted.

TO COUNSEL FOR THE UTICA: She did say her husband was up in Maine during December 1951, January and February 1952. ~~the same~~ same Washington's Birthday and she is not sure whether ~~he returned to~~ returned to Port Kent. Asked, you think he came home on Washington's Birthday and then did not return to Port Kent, witness replied, I don't know. Her husband did come home for Christmas and the next time after that was on or about Washington's Birthday, which was in February. ~~she~~ knowledge she does not know what his condition was in Jan. 1952. Asked, and when you told us a little while ago that you noticed ~~his short~~ short breath in January 1952 that was not as result of any personal observation which you had made, witness replied, I was not there in January. Asked, that is what you told us, witness replied, the only time I could have seen him was when he left after New Years. If she said previously that she first noticed he was getting out of breath in January, ~~she~~ not as as she did not see him then. Asked, and your memory now ~~that you~~ you have no clear recollection as to when you first noticed him getting out of breath to speak, witness replied, that is correct. Her husband came home in December 1951 a few days before Christmas. She would not say he started to lose weight in December 1951. She did testify that clearing of the throat started in December 1950. Asked if that seemed to get progressively worse as time went on or remained the same, witness replied, got worse. Before her husband worked for the A.W. Bancroft Company he worked for the New England Insulation Company. He was doing the same type of work there. That is the work she has described here. She thinks he worked at the New England Insulation Company quite a while. It must have been over two years. Her husband went to work for the A.W. Bancroft Company directly after his employment at New England Insulation Company. There was no layoff period or anything of that nature. He went to work for the Bancroft Company within a week after his leaving the New England Insulation Company. Asked, can you recall for whom he worked before he worked for the New England

Entirely (new)

Insulation Company, witness replied there was a whole list of them, I can not give them in order, I don't know if I could give them all. Before he worked for the New England Insulation Company he worked for the Insulation Company of New Jersey. There he did the same type of work that he did for New England Insulation Company, A. W. Banoreft Company and Armstrong Company. He may have worked for the Insulation Company of New Jersey about a year.

During her husband's lifetime he did the same type of work as she has described here this morning; that was his trade, in other words. He had been engaged steadily at that trade during their married life except during the depression. During the depression he was out of work six years. They were married December 25, 1930. Her husband was working at that time sometime in the early Thirties he was out of a job. In the late Thirties he resumed working again at the type of work she has described. She read in the paper that the Mr. Banoreft for whom her husband worked had died. She understood that the Mr. Banoreft for whom her husband worked had a small shop. Her recollection is that the day her husband stopped working for the A. W. Banoreft Company he then started to work for the Armstrong Company the next day. He did not have occasion to wash his clothes while he was up Fort Kent. Her husband did not send them home, Ashed, and you don't know of your own knowledge under what conditions he worked while at Fort Kent, witness replied, just what he told me. When she told this morning about the conditions under which her husband worked that was something her husband told her. She did not follow him around.

TO COUNSEL FOR THE TRAVELERS: Her husband brought his overalls every two weeks for her to wash. She is positive of that. He used to leave the overalls in his tool kit when he did not bring them home. Ashed, when you testified this morning as to the condition of his overalls, only saw those overalls once every two weeks, more or less, witness replied, yes. After her husband saw the doctor on February 21st or 22nd he went to work for the Banoreft Company. He continued to work for this company until March 19, 1952. The next day he went to work for the Armstrong Company. From the time he saw the doctor in February 1952 up until he saw the doctor in April 1952 when he stopped working, she observed that he was different, he was irritable, at times he was not eating good, he was not sleeping good. Ashed, anything else, witness replied, just was not feeling good, he was not himself. Ashed, was he complaining to you about anything during the period from February 21 or 22, 1952, witness replied, he was not of his chest. Ashed, what did he complain about in his chest, witness replied, one morning he got up and went to the bathroom and came back holding his chest tightly, he said it couldn't breathe, can't breathe. Ashed, you testified he started to get out of breath in January 1952, witness replied, I meant he found it harder to breathe. Ashed, what did you observe about him during that period from February 21 to April 25th, anything else, witness replied, I don't know. Ashed, is that the condition you observed him to be in from February 21 to April 25, 1952, witness replied, yes. Ashed, you're sure this was the condition he was in from February 21st to April 25th, witness replied, yes. Ashed, no question about it at all, witness replied,

DR. HARRIET L. HARDY, called and questioned by counsel for claimant, testified her professional address is Massachusetts General Hospital, Medical Department of M.I. She is a physician and licensed to practice medicine in the Commonwealth of Massachusetts. Ashed if she has a particular speciality in the field of medicine, witness replied she makes a special study of occupational diseases. Ashed if she holds any position with regard to that speciality, witness replied, yes, I have charge of the occupational medical clinic and at M.I. I am assistant medical director in charge of the occupational medical service. Ashed if in that field her work is primarily one of treating patients or primarily one of research, witness replied, it's a combination of both the features. In connection with her speciality she deals with diseases of the chest. The decedent in this case was a patient of hers at Massachusetts General Hospital. She first saw him on June 23, 1952 at her office. At that time she received a history from him. Ashed to tell the history she received, witness replied, he gave her a history of gradual onset of coughing in the morning causing him to vomit in January 1952 without other symptoms. In answer to counsel for Travelers witness stated this history is in her

Rothwell (dec'd)

personal records), he kept working for three weeks in spite of this cough, he was told to stay home by his family physician who said he had the grippe, then began to have severe pain in the left shoulder blade - worse in the morning, better when he moved around, much worse at night, there was increase in cough and about this time he began to be aware of increasing shortness of breath, he dated that as about March 1, 1952, it so troubled him that he had to do something about it, about April 1, 1952 he went to his physician in Dorchester, Dr. Edward Hogan, and she has talked with him. She got her history from the patient. She got the history and then did the physical and then talked with Dr. Hogan. The patient gave her the history of Dr. Hogan telling him after his x-rays that his lung collapsed (counsel for Travelers objected to this being admitted, his exception is saved. - counsel for Union also objected to this being admitted and his exception is saved.) Her history continues that from this period of time in April 1952 the patient had been taking penicillin and iron and sulphur drugs, he had some constipation and a burning sensation in the left armpit, he reported a weight loss of 16 pounds since January, a shortness of breath that he noted beginning in March. He was getting worse when seen in March, his appetite was fair, the medical history that he gave insofar as it was important was that he had bronch 8 years ago, he had had slight sinus infection with some coughing but nothing severe enough to keep him out of his work, he had always taken a time to time in community surveys and he was never told otherwise anything wrong, his father was thought to have tuberculosis, that diagnosis was not clear, the patient gave it to witness and the put down a question mark after it, the man smoked both pipe and cigarettes, averaging about a pack a day until his present illness, his occupational history was that he began working in a store as a clerk while still at school and he did errands at Boston Floating Hospital for two years while still at school and during the summers he was a shipper at Pilgrim Press Company, he said that about 29 years ago, when he was about 17, he worked off and on sometimes with his grandfather and with a number of companions, he said I called a heat and frost insulator and his description of that job was that he received asbestos boards, its source depending on the company with which he was working (in answer to counsel for Travelers' question as to what period of development she is now talking about witness she is talking about the history he gave her covering 29 years.) He gave no description of any specific boards, asbestos boards, I gave a description of his trade as heat and frost insulator. His job was to cut and saw and glue asbestos boards to his pipe and that was needed for insulation. Witness did a physical examination of the man when he followed him while he was in the hospital during his various admissions, witness replied, with the exception of his admission in June when I was away on my holiday, she followed him in June and he remained kept in touch with her. When he returned to the hospital after that she followed him. After his death an autopsy was performed. She had a chance to read autopsy protocol and the different autopsy material. Having in mind her contact with this case she presently has an opinion as to what the diagnosis of this man's illness was. She did testify that she followed this man throughout his entire period of hospitalization. She reviewed the autopsy protocol and saw some of the pathological material in connection with the autopsy. In addition she is familiar with the hospital record itself.

TO WERNER COMMISSIONER: She did examine this man. Her first examination was on June 23, 1952 when she discovered the man had a complete collapse of his left lower lung, he obviously had lost weight, following he had chest x-rays which she viewed with the radiologist and discovered that he not only had the collapse of his left lower lung but he had evidence of density by x-rays in the right lung. On the basis of these findings she recommended his hospitalization for diagnostic studies. He was hospitalized. These were made by her colleagues in the hospital at her suggestion, she was not there. Asked if she participated in some of them, witness replied, only to the extent of suggesting them. Her holiday came during this period and when she came back they went over material together. Asked if she supervised or controlled these studies or

Rothwell (dwe'd)

were they just merely a suggestion on her part, witness replied I supervised them to the extent of being the senior officer who is doing the recommending, there were other doctors around. The results of the studies were made available to her. Based on the history she received the physical examination she conducted, the diagnostic material which was made available to her, she arrived at a diagnosis in this case. Her diagnosis was carcinoma of the lung and asbestosis.

TO COUNSEL FOR THE CLAIMANT: Asked after she reached the diagnosis she has just testified to, did she have any further contact with the man during his period of hospitalization, witness replied, yes I did. This further contact was that she went to see him very often while he was in the hospital, consulted with other physicians about the course of treatment once the diagnosis was made and followed him came to the time of his death, she was not a witness at the autopsy but followed out very carefully what those findings were. She has personally viewed some of the autopsy material. She personally viewed a slide of the lung. In the course of her medical training she has had occasion to receive training in the field of pathology. Asked to tell what that training was, witness replied, she had the usual amount of pathology as an undergraduate, meaning she took lectures and so on, then when she was house officer at Philadelphia General Hospital she had intensive training in pathology which involves doing a great amount of autopsies, then she went on to work in the department of pathology in Cornell University making an intensive study of certain pathological problems, since that time she has had her privilege to associate with Dr. Tracy Mallory in pathology and studies of occupational diseases. Asked, do you feel that you are qualified to view these pathological slides of Mr. Rothwell's lung tissue (objection noted by counsel for Travelers and Utica, exception is noted) witness replied, yes. Asked to tell what the slides revealed (objection noted and exception saved for counsel for Travelers and Utica), witness replied, showed what is known as pulmonary fibrosis, meaning scar tissue and reaction around the bronchioles and large bronchi which are usually associated with the presence of foreign material, I saw what are known as asbestos bodies and I saw cells of malignancy (counsel for Travelers objected to the testimony about the asbestos bodies and his exception is saved). Asked to describe the asbestos bodies for the purpose of the testimony, witness replied, the asbestos bodies are small, needle-shaped bodies that take an iron stain which means that under the microscope, they vary in length and contour and are associated with the inhalation of certain silicates of which asbestos is one (counsel for Travelers objected to the testimony being admitted, exception is saved) these asbestos bodies are little of surrounded with blood pigment which have clung to the asbestos bodies during their long presence in the small bronchioles which is the part of the bronchial tree, their shape varies, depending on the length of the asbestos fibers and the length of time it's been in the bronchial tree. Asked, do you now have an opinion, based upon the evidence with this case as you have testified, as to what the disease was in the case, witness replied, yes (objection noted for counsel for Travelers and Utica and their exception is saved). Her present opinion is that this man died of bronchogenic carcinoma, secondary to asbestosis. Asked, have you an opinion as to the relationship of the asbestosis and his work as pipe coverer (objection noted by counsel for Utica and Travelers, question allowed, their exception is saved) witness replied, I said 'yes' I had an opinion, my answer is based on the length of time that this patient worked in the industry involving exposure to fine asbestos fibers during the cutting and sawing of asbestos boards, the length of time I would like to emphasize and the discovery of asbestos bodies in the lungs definitely prove the relationship between exposure to the diseased process, it's my opinion these two things fall in together - his work as pipe coverer and the disease that resulted in his death. Asked, did you ever give you at any time during the period that you saw him any specific info:

Continued (rew'd)

tion as to his work for the A. W. Baneroff Company between December 17, 1951 and March 19, 1952, witness replied, he described to me his work with the Baneroff Company as we worked backwards into his early life history and he told me that his work at the Baneroff Company was precisely the same trade as I have earlier described to you. Asked, did he give you any information with regard to dust conditions in his work for the Baneroff Company, witness replied, nothing above the grinding and sawing which I have stated previously. He did not produce any asbestos material to show how he conducted his work. Asked if she got any information from him as to whether or not the cutting and sawing of asbestos pipe covering produced any dust, witness replied, yes. He told witness that when he was cutting and sawing material that he had to fit on the pipe he often did it dry and had to use a grinding wheel of one sort or another or mechanical type of saw that he pumped with his feet or had some electrical equipment if it was a bigger company and at that time there was a good deal of dust flying around about the air, that was a kind of history she was trying to draw out of him. Counsel for Travelers objected, stating the question was asked with regard to his work at Baneroff Company and if the answer is not confined to it then he would like it taken out. Asked if she got any specific information with regard to the work at the Baneroff Company, witness replied, he talked about this at great length because except for this very brief employment at the Armstrong Company that was his most recent job, and in the discussion of the operation it was obviously the Baneroff Company he was talking about. He talked about the character of the job and he told about the times that he did not do the wet, sometimes this job was done wet. He did describe to me the operation of mixing the asbestos powder into a mud. Asked, did he describe that operation as having been performed while working between December 17, 1951 and March 19, 1952, witness replied, I have no such note. Asked, did he tell you about his work for the Armstrong Cork Company between March 20, 1952 and April 25, 1952, did he give you any specific information with regard to the character of that work, witness replied, the only note I have is that the most recent work was similar to his earlier work and I don't have the precise description of his work at the Armstrong Company being different from that of the Baneroff Company. Asked, do you have an opinion as to whether or not this employee's disease and death were directly related to his exposure to asbestos while he was employed by the Baneroff Company, witness replied, yes, I have described it in your previous answer and while in the employ of the Baneroff Company between December 17, 1951 and March 19, 1952, witness replied, yes. Asked, do you have an opinion as to whether it was related to his exposure to the same type of work that he was mentioned in your answer, witness replied, yes, I have an opinion. Asked, you're making it tough for me, no. Asked, in your previous answer you told me that you felt that his disease and death were related to the length of time that he was exposed to his work in pipe covering, witness replied, yes. Asked, do you have an opinion as to whether or not he received any additional injury to his lungs while performing his work for the Baneroff Company between December 17, 1951 and March 19, 1952, witness replied, yes, this is a medically sound observation, I do have such an opinion. Asked, do you have an opinion as to whether or not he received any additional injury to his lungs while working for the Armstrong Cork Company doing his work as you have testified to between March 20, 1952 and April 25, 1952, witness replied, yes, I have an opinion. Asked to give an opinion in regard to this additional injury to his lungs while working for the Baneroff Company, witness replied (objection noted by counsel for the Utica, stating there was no specific information as to what he did for this company, counsel's exception is saved) the history from way back up until and including the Baneroff Company gives substantial evidence of exposure to very fine asbestos dust because of the nature of the operations and the use of the asbestos board for use as insulating material (objection noted by counsel for Utica and Travelers and their exception is saved). The study of the case very clearly indicates a long-standing process, depending on the presence of asbestos fibers of varying sizes in the small bronchioles with resultant reaction around these bronchioles and what amounts to little patches of pneumonia, when these little patches of pneumonia take place parts of the lung become incompetent, they are no longer of any use, now during the exposure at the Baneroff Company he inhaled more asbestos dust of a fine enough caliber to reach the small bronchioles, he plugged the small bronchial

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which resulted in reaction (counsel for Utica objected to the description of 'small caliber of asbestos' while working for his company, question an answer admitted as being.) Asked, in answer to the previous question about this man's exposure while in the employ of the Bannock Company, is it to say for his employer between December 17, 1950 and March 19, 1952, you did not tell us anything as to the size or caliber of the particular asbestos fibers to which he was exposed, did you obtain any information from him as to that, witness replied, no. Asked, what do you base your statement to your previous answer with reference to the caliber and size of the asbestos bodies to which he was exposed while in the employ of the Bannock Company, witness replied, the answer is very simple - because of the finding of the asbestos in the lung, it had to be small enough to get there, there could be any number of them arriving at one exact moment but because of the quantity of them and the character of them which I have ascribed to you earlier as evidence of the asbestos bodies it seems reasonable, and certainly an extra number of fibers reaching that lung set up a reaction during the period I have just been describing to me, (counsel for Utica objected to the question and answer and they are admitted as being.) Asked, did you receive enough information from this man to form an opinion as to whether or not he had sustained any additional injury to his lungs during the period from March 20, 1952 to April 25, 1952, witness replied, no, I have no such thing. She does not have enough information on that. Asked, in a previous answer you testified that the bronchogenic carcinoma secondary to asbestosis, will you give us your reasons for that statement, witness replied, my reasons are based on comparison and study, experience of other cases of individuals who have had asbestosis and have died of bronchogenic carcinoma, precisely with the same clinical picture as pathological study as Mr. Rothwell and when I speak of study I refer to my knowledge of literature plus traveling in Europe and being at Saranac symposium in October 1952 at which time the whole subject of asbestosis and cancer of the lung was reviewed. She has had experience with individual cases of asbestosis and bronchogenic carcinoma other than that of Mr. Rothwell. Asked to tell what her experience has been in these other cases, witness replied, precisely the same - a long history of exposure to asbestos. Asked, do you have an opinion as to the mechanism whereby the asbestosis is causally related to the bronchogenic carcinoma, witness replied, yes. In her opinion the asbestos fiber which is small enough to reach the bronchioles is not big enough to readily plug and what happens is that during inspiration and expiration the asbestos fiber swings back and forth and acts as a mechanical irritant and, like other mechanical irritants that have produced malignancy, that is the basis for the opinion that the asbestosis caused the bronchogenic carcinoma.

TO COUNSEL FOR THE UTICA: Asked, you don't want to tell us you know what causes cancer, witness replied, in some instances I would be glad to, we have a pretty clear evidence in regard to pipe smokers, et. Asked, people found that there is a greater incidence of cancer among pipe smokers but that is just one of the factors which you have found in your studies, witness replied, yes, but if he did not smoke the pipe he would not get the cancer, that is all. Asked, is it true that you also find cancer of the lung among people who don't smoke at all, witness replied, yes. Asked, it's also true you find cancer of the lung among people for whom you did not discover in the history of their occupation or background or anything else that the lung had been irritated in any way whatsoever, witness replied, because we can't find it does not mean it does not exist. They have found cancer of the lung in such cases. It is true that her theory that irritants produce malignancy does not follow through in all cases. At the time of this man's first admission to the hospital she did not form the opinion that he had asbestosis. She was on vacation during July of that year. On June 23rd he was in her office as an outpatient, as was not confined to bed then. At that time she received the history she has stated, Mr. Rothwell was still in the hospital when she returned from her vacation in July. Asked if she made an examination of him or assisted or supervised the making of an examination of him at that time, witness replied, yes. On that particular admission he was dis-

charged on July 18, 1952. She did not prepare a discharge diagnosis at that time. Asked, was there one prepared and as part of the hospital record, witness replied, there must be. Asked, weren't you in charge of his case, witness replied, do you want to understand the administrative mechanism, that would be helpful, I am in charge of the occupational medical clinic I recommend these cases for admission for diagnostic study and treatment but they go on the ward as a regular patient and I don't 'boss' the job, I go around and help work the case out but it's not my ultimate responsibility about what is written on the chart and what is done to the patient, that is just the mechanism of the hospital. She saw the man in her office on June 23. He was later admitted to the hospital. He was admitted to the hospital with a tentative diagnosis, that is the way it is done, she sees on the record that it states 'asbestosis' with a question mark. She has the original of the hospital record. Asked, and do you find in the original record this notation under July 2nd which reads 'first Massachusetts General Hospital record of this 46-year old white male who enters with diagnosis of "possible carcinoma of lung", witness replied, yes. The question mark stands for possible, questionable. Asked, at the time of his admission to the hospital, is there any reference in the hospital record of any asbestosis that you can see, witness replied, on July 3, 1952 it says history is compatible with a diagnosis of asbestosis - these are not my notes. Asked, what I'm trying to get in this, when would you have first questionable diagnosis that was inserted there upon admission, was that be something that would come from your record as result of your examining and studying him on June 23rd, witness replied, no, I just explained to you, the administration has nothing to do with me, that is important, there are technicians, researchers and X-ray men, I don't dictate opinions to them. Asked, so if I understand you you're not responsible for any of the opinions expressed in the record itself, witness replied, I certainly am not. She studied the record carefully. Asked if there is any part of the record she disagrees with, witness replied it would be awfully queer if there were not but I don't see that enters into my opinion. She has reviewed the record. There is no treatment for the disease of asbestosis. It is a progressive disease without any treatment known to her. Asked, what would be the effect of numerous x-rays on an individual's chest with reference to this condition of asbestosis, would it aggravate it, witness replied, you're talking about the diagnosis or therapeutic radiation. The radiation was given in this case for the treatment of the cancer. She knows this man did receive therapeutic radiation. He received quite a number of them. She thinks he began to have this on his second admission - he had a lot of x-rays taken at the outpatient department. Asked, it's a fact, is it not, that therapeutic x-ray treatment would be detrimental to him insofar as the asbestosis condition is concerned, witness replied, no, I don't think one can draw any such conclusion. She does not believe that, in fact counsel gave her an idea in that shrinking of the tissue might do some good. The therapeutic xraying was done to "shrink" out the cancer cells, shrink the tissue and make the man more comfortable but no one has the slightest of treating with the idea of curing him, it was simply a case of putting off the day of death. Asked, so if the record itself indicates that the patient was treating this man for cancer from the day of his first admission that is so, witness replied, as soon as the diagnosis was made. Asked, the was made on the first admission, witness replied, I think that was made about July 10th. Asked, wouldn't therapeutic x-rays cause an increased fibrosis of the lung, witness replied, that would depend on how much of the lung was exposed to the radiation, usually this is fairly localized treatment, care being taken not to give general radiation, I could talk it over with the radiation man if you want me to. She does know if one gets enough radiation on the lung as a whole you can get pulmonary fibrosis. She doesn't feel qualified to express an opinion in this regard in this case. Asked if in the treatment of asbestosis where the bronchial tubes are reduced in size in order to alleviate that condition do they not administer a dilating drug for this, witness replied, we use it but have not been able to produce any good results with asbestosis. They did not do it in this case because there was too much carcinoma. Asked, and that was apparent to you from the outset on the first day you examined him with the collapse of the lung, witness replied, there was no question but that is what this was

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Asked, you have notes with you with reference to the history that you received from him as to the employment over the years, witness replied, I don't think these are satisfactory; they are my written or scribbled notes. She has no dates in that, she was trying to get a description of his work as heat and frost insulator. Asked if she wrote down all she got, witness replied, one does not do all that, there are a good many things that a man like this tells me that are not written down, precisely I have not got down here the exact days when he worked for this company, that company. Asked, when you first examined this man you were not interested fixing liability on a particular individual inasmuch as you were in making diagnosis, witness replied, yes. Asked, and it would be important in making a diagnosis to determine how long the individual had been employed this particular job, witness replied, it does not seem relevant when you have a history that is so long in time of exposure. She has noted that he was in a store after school in his early youth. Then while still in school he worked for two years for the Boston Floating Hospital. He worked at Poly Press as shipper also. He worked there about a year. Her next recollection that he worked at Waverly Heating for one year. Following that he did mason work, he worked off and on with his grandfather in this cement work. He then started at what he called heat and frost insulating and did it on and on for about 30 years, he cut and saved asbestos board to fit pipes, boilers, etc. She was interested in this 30 years' employment in that particular trade. Asked insofar as what he did while working for a period of 15 months for one employer or two years for another employer in that particular time when you received this history you were not too interested in finding out the details of that, witness replied, that's right. Asked, and nowhere in the record does it indicate how much asbestos he came in contact with while in the employ of the Baneroff Company and nowhere in the record does it indicate the caliber of the asbestos while working for the Baneroff Company, witness replied, yes. Working with asbestos requires one to have proper ventilation or the wearing of a mask and that it can be done safely. Insofar as her records are concerned she doesn't know what while working for the Baneroff Company he was out in the open or in a confined space, what the situation was with reference to ventilation. She saw this patient during his last admission to the hospital - the last part of November and first part of December. She was not the so-called attending physician at that time; the man was on the ward. She had nothing to do with the preparation of the death certificate; that was done by the house officer. She had nothing to do with the preparation of the final diagnosis. The diagnosis of asbestosis throughout the hospital record was questionable but that antedated the postmortem. That as the hospital record is concerned.

TO COUNSEL FOR TRAVELERS: On looking at the slides following autopsy she observed some club-shaped, brownish and bits of because of their length and contour and duration in the brownish color of lung she concluded they were asbestos fibers. Asked if she had an opinion as to whether they had been there a year or ten years, witness replied, I don't think I can give you an opinion on time. Asked, the fibers that caused the cancer which produced the death had been there no longer than a year, that is a fair statement, witness replied, that seems certainly more than likely. Asked if in her opinion that is true, witness replied, I wish I could be awfully flat-footed but I'm certainly willing to go along with you on that.

TO COUNSEL FOR THE CLAIMANT: Asked, the diagnosis of asbestosis which was placed on the hospital record on at least several occasions as being a possible diagnosis, was that confirmed by the postmortem, witness replied, yes.

TO COUNSEL FOR THE UTICA: Asked, is it a fair statement to say that you have no opinion as to how long the asbestos fibers which you saw on the slides had been in his system, witness replied, yes. Asked, and of course those would be the fibers which produced the cancer which caused his death, in your opinion, witness replied, no, you can't bring that into what I have said because the asbestos fibers move around. Asked, while they move around they will not leave the system, witness replied, yes, they will. Some of them might leave the system; they might leave at any time. She has no opinion as to how long the fibers which she saw under the slide were in the system.

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Counsel for Utica renewed his request that the questions and answers admitted as bona be stricken from the record and Commissioner in they be allowed in until the entire record had been submitted.

At the continued hearing held in this case in Boston on Friday July 31, 1953, the following evidence was reported:

APPEARANCES: L. Locke, Esquire, for Claimant.
A.J. McLaughlin, Esquire, for Utica Mutual Insurance Company.
R. Plunkett, Esquire, for Travelers Insurance Company

HELEN V. ROTHWELL, the claimant, questioned by her counsel, testified she recognizes the memorandum book which counsel has in his hand. She found that in the pocket of the coat her husband wore to work. Asked to look at the handwriting in that book and tell if she recognizes it, witness replied, yes. It is her husband's.

Counsel for claimant offered this Memorandum Book for this record as an Exhibit, stating it is a work record kept by the deceased from Monday, October 28, 1951 through February 19, 1952, that in it the employee listed from day to day the work that he did, that it is apparent this man had some sort of supervisory capacity on this job; counsel for Utica objected to the admission of this Memorandum Book; Commissioner ruled the Memorandum Book was to be admitted as an Exhibit and evidence is saved for counsel for Utica.

JOHN J. HUGHES, called and questioned by counsel for claimant testified he presently lives on Cherry Street, Dorchester. His occupation is of insulating work. He is a member of the Heat and Frost Insulation Workers' Union. He has worked as an insulating worker about 35 years. (Counsel for claimant stated he was offering this man as an expert witness on the trade of a heat and frost insulator. During this 35 years he has worked as insulator on boilers, pipes, tanks and steam. In doing this work he only had to mix up the asbestos with water - that was the only mixing he did. He has done that work himself. In that trade he had occasion to cut cylinders of prepared insulating materials. He has done that work himself. He has blocked boilers, flues and stacks himself. (Counsel for claimant again stated he offered this man as an expert witness on the trade of asbestos worker and heat and frost insulating work.) Blocking a flue was part of the insulating job. The material was not always used to block a flue. There are a certain list number of materials used for blocking a flue. Asked, what are the materials used for blocking a flue, witness replied, 85 per cent Magnesite would be one; air cell board would be another - this is just an asbestos paper; and application of magnesite cement alone without blocking. Asked, in any of these three insulating materials that you have just mentioned is asbestos used, witness replied, yes. It is used in the magnesite. Asked, the materials was used specifically in insulating, for heat saving. They also used an asbestos cement. Asked if a particular type of flue required a particular one of those four insulating materials, witness replied, yes. Asked, what would be the circumstances under which you would use the asbestos cement, witness replied, in 90 per cent of the cases you used the asbestos cement for finishing. Asked, how is that asbestos cement prepared, witness replied, it comes right from the mines. They get it in bags and drop it into a mixing box and apply water. Asked, is it the custom of the

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trade of a heat and frost insulating man and asbestos worker, is it the or of that trade that the men on the job mix this asbestos cement as they use it (objection by counsel for Utica as being immaterial, question allowed) witness replied, yes. He has done that himself.

TO THE COMMISSIONER: Asked to tell what he actually observed when this cement was mixed, witness replied, the dust naturally raises up when the cement strikes the box.

TO COUNSEL FOR THE CLAIMANT: Blocking a boiler just means applying the insulation. That is done in the same manner as blocking a flue. When blocking a boiler you generally used the insulation directly in contact with the boiler because no air space was called for but in a flue they used an air space lath to give air space when blocking it. The army used the air space. Asked, you said in answer to a previous question that 90 per cent of the time the material used in blocking a flue was this asbestos cement, would that same figure apply in blocking a boiler or would it be a different proportion, witness replied, no, it's the same thing. He would say that 90 per cent of the time they used this asbestos cement to finish in other cases they used the asbestos cement to stick the blocking to the boiler but that was not a general practice with every person. Asked to be how he would go about covering a steam pipe, witness replied, a steam pipe up to ten inches is generally stuck on with paste. The insulating material is generally magnesia. Asked, is it loose material or does it come in the form of a cylinder, witness replied, no, it's a molded material. Asked to tell what he means by that, witness replied, it comes in a molded form up approximately ten inches and then molded in segments from four to ten inches on. He means it comes pre-shaped. They do have to cut it to fit. Asked, on the material that you used is there any label on it, witness stated what the material is composed of (objection noted by counsel for Utica, question allowed and exception is saved) witness replied, yes. He only knows of four companies who manufacture this material - they are Hibbs & Materson, Johns-Manville, Phillip Carey, Everett Asbestos. Asked, is your memory sufficiently strong today so you could tell us today what appears on the labels of the molded pipe-covering produced by any of those manufacturers (objection noted by counsel for Utica, question allowed) witness replied, 85 per cent magnesia and that is all. Asked, does it say anything there about what the other 15 per cent is there, witness replied, never stated to my knowledge. Asked, what does the phrase 'blocking a boiler' refer to, witness replied, that is simply finishing the work. Asked, what is the substance that is used in that operation, witness replied, asbestos cement. Asked, what is the phrase 'finishing fittings' mean, witness replied, putting on the asbestos cement and canvassing.

TO COUNSEL FOR TRAVELERS: He didn't know Mr. Rothwell very well. He was on the same job with him but never worked directly with him. He never worked directly with him so he never saw what work he did. Asked, there are a lot of the duties on this job that are not dusty, witness replied, I would not say a lot, it's really a dusty job. Asked, when the mixing is dusty, witness replied, even the application is dusty. After you have mixed the water with the material that is in the tub, when you apply it it's wet and there is no dust, is that right, witness replied, no, there is dust when you apply it. Asked, when you mix it, witness replied, you're not applying this wet stuff to the boiler or flue, when you apply it to the magnesia block it's dusty. They put this dry material in a pail or tub and pour water on it. Then it's wet. The mixing can be done in a few minutes. Then the men who are going to use that take it to a mortar board or pail. They use a trowel. These men take some in a bucket and then apply it with a trowel. One man can mix enough for 100 men. On an average job there would be ten men. One man, in one hour, could mix enough cement for all the men for the day. So the other nine men would go to the tub and get a pail or bucket full of this material and take it to where they were working and apply it with a trowel. That is the usual way it is done.

TO COUNSEL FOR UTICA: He was not working up in Fort Kent, Maine with Mr. Rothwell; he was not on that job. He worked with him at the Lynde Housing. That may have been two years ago. It was sometime in 1931.

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There are different means of applying insulation to a boiler. There are all different types of insulation used. Asked, and whether or not in any given period of time Mr. Rothwell was using asbestos to your knowledge you don't know, witness replied, no.

TO COUNSEL FOR THE CLAIMANT: When one is applying this wet cement you're going against the dry surface and when you apply wet stuff on the dry surface you bring back the dirt. He did state the asbestos cement was used as the finishing coat. As a general rule it was used as a finishing coat on top of something else. Asked, what is the usual material that is put on before the asbestos cement, witness replied, that is 85 per cent magnesia. Asked, is that in the form of a pre-molded segment or section or is it also in the form of a wet base, witness replied, 90 per cent of the o it's in molded form. Besides the mixing of the cement which is dusty, the cutting of the material is dusty; when you're sawing it, it's dusty. Asked and would it make any difference where you were installing these molded segments as to the extent of the dust that would get on you, would some places be more dusty than others, witness replied, yes, on open construction there would be more wind. That would make it more dusty. Asked, how about installing insulation on pipes that are in the ceiling, between one ceiling and the floor above (objection noted by counsel for Utica, question admitted de bene) witness replied, I don't think that question is put correctly as far as we are concerned because between a ceiling is not so, you're not between a ceiling when you're applying that, you're open although it's between the ceiling when the job is completed, you're in the open when you apply it. The floor above is in place. Asked, you're working above against a floor, witness replied, yes. Asked, is that work more dusty than other work or less dusty, witness replied, I think the answer would be just about the same.

TO COUNSEL FOR THE UTICA: That depends on the conditions on the job.

TO COUNSEL FOR THE CLAIMANT: Asked, so if I understand your answers, there are three parts of the work that are dusty, one of it is mixing of the asbestos cement, the second is when you place the asbestos cement against the magnesia block and the third is when you cut the molded segments to put on pipes, is there any other part of the work that is dusty, witness replied, as far as dusty, now as I understand that question to be is the work dusty, yes, it's dusty, but I don't say it's dusty for all materials.

TO THE COMMISSIONER: The work was dusty when he used their material in mixing or cutting or applying.

TO COUNSEL FOR TRAVELERS: Asked, on these jobs where you are applying or this material that you were cutting, there was a considerable dust that was not as result of your materials, is that true, witness replied, that is true, I said yes. Asked, in other words on boilers that you might be working on there may be a thick coat of ordinary house or building dust, so-called, is that right, witness replied, yes. Asked, and on pipes when you were covering or repairing there might likewise be thick coating of house or building dust, witness replied, yes. Asked, and when you say the job was dusty you mean in your operations you disturbed and knocked loose some of this dust is around there, witness replied, no, in my statement... Asked, I say is that the procedure when you apply material either to a boiler or to these pipes you might disturb the dust that was on these pipes, witness replied, the answer would be 'yes'. That would fly around. Asked, when you explained that the job was dusty you meant that dust as well as other, witness replied, no, I did not in the question which was asked. As he was working there this other dust was flying around. He did say 90 per cent of the material is molded. Some of the molded material comes with cloth wrapped around the outside of it. All of it does not come that way. Asked, but your pipe material comes that way, with cloth on the outside, witness replied, no, up to approximately ten inches, yes. Asked, would you say 90 per cent of your work involved the use of material up to ten inches or what percentage would you say, witness replied, I would have to withhold the percentages, I would not know that answer. Asked, would you say

Rothwell (see'd)

majority involved material up to ten inches, witness replied, on the work I followed it has been without cloth, most of the work I have been doing has been larger work. He wouldn't know whether Mr. Rothwell worked with the larger work or with work up to ten inches. Asked, but if he did work with material up to ten inches it would be covered with cloth, witness replied, it would be. This wet cement was applied to a boiler or other object with a trowel. When that was done, it was applied only a section at a time. That answer does not apply when it is applied to the insulation on the boiler. They apply the insulation on the boiler first and then finish with the cement. Asked, on the stuff you apply directly to the boiler you put that on directly with a trowel and that is wet, witness replied, no. Asked, you put that on with blocks, witness replied, yes. After he puts the blocks on, then he puts on the wet cement. The wet cement is handled in a trowel. Then they put on one part at a time. Asked, so the only part of the boiler that you touch when you put on the wet cement with the trowel is that part which becomes wet, you don't touch any other part, witness replied, the wet cement hits one part of the boiler and invariably disturbs the dust that is on there. They cut these molded forms with a saw. Asked, and when you cut them with a saw do you usually put them down on something and saw down on them, witness replied, I would say 'no' to that question. That is usually done by laying it down on a flat surface and cutting across it. It is done like on a table and cut across. It cuts easily. Asked, and the material that you cut is usually covered with cloth, up to ten inches, witness replied, yes. Asked, you don't know whether Mr. Rothwell used any material over ten inches or not, witness replied, not definitely.

DR. JAMES STEWART ROONEY, called and questioned by counsel for claimant, testified (Qualifications admitted as pathologist) he has had the opportunity to review the record of Massachusetts General Hospital and the autopsy record of the Massachusetts General Hospital, pathology department. He has formed an opinion as to the cause of death in this case. In his opinion this man's death was caused by adenocarcinoma of the lung - that was the immediate cause of death - with extension to the heart, pleura, diaphragm, retroperitoneal lymph nodes on the left, kidneys and the lymph nodes. Asked, was there any other pathological condition this man had which was a contributing factor in his death (objection noted by counsel for Utica, his exception is saved) witness replied, there were other contributing factors. Asked, what were they in order of importance, witness replied, this man had asbestosis with pulmonary fibrosis, congestion of the liver, inflammation of the external surface of his heart, inflammation of his right lung, externally, and he had approximately a quarter of fluid in his right chest. Asked to tell what there is in the hospital record which leads him to the opinion this man had asbestosis, witness replied, in the microscopic examination of his lung tissue the characteristic nodular shaped bodies that one sees in asbestosis were present, these are diagnostic of asbestosis. Asked if he has an opinion as to whether or not there is any causal relationship between the asbestosis and the cancer from which this man died, witness replied he has. His opinion is that due to the longstanding chronic irritation, as result of the inhalation of asbestos fibers, that this is an adequate cause for the development of his cancer which led to his death. Asked, did the asbestosis itself, apart from its effect in producing the cancer, did the asbestosis itself play any part in his death at the time that he died, witness replied, I don't think so, no. Asked, I want you to assume that this employee worked for A. W. Bancroft Company between December 17, 1950 and March 19, 1952, that during that time he performed the regular duties of a heat and frost insulation worker or asbestos worker as it is ordinarily described, that this work, and specifically days during the period from October 28, 1952 and February 19, 1952 included days in which he covered steam pipes with insulation material, in which he blocked flues, days in which he blocked boilers, days in which he covered pipes, days in which he finished fittings, that in these operations he used insulating materials, included among which would be asbestos cement, he used molded insulation material and molded segments, that in connection of covering of pipes he had to cut and saw the asbestos board, that he had to cut it to fit around pipes and fittings that came with the pipes that he was covering,

that this work was dusty, that the dust included dust from the insulation materials as well as building dust which was present in a construction job, that the widow testified as fact that he coughed, that the clothes she washed contained dust particles and I want you to assume further that in January 1952 he developed the onset of a harsh, hacking cough which was worse in the morning and productive of a small amount of brownish sputum, that shortly thereafter he noticed that on exertion he was short of breath and had a sharp boring pain below the angle of his left shoulder blade, that he was out of work from February 21 to February 29, 1952 and returned home from the job which he was doing away from home and was treated for what the doctor told him was grippe, that he then returned to work for a few weeks and finally ceased work for the Bancroft Company on March 19, 1952 and went to work for the Armstrong Company from March 20, 1952 to April 2, 1952, that he continued to do the work of a heat and frost insulation worker for the Armstrong Company, that he finally stopped work in April 1952 following consultation with a physician because of these symptoms described before, namely, shortness of breath on exertion, pain below his left shoulder and cough, now, assuming those facts to be true as to his work history and the history of the onset of his symptoms, do you have an opinion as to whether or not the work this man was doing while in the employ of the A. W. Bancroft company, that would be December 17, 1950 to March 19, 1952, was an important factor in producing the asbestosis and bronchogenic carcinoma which he died, witness replied, (counsel for Utica objected, was admitted to be true, his exceptions are saved) I do. It is his opinion that sometime during 1951 this man developed a malignancy of his lung as secondary to his asbestosis, the asbestosis was a factor in causing the malignancy to start, that is as far as he can go. Asked, do you have an opinion as to whether the inhalation of dust from insulating materials in his work during 1951 was a factor, aggravating or precipitating factor, in the asbestosis and thereby of the cancer (objection noted by counsel for Utica, his exception is saved) witness replied, if he inhaled dust containing asbestos during the period of time it would aggravate his condition. Asked, do you have an opinion as to whether or not his work from March 20, 1952 up to April 25, 1952, for the Armstrong Cork Company, assuming that he inhaled dust from insulating materials at his work, including asbestos, was a factor in the asbestosis and cancer from which he died, witness replied, I have an opinion. It is his opinion that it did not play any role. Asked to give his reason for that opinion, witness replied, because he had carcinoma prior to the time and carcinoma was the cause of the death. Asked, didn't the further inhalation of the dust during the last six weeks play any part in the aggravating or worsening of the condition, witness replied, no, I don't think so. Asked, did it play any part in producing the death at the time that he died, witness replied, I don't think so.

TO COUNSEL FOR THE UTICA: Asked, you say that there was a long-standing chronic irritation due to the inhaling of fibers which you say was an adequate cause for the cancer, witness replied, that is correct. Asked, when you say long-standing chronic irritation, can you tell us how long, witness replied, I don't think anybody can tell you that; we do know that one of the causative factors in the production of malignancy is a chronic irritating process, when that begins I don't think anybody can narrow it down as to a week or a month, we know that cancer takes a certain length of time to develop, once it starts it depends on the location it depends on whether it can be removed or not, this man's cancer was too advanced to remove, they took him to the Massachusetts General and attempted to remove it and found they could not because of the advanced stage, when his cancer began I can't tell you because the line of demarcation between normal and abnormal no one ever sees, I don't think anyone can tell. Asked, so you can't say whether or not the cancer had its inception prior to March 20, 1952 or subsequent to that date, witness replied, it had its inception prior to 1952 because it was far advanced when they opened him up at the General. He cannot give a definite date on the inception of cancer in 1952. He cannot give a definite date on that for 1951. He thinks it began subsequent to 1950. Asked, so that you say that sometime in 1950 or, witness replied, either that - I would say probably 1951 from the description of the cancer. It could have been 1950. He has seen the autopsy report. Asked, this man, according to that report, had a history of having worked 29 years in the asbestosis business, have you an opinion as to when the asbestosis first commenced, witness replied, I would say the asbestosis had been present for many years. That is so because of the appearance of the lungs. Asked,

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assume that this man worked at the same job subsequent to March 20, 1952 up to April 25, 1952, doing the same sort of thing that he had done between the period of December 1950 to March 20, 1952, do you have an opinion as to whether or not the work subsequent to March 20, 1952 would be detrimental to him, having in mind the facts that it was your opinion at that time he had, first, asbestosis and, second, cancer (counsel for Travelers stated that the doctor has already answered the question) witness replied, here's a man who by 1952 was doomed to death from his malignancy, his malignancy was then far advanced, I doubt the inhalation of anything further accelerated the growth of his malignancy. Asked, do you have an opinion as to whether or not work during that period of time was detrimental to him (objection noted by counsel for Travelers, doctor allowed to answer the question) witness replied, there are certain patients with malignancy that you advise continuing their job and working until the day they die, there are other patients who completely collapse once you tell them they have malignancy and never return to work, I don't think the work factor plays much of a role in the advancement of malignant disease. Asked, the malignant disease was aggravated was it not, by the inhalation of asbestos after the malignant disease had started in his system, was it aggravated by the asbestos dust, in your opinion, witness replied, I think that once his malignancy began, that for period of possibly four or five or six months following the beginning of his malignancy he might have accelerated the growth a little bit by inhaling more of the factor that was one of the causative agents in his malignant condition, the malignancy once it started was not aggravated too much by the further inhalation of asbestos, that is in and of itself, in substance it's not known to cause death per se. Asked, asbestosis, witness replied, yes. Asked, but your answer was that it was not aggravated very much, witness replied, I don't think it was aggravated very much by his work after his malignancy started. Asked, but it might have been aggravated somewhat, witness replied, slightly.

TO COUNSEL FOR TRAVELERS: Asked, did I understand you to say in your opinion the man's work from March 20th until the date he finally stop work, such as asbestos as he might have inhaled, if any, played no part in either the aggravation or acceleration of the disease nor did it bring about his death sooner than it otherwise would have occurred, is that a correct statement, witness replied, that is correct.

Counsel for Travelers made a motion the claim against them be dismissed. The motion was taken under advisement.

Counsel for claimant requested the Autopsy Report of March 20, 1952 - Unit Number 778205 - be made part of this record. This is done by reference and may be found in the Board file. The anatomic diagnosis report thereon are: Bronchogenic adenocarcinoma, left lower lobe with extension to left upper lobe, heart, pleura, diaphragm, and retroperitoneal tissue on left and metastases to right lung, adrenals, kidneys, and hilar lymph nodes; left supraclavicular and para-aortic lymph nodes; Asbestosis with moderate pulmonary fibrosis; Hepatic congestion, moderate; Pericarditis, fibrous, Pleuritis, right; Pleura effusion, right (800 cc.); (Pulmonary osteoarthritis, mild).

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MEMBER'S DECISION

This hearing was held to determine whether the employee suffered a personal injury arising out of and in the course of his employment and if so, whether his death was causally related to said injury.

The claim was brought against two insurers - Utica Mutual Casualty Company which covered the A. W. Bancroft Company and Travelers Insurance Company which covered the Armstrong Cork Company.

The employee worked for the A. W. Bancroft Company from December 17, 1950 to March 19, 1952 and he worked for the Armstrong Cork Company from March 20, 1952 to April 25, 1952.

There is evidence in this record upon which I find that this 46-year old decedent, with a 29-year work history as an asbestos worker, was last employed as a pipe cutter, and heat and frost insulator for the two aforementioned companies. This work with the two insured firms entailed the handling and installation of asbestos in the covering of pipes and also as an insulator against heat and frost, in various forms and under various conditions.

There is evidence upon which I find that the decedent's work exposed him to the inhalation of asbestos dust. I find he did inhale these particles.

It is also a fair and reasonable inference--and I so infer--that asbestosis is a disease contracted only by people who are exposed to the inhalation of asbestos fibers in their work. It is common knowledge that persons who are not so exposed do not suffer from this progressive disease for which there is no known cure.

There is additional evidence that the employee died in December 1952 and the further evidence upon which I find that death was due to bronchogenic carcinoma, secondary to asbestosis.

I accept and adopt the opinion of Dr. Harriet L. Hardy, under whose supervision the decedent was treated during his entire period of hospitalization and who had an opportunity to review the entire autopsy protocol and who saw some of the pathological material in connection with the autopsy. Dr. Hardy testified--and I so find--the work the decedent

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performed as a pipe cutter and heat and frost insulator and the disease resulted in his death "fall in together".

I accept and adopt the opinion of Dr. James Stewart Rooney, a pathologist, who testified "that sometime during 1951 (when he was working for A. W. Bancroft Company) this man developed a malignancy of his lung as secondary to his asbestosis, the asbestosis was a factor in causing the malignancy to start."

I find, therefore, that the asbestos dust which the employee inhaled at his work resulted in asbestosis. This, I find, constitutes a personal injury arising out of and in the course of his employment. I find further that the asbestosis caused a lung malignancy which resulted in his death on December 3, 1952.

The fibers that caused the cancer which produced the death of the employee had been in the employee's lungs much longer than a year in the opinion of Dr. Hardy. "That is a fair statement," Dr. Hardy testified, adding, "that seems certainly more than likely, and I so find."

This considered medical opinion would certainly relieve the last insurer of any responsibility for the payment of compensation since it was in the year of his death that the employee commenced work for the second insured.

This opinion, too, is shared by Dr. Rooney. He testified, and I so find, that "the man's work from March 20 until the date he finally stopped work, such asbestos as he might have inhaled, if any, played no part in either the aggravation or acceleration of the diseases nor did it bring about his death sooner than it otherwise would have occurred."

Dr. Rooney, who is prominent in the field of pathology and whose qualifications were admitted here, testified it is his opinion the cancer started "subsequent to 1950. * * * I would say probably 1951 from the description of the cancer." I accept and adopt Dr. Rooney's opinion and so find. The decedent was in the employ of the A. W. Bancroft Company, the first insured, throughout all 1951.

I find, therefore, that the industrial injury which resulted in a lung cancer and caused the employee's death is causally related to his

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employment with the A.W. Bancroft Company, covered by the Utica Mutual Casualty Company.

There is evidence in the record that the employee's last workday was April 25, 1952. Between the cessation of his employment and his death he was three times confined to the hospital and in addition to these three confinements received out-patient care.

There is no evidence to the contrary and so I infer and find that the employee was totally incapacitated for work between April 26, 1952 and December 2, 1952 due to the aforementioned compensable industrial injury, namely lung cancer. The Utica Mutual Casualty Company is directed to pay total incapacity compensation for the above-mentioned period, at the rate of \$30.00 a week, plus \$15.00 a week for dependency, in the total sum of \$1420.71. (See Atamian's Case, 265 Mass. 52)

The Utica Mutual Casualty Company is further directed to pay the claimant widow the sum of \$20.00 weekly dependency compensation, from December 3, 1952 to date and continuing, subject to the provisions of the Act. The sum of \$905.71 is due to the filing date of this decision.

The Utica Mutual Casualty Company is also directed to pay the claimant widow the sum of \$25.00 weekly dependency compensation for the care and support of five minor children in accordance with the provision of the Act. The sum of \$1132.14 is due in weekly compensation benefits for the children to the filing date of this decision.

The total sum due the claimant widow under this decision to the filing date, October 16, 1953, is \$3458.56 which the Utica Mutual Casualty Company is directed to pay forthwith.

The Utica Mutual Casualty Company is also directed to pay the claimant widow the additional sum of \$300.00 under Section 33 of the Act.

The Utica Mutual Casualty Company is ordered to make the payment of \$500.00 to the State Treasury in accordance with Section 9A of the Act.

I find equity and justice required the testimony of Messrs Ha and Rooney and they are each entitled to \$50.00 under the provisions of Section 9A of the Act.

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The claim against the Travelers Insurance Company is hereby
denied and dismissed.

Hugh J. Golden
HUGH J. GOLDEN

INDUSTRIAL ACCIDENT BOARD

FILED

Friday, October 16, 1953
9 am *Edward Dwyer*

SECRETARY

23695 & 23696
EPD/cmg

WORKMEN'S COMPENSATION ACT
INDUSTRIAL ACCIDENT BOARD
Boston, Massachusetts

Richard J. Rothwell (dec'd)
A. W. Bancroft Company
Utica Mutual Casualty Company

Employee
Employer
Insurer

Armstrong Cork Company
Travelers Insurance Company

Employer
Insurer

FINDINGS AND DECISION OF THE REVIEWING BOARD

The Utica Mutual Casualty Company, having filed a claim for review, the within-named Reviewing Board heard the parties at Boston, Massachusetts, on Monday, December 14, 1953.

PRESENT: Miss Hicks (presiding), Messrs. D'Agostino and Kolofolias.

APPEARANCES: Laurence Locke, Esquire, for the claimant.
A. J. McLaughlin, Esquire, for Utica Mutual Casualty Company.
Robert Plunkett, Esquire, for Travelers Insurance Company.

ISSUES: As stated in the report of the single Member.

The report and decision of the single Member and this report and decision of the Reviewing Board contain the evidence and constitute the record.

Counsel for the parties agreed to proceed before a Reviewing Board of three Members, notwithstanding a long continued practice of constituting Reviewing Boards of not less than five Members in fatal cases.

Counsel for the Utica Mutual Casualty Company presented to the Reviewing Board a "MOTION TO STRIKE" reading as follows:-

MOTION TO STRIKE

Now comes the Utica Mutual Insurance Company, insurer of the A. W. Bancroft Co., and moves that the "Claimants Memorandum of Law" be stricken from the record on the ground that no leave was given by the reviewing board under Rule 5, No. 5, to file briefs late.

By its attorneys,

(sgd) Arthur J. McLaughlin
Darling & McLaughlin

The Reviewing Board find it not necessary to pass on the above quoted motion other than to comment that the "Claimants Memorandum of Law" referred to therein while in the nature of a "Brief" though not so styled, is not part of "the record"; the Utica Mutual Casualty Company ought not to be heard to complain since it had equal opportunity with the claimant to file brief seasonably, or thereafter as allowed in the discretion of the Reviewing Board.

Counsel for the Utica Mutual Casualty Company presented to the Reviewing Board "Exceptions to Rulings relied on by the Utica Mutual Casualty Company" and this paper is made part of this record by reference.

The Reviewing Board sustain the Rulings of the single Member in relation to the admission or exclusion of evidence, in each and every particular to which the exceptions of the Utica Mutual Casualty Company referred.

The Reviewing Board, on consideration of all the material evidence, affirm and adopt the findings and rulings of the single Member, excepting those relating to incapacity and dependency compensation and the rates and awards fixed in relation thereto, as set forth in the first four paragraphs on page 20 of the single Member's decision, and in place of which the Reviewing Board find and determine as follows:-

The Reviewing Board find that the employee's death on December 3, 1952, was causally related to a personal injury, to wit, asbestosis and bronchogenic carcinoma, resulting from exposure to and inhalation of asbestos fibers in the service of the A. W. Bancroft Company later than March 19, 1952, and which date, we find, the employee's injury to have been received and which injury caused him to be totally incapacitated for work from April 25, 1952, until his death therefrom on December 3, 1952, as stated.

The Reviewing Board find that the claimant widow is entitled to receive from the Utica Mutual Casualty Company, for her own use and benefit, and the benefit of the five dependent children of the claimant and the deceased employee, weekly dependency compensation at the rate of \$45, dating from April 25, 1952, and continuing, subject to the provisions of the Act. The amount of such compensation due and payable to the claimant widow to April 23, 1954, is \$4,680, which amount is ordered to pay to her forthwith.

The Reviewing Board order further that said insurer pay to the claimant widow the sum of \$300 toward the reasonable expense of burial of the deceased employee pursuant to the provisions of G. L., Chapter 152, section 33, as amended.

The Reviewing Board, acting pursuant to the provisions of G. L., C. 152, section 10, as amended by C. 208 of the Acts of 1930, assess the costs to the injured employee of this review including reasonable counsel fee, against the Utica Mutual Casualty Company in the sum of \$75, and order that the Utica Mutual Casualty Company make payment therefor by check payable jointly to Helen V. Rothwell, the claimant, and Laurence Locke, Esquire, her attorney, and mailed directly to the claimant.

The Reviewing Board order further that said insurer pay fees of \$50 each to James Stewart Rooney, M. D., and Harriet L. Hardy, M. D., pursuant to the provisions of G. L., Chapter 152, section 9A, as amended.

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Rothwell

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The Reviewing Board order further that said insurer pay the sum of \$500 into the special fund in the custody of the State Treasurer pursuant to the provisions of G. L., Chapter 152, section 65H, sending check in payment therefor to the Industrial Accident Board, Attention of its Bookkeeper, to enable deposit of said sum in said fund through fiscal records.

The Reviewing Board dismiss the claim made as against the Travelers Insurance Company.

Mary F. Hicks
Mary F. Hicks

Paul A. D'Agostino
Paul A. D'Agostino

Elias C. Korofolias
Elias C. Korofolias

INDUSTRIAL ACCIDENT BOARD

FILED

Forwarded by Special Agent
Edward Dwyer

SECRETARY