

FILE NAME: Metalclad (METC)

DATE: 1959

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DOCUMENT DESCRIPTION: WC Petition- Riley, James

JAMES WHITCOMB RILEY,)
(
Applicant,)
(
vs.)
(
JOHNS-MANVILLE, INC., a)
Corporation, et al.,)
(
Defendants.)
(

APPLICATION FOR HEARING AND
PETITION FOR REAPPORTIONMENT
AND DETERMINATION OF ADDITIONAL
AND MULTIPLE LIABILITY AND
RESPONSIBILITY UNDER LABOR CODE
SECTION 5500.5.

STATEMENT OF FACT AND ALLEGATIONS

- 1 -

defendants but denied by Order of the Southern Panel of the Industrial Accident Commission on February 4, 1960.

That on or about March 3, 1960, applicant made an election against your Petitioner only, as among those held jointly and severally, liable to pay said Findings and Award which payments in fact have been made and continue to be made,

That your Petitioner has complied with and continues to comply with said Findings and Award. Also that to date your Petitioner has paid \$7400.00 in temporary total disability and \$1376.17 for medical treatment.

FIRST, THAT APPORTIONMENT OF THE ABOVE MENTIONED LIABILITY AND RESPONSIBILITY BE ALLOWED AS BETWEEN THOSE PARTIES HELD JOINTLY AND SEVERALLY LIABLE UNDER THE ORIGINAL FINDINGS AND AWARD BUT AGAINST WHOM NO ELECTION FOR PAYMENT WAS MADE.

Briefly, your Petitioner respectfully requests that further proceedings be had to determine the extent of liability and responsibility under the Compensation Laws of the State of California of the various jointly and severally liable defendants who, as yet, have not been compelled to satisfy any part of said Findings and Award.

As said parties are already joined in this matter, and their employment-coverage relationship already adjudicated, your Petitioner asks that these parties be again joined only if necessary and be given notice of said proceedings so as to determine their proportionate liability:

SECOND, THAT THE FOLLOWING PARTIES EMPLOYER AND COMPENSATION CARRIER BE JOINED AS PARTIES DEFENDANT SO THAT THEIR RESPECTIVE PROPORTIONATE LIABILITY AND RESPONSIBILITY CAN BE JUDICIALLY DETERMINED.

It is respectfully asserted that the applicant herein also sustained the industrial injury as alleged herein while in the employ of the following employers for the following periods and under the following compensation insurance coverage (see also attached letters of California Inspection Rating Bureau and Social Security Administration, marked as Exhibits B & C).

EMPLOYER	APPROXIMATE PERIOD OF EMPLOYMENT	COMPENSATION CARRIER
1. Warren & Bailey Co. 3528 So. Garfield Los Angeles, Calif.	1925-1927	Unknown
2. Plant Rubber & Asbestos Company 2741 So. Yates Ave. Los Angeles, Calif. (believed merged w/ Thorpe Insulation Co. same address)	1929-1934 and 1938	Unknown
3. Weston Asbestos Co. 675 Townsend Street San Francisco, Calif.	Fourth quarter 1937, First quarter 1938	State Compensation Insurance Fund. Policy Nos. 9322436, 9322437, 9322438
4. M. R. Carpenter 907 Front Street Sacramento, Calif.	May 1938	State Compensation Insurance Fund
5. Plant Rubber and Asbestos Works 937 Binnon Street San Francisco 7, Cal. aka Fibre Board Paper Products Corp., and Parriffine Co., Inc. (same address)	1933-1946, irregular	Permissibly self- insured; Pacific Indemnity Company
6. Earl O. Stice Company 852 West Doran Street Glendale, California	1946	Unknown
7. C. R. Dutton, C.A. Leighton, Weston Fibre Glass Supply, Ltd. 739 Bryant Street San Francisco 7, Calif.	1946	Industrial Indemnity Exchange Policy Nos. 449833, 4460714
8. Marine Engineering & Supply Company 914 E. Second Street Los Angeles 12, Calif. (believed merged with Cwens-Fibre Glass Co., 5933 Telegraph Avenue Los Angeles, California)	Irregular 1946-1951	Pacific Employers Insurance Company
9. Roderick Lynch, dba Lynch Asbestos Company 2152 Sacramento Street Los Angeles 21, California	1947-1948	Industrial Indemnity Company Policy Nos. 6473-01137, 6483-01145
10. Warren & Bailey Company 350 So. Anderson Street Los Angeles, California	1947	State Compensation Insurance Fund
11. United Cork Company Kearney, New Jersey	Second quarter 1948	Liberty Mutual Insurance Company

EMPLOYER	APPROXIMATE PERIOD OF EMPLOYMENT	COMPENSATION CARRIER
12. Plant Insulation Co. 2741 So. Yates Ave. Los Angeles 22, Calif. (now known as Thorpe Insulation Company, same address)	1948-1955 Intermittently	Pacific Employers Insurance Company Fireman's Fund Insurance Company
13. Cork Insulation Co., Inc. Fourth quarter 1948 155 East 44th Street New York 17, New York		Unknown
14. J. T. Thorpe, Inc. 948 E. Second St. Los Angeles 12, Calif.	First quarter 1949; 1956-1957	Pacific Employers Insurance Company American Motorist Insurance Company
15. Neindt Cork Company 7101 Tonelle Ave. North Bergen, N. J.	First and second quarters 1950; Fourth quarter 1952	Unknown
16. Metal Clad Insulation Company 1759 Western Ave. Torrence, Calif.	Second & third quarter 1950	The Aetna Casualty & Surety Company
17. J. T. Thorpe & Sons, Inc. Fourth quarter 1950 1351 Ocean Avenue Emoryville, Calif.		Unknown
18. Oil Field Construction Co. of Bakersfield 2650 Cherry Ave. Long Beach 6, Calif.	Second & third quarter 1951	The United Pacific Insurance Company Policy No. TCW 13353
19. E. J. Bartells Company 12 - 26th Avenue S. Seattle 4, Washington	Third quarter 1951	Associated Indemnity Company Policy Nos. C-47-3752 & 47-6597
20. Armstrong Cork Company Liberty & Charlotte Sts. Lancaster, Penna.	Fourth quarter 1951 " " 1953, 1954	Standard Accident Insurance Company The Travels Insur- ance Company
21. Isothein Company 2100 Union Avenue Bakersfield, Calif.	First & Second quarter, 1952	Industrial Indemnity Company Policy Nos. 6515-01404 and 6525-01112
22. Jamar & Olneh Co. 320 North Handling Chicago 24, Illinois	Second, third & fourth quarter 1952	The Employers Mutual Liability Insurance Company
23. Asbestos Products Co. P. O. Box 988 San Diego, California	Fourth quarter 1952	State Compensation Insurance Fund
24. United Refractory Construction Co. 1201 Bankville Road Pittsburgh, Penna.	First quarter 1953	Liberty Mutual Insurance Company
25. Philip Carey Mfg. Co. Lockland Cincinnati, Ohio	Third quarter 1952 First quarter 1953	General Accident, Fire & Life Insurance Corp.

EMPLOYER	APPROXIMATE PERIOD OF EMPLOYMENT	COMPENSATION CARRIER
26. Reese Insulation Co. 6025 District Blvd, Los Angeles 22, Calif.	Fourth quarter 1952 First quarter 1953	Argonaut Insurance Policy No. 50638
27. Owens-Corning-Fibre Glass Corporation Toledo, Ohio	Fourth quarter 1954	The Aetna Casualty & Surety Company
28. Coast Insulation Products Corp. 2316 San Fernando Rd. Los Angeles, Calif.	Fourth quarter 1954, First, second and Fourth quarter 1955, First quarter 1956	Guarantee Insurance Company Policy UC-206829 & C-514978; Argonaut Insurance Exchange Policy Nos. 86736 and 95792
29. Los Angeles Cork Co. 4180 E. Washington Blvd. Los Angeles, Calif.	Second quarter 1955, Third quarter 1955	National Automobile & Casualty Co. Policy Nos. C547121 and C572258
30. Johns-Manville Sales Corporation 22 East 40th Street New York 16, N. Y.	Third quarter 1955	The Travelers Insur- ance Company Policy Nos. 3955647 & 4979820
31. Totman, Morgan Company 122 So. Michigan Ave. Chicago 3, Illinois	First, second and Third quarters 1956	The Employers Liabi- lity Assurance Corp. Ltd. Policy Nos. WC 3119719 & WC31148253
32. Mountain State Construction Co. P. O. Box 7586 Denver, Colorado	Second quarter 1957	Unknown

It is therefore respectfully requested that all of the above named employers and carriers be joined, if not already joined in this action, as parties to said action.

Further, the requested joinder is listed below:

1. Warren & Bailey Company, 3528 So. Garfield, Los Angeles, Calif.
2. Plant Rubber and Asbestos Company, 2741 So. Yates Ave., Los Angeles
3. Thorpe Insulation Co., 2741 So. Yates Ave., Los Angeles, Calif.
4. Weston Asbestos Co., 675 Townsend St., San Francisco, California
5. M. R. Carpenter, 907 Front Street, Sacramento, California
6. State Compensation Insurance Fund, 600 So. Lafayette Park Pl., L.A.
7. Plant Rubber and Asbestos Works, 937 Binnon St., San Francisco 7
8. Fibre Board Paper Products Corp., 937 Binnon St., San Francisco 7
9. Parrifine Co., Inc., 937 Binnon St., San Francisco 7, California
10. Earl O. Stice Co., 852 West Doran Street, Glendale, California
11. C. R. Dutton, C. A. Leighton, Weston Fibre Glass Supply, Ltd.,
739 Bryant Street, San Francisco 7, California

12. Industrial Indemnity Exchange, 350 Sansome St., San Francisco
13. Marine Engineering Supply Co., 914 E. Second St., Los Angeles 12
14. Owens-Fibre Glass Co., 5933 Telegraph Ave., Los Angeles, Calif.
15. Pacific Employers Insurance Company, 1033 So. Hope St., Los Angeles 15
16. Roderick Lynch, dba Lynch Asbestos Co., 2152 Sacramento St., L.A.
17. Warren & Bailey Co., 350 So. Anderson St., Los Angeles, California
18. United Cork Company, Kearney, New Jersey
19. Plant Insulation Co., 2741 So. Yates Ave., Los Angeles 22, Calif.
20. Thorpe Insulation Co., 2741 So. Yates Ave., Los Angeles 22, Calif.
21. Fireman's Fund Insurance Company, 3440 Wilshire Blvd., Los Angeles
22. Cork Insulation Co., Inc., 155 East 44th Street, New York 17, N.Y.
23. J. T. Thorpe, Inc., 948 E. Second St., Los Angeles 12, Calif.
24. American Motorist Insurance Co., 3545 Wilshire Blvd., Los Angeles 5
25. Neindt Cork Co., 7101 Tonnelle Ave., North Bergen, New Jersey
26. Metal Clad Insulation Co., 1759 Western Ave., Torrance, Calif.
27. The Aetna Casualty & Surety Co., 810 So. Spring St., Los Angeles 14
28. J. T. Thorpe & Sons, Inc., 1351 Ocean Ave., Emoryville, California
29. Oil Field Construction Co. of Bakersfield, 2650 Cherry Ave.
Long Beach 6, California
30. The United Pacific Insurance Company, 616 S. Shatto Pl., L. A.
31. E. J. Bartells Co., 12 - 26th Ave., S., Seattle 4, Washington
32. Associated Indemnity Company, P.O. Box 2133, Los Angeles 54, Calif.
33. Armstrong Cork Company, Liberty & Charlotte Sts., Lancaster, Penn.
34. Standard Accident Insurance Company, 548 So. Kingsley Dr., L.A.
35. The Travelers Insurance Company, 510 West Sixth St., Los Angeles
36. Isothein Company, 2100 Union Avenue, Bakersfield, California
37. Jamar & Olneh Company, 320 North Handling, Chicago 24, Illinois
38. The Employers Mutual Liability Assurance Co., Ltd., 639 S. New Hampshire
Los Angeles, California
39. Asbestos Products Co., P.O. Box 988, San Diego, California
40. United Refractory Const. Co., 1201 Bankville Road, Pittsburgh, Pa.
41. Philip Carey Mfg. Co., Lockland, Cincinnati, Ohio
42. General Accident, Fire & Life Insurance Corp., 3535 W. 6th St., L.A.
43. Reese Insulation Co., 6025 District Blvd., Los Angeles 22, Calif.
44. Argonaut Insurance Company, 1001 Wilshire Blvd., Los Angeles 17
45. Owens-Corning-Fibre Glass Corp., Toledo, Ohio

46. Coast Insulation Products Corp., 2316 San Fernando Rd., L. A. 65
47. Guarantee Insurance Company, 1671 Wilshire Blvd., L. A., Calif.
48. Los Angeles Cork Company, 4180 E. Washington Blvd., Los Angeles
49. National Automobile & Casualty Company, 639 So. Spring St., L.A.
50. Johns-Manville Sales Corp., 22 East 40th St., New York 16, N.Y.
51. Liberty Mutual Insurance Co., 714 So. Hill St., Los Angeles
52. Totman, Morgan Company, 122 So. Michigan Ave., Chicago 3, Illinois
53. Industrial Indemnity Co., P. O. Box 2252, Los Angeles
54. Mountain State Construction Co., P. O. Box 7586, Denver, Colorado

It is therefore respectfully requested that the above mentioned parties be joined as parties defendant and the matter set for further hearing at the first date available to the Industrial Accident Commission.

Please be advised that copies of this Petition and the attached documents thereto have concurrently been served upon all parties already joined or requested to be joined concurrent with the filing of this Petition.

Dated this 18th day of November, 1960.

Respectfully submitted,

HERLIHY & HERLIHY

By

George D. Thompson
George D. Thompson

I, the undersigned, say: I am the attorney for Petitioner in the above entitled action; I have read the foregoing Application for Hearing and Petition and know the contents thereof; and that the same is true of my own knowledge, except as to matters which are stated upon my information and belief, as as to those matters that I believe it to be true.

I certify and declare under penalty of perjury that the foregoing is true and correct.

Executed on November 18, 1960 at Los Angeles, California.

George D. Thompson
George D. Thompson

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

CASE NO. 57-L.A. 182-835

JAMES WHITCOMB RILEY,

Applicant,

vs.

JOHNS-MANVILLE, INCORPORATED, a corporation; SOUTHERN ASBESTOS & MAGNESIA CORPORATION, a corporation; ASBESTOS COMPANY OF CALIFORNIA: PLANT RUBBER & ASBESTOS COMPANY; LOS ANGELES RUBBER COMPANY; MARINE ENGINEERING COMPANY, a corporation; FIBERGLASS ENGINEERING & SUPPLY COMPANY, a corporation; ROBERT O. LYNCH, an individual, doing business as Lynch Asbestos Company and LYNCH ASBESTOS COMPANY, a corporation; PLANT INSULATION COMPANY, a corporation; COAST INSULATION PRODUCTS, a corporation; ARMSTRONG CORK COMPANY, a corporation; J. T. THORPE, INC., a corporation; WARREN AND BAILEY; TOTMAN-MORGAN COMPANY; OWENS-CORNING FIBERGLASS COMPANY, PACIFIC COAST DIVISION; PLANT INSULATION AND THORPE COMPANY;

EMPLOYERS LIABILITY ASSURANCE CORPORATION, LTD. of LONDON, ENGLAND, a corporation; THE TRAVELERS INSURANCE COMPANY, a corporation; ASSOCIATED INDEMNITY COMPANY, a corporation; FIREMAN'S FUND INDEMNITY COMPANY, a corporation; AETNA CASUALTY & SURETY COMPANY, a corporation; INDUSTRIAL INDEMNITY COMPANY, a corporation; EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN, a corporation; GUARANTEE INSURANCE COMPANY, a corporation; ARGONAUT INSURANCE COMPANY, a corporation; AMERICAN MOTORISTS INSURANCE COMPANY, a corporation; ZURICH INSURANCE COMPANY, a corporation; PACIFIC EMPLOYERS INSURANCE COMPANY, a corporation,

Defendants.

FINDINGS AND AWARD,
ORDER DENYING LIEN
CLAIMS AND ORDER
DISMISSING PARTY
DEFENDANT

Hays and McLaughlin, by John F. McLaughlin,
applicant's attorneys

Herlihy & Herlihy, by Kennis T. Jones, attorneys
for Argonaut Insurance Co., Phoenix Indemnity
Co., Fireman's Fund Indemnity Co., Industrial
Indemnity Co., and Employers Liability Assur-
ance Corp., Ltd. of London, England

Clopton and Penny, by R. Wriesner, attorneys for
Pacific Employers Insurance Co.

Tipton & Weingand, by C. Weingand, attorneys
for Associated Indemnity Corp.

Spray, Gould and Bowers, by M. W. Bralley, Jr.
attorneys for Employers Mutual Liability
Insurance Co. of Wisconsin and Guarantee
Insurance Co.

F. E. Carignan, representative for American
Motorists Insurance Co.

Joseph Bilchak, representative for The Travelers
Insurance Co.

* * * *

An Application having been filed herein and all
parties having appeared and the matter having been regularly submitted
for decision, GEORGE A. MARTINELLI, Referee, makes his Findings and
Award, Order Denying Lien Claim and Order Dismissing Party Defendant
as follows:

FINDINGS OF FACT

1. James Whitcomb Riley, born October 23, 1899, while
employed as an insulator by various employers in the State of
California, commencing in the month of January, 1920 continuing
through May 19, 1957, sustained injury arising out of and occurring
in the course of his employment as follows: In the performance of
his occupational duties, the applicant was exposed during each and
every day of his employment to deleterious dusts, the accumulative
effects of which resulted in a pneumoconiosis and tuberculosis which
rendered the applicant totally disabled on May 19, 1957.

2. The names of the employers and insurance carriers
for said employers during the periods of said employment and ex-
posure are as follows:

(a) Employers: Johns-Manville, Incorporated;
Warren and Bailey; Southern Asbestos & Magnesia Corporation; Plant
Rubber and Asbestos Company; Los Angeles Rubber Company; Plant Insula-
tion Company; Marine Engineering Company; Robert O. Lynch, an indi-
vidual, doing business as Lynch Asbestos Company and Lynch Asbestos

Company; Plant Insulation and Thorpe Co.; Armstrong Cork Company; Coast Insulation Products; Totman-Morgan Company; and J. T. Thorpe, Inc.

(b) The insurance carrier for Marine Engineering Company, a corporation, and Plant Insulation Company, a corporation, during a part of the period of applicant's employment, was Pacific Employers Insurance Company, a corporation.

The insurance carrier for Robert O. Lynch, an individual, doing business as Lynch Asbestos Company and Lynch Asbestos Company, a corporation during a part of the period of applicant's employment, was Industrial Indemnity Company, a corporation.

The insurance carrier for Coast Insulation Products, a corporation, during a part of the period of applicant's employment was Guarantee Insurance Company, a corporation.

The insurance carrier for J. T. Thorpe, Inc., a corporation, during the entire period of applicant's employment, was American Motorists Insurance Company, a corporation.

The insurance carrier for Plant Insulation Company, a corporation, during a part of the period of applicant's employment, was Fireman's Fund Indemnity Company, a corporation.

During said times, all the employers and the employee were subject to the provisions of the Labor Code of the State of California.

3. Said injury caused temporary total disability, entitling the applicant to \$40.00 per week beginning May 20, 1957 through November 16, 1959 and thereafter during the continuance of disability or until the further Order of this Commission, based upon maximum earnings.

4. Defendants are entitled to credit for all sums heretofore paid as disability indemnity.

5. Applicant is entitled to be reimbursed for the reasonable value of medical treatment procured by him to cure or relieve from the effects of said injury, to be adjusted by the

parties among themselves. If adjustment is not possible, this Commission will determine the matter upon the filing and service of itemized bills. Among the items of reimbursement are the following: The defendants are directed to pay to Veterans Administration Hospital the sum of \$2,685.60; to Dr. C. Pierre De Lawter, the sum of \$105.00; for services rendered as anesthesiologist which was authorized by the defendants; and to Dr. John K. Shirey, the sum of \$331.00.

6. In view of Finding #5, the lien claims of Dr. C. Pierre De Lawter and Veterans Administration Hospital should be denied.

7. Pursuant to Labor Code Section 4600, applicant is entitled to the reasonable, actual and necessary medical expense incurred for x-rays, laboratory fees and medical reports required to successfully prove his claim herein, in the sum of \$150.00 payable directly to Dr. John K. Shirey.

8. Founders Insurance Company is entitled to a lien against unpaid compensation in the sum of \$1,040.00 for the period beginning May 27, 1957 for a period of 26 weeks, at the weekly rate of \$40.00 under the provisions of Labor Code Section 4903-F.

9. Founders Insurance Company is not entitled to a lien in the sum of \$120.00 for hospital benefits paid the applicant under the provisions of the Labor Code.

10. Applicant is entitled to such further medical and/or surgical treatment as may reasonably be required to cure or relieve from the effects of said injury. This treatment is to be furnished by the defendants herein.

11. Said injury will result in permanent disability. Further hearing to establish the extent thereof will be held by the Commission upon the request of any party in interest upon proof that the disability has become permanent and stationary.

12. The claim herein is not barred by the Statute of Limitations.

13. Defendants have not been prejudiced by any alleged failure of the applicant to report said injury within the time required by the provisions of the Labor Code.

14. Applicant's attorneys are entitled to a lien against unpaid compensation for the reasonable value of their services in the sum of \$750.00.

15. Pursuant to stipulation of the parties, Phoenix Indemnity Company, a corporation, is entitled to be dismissed and discharged herefrom.

A W A R D

AWARD IS MADE in favor of James Whitcomb Riley against Johns-Manville, Incorporated, a corporation; Warren and Bailey; Southern Asbestos & Magnesia Corporation, a corporation; Plant Rubber and Asbestos Company; Los Angeles Rubber Company; Plant Insulation Company, a corporation; Marine Engineering Company, a corporation; Robert O. Lynch, an individual, doing business as Lynch Asbestos Company and Lynch Asbestos Company, a corporation; Plant Insulation and Thorpe Company; Armstrong Cork Company, a corporation; Coast Insulation Products, a corporation; Totman-Morgan Company; Pacific Employers Insurance Company, a corporation; Industrial Indemnity Company, a corporation; Guarantee Insurance Company, a corporation; American Motorists Insurance Company, a corporation; and Fireman's Fund Indemnity Company, a corporation, jointly and severally, of the sum of \$40.00 per week beginning May 20, 1957 through November 16, 1959 and thereafter during the continuance of disability or until the further Order of this Commission; together with interest as provided by law; less all sums heretofore paid; less the sum of \$1,040.00 payable to Founders Insurance Company, as outlined in Finding #8; and less the sum of \$750.00 payable to Hays and McLaughlin, as attorneys' fees; together with reimbursement for the reasonable value of his self-procured medical treatment; among the items of reimbursement, the defendants shall pay directly to

Veterans Administration Hospital, the sum of \$2,685.60; to Dr. C. Pierre De Lawter, the sum of \$105.00; and to Dr. John K. Shirey, the sum of \$331.00, as outlined in Finding #5; together with reimbursement under Labor Code Section 4600 in the sum of \$150.00 payable directly to Dr. John K. Shirey; together with such further medical and/or surgical treatment as may reasonably be required to cure or relieve from the effects of said injury, as outlined in Finding #10.

IT IS ORDERED that the lien claim of Veterans Administration Hospital and the lien claim of Dr. C. Pierre De Lawter be and they are hereby DENIED.

IT IS FURTHER ORDERED that Phoenix Indemnity Company, a corporation, be and it is hereby DISMISSED.

DEFENDANTS ARE FURTHER ORDERED to report to report to this Commission on Form C-6 within ten days after the cessation of compensation payments under the above continuing award. Copies of said form and copies of all reports incidental thereto are to be served on all adverse parties before filing with this Commission.

GEORGE A. MARTINELLI

Referee

INDUSTRIAL ACCIDENT COMMISSION

GAM:NN

57-LA 182-835

DATED AT LOS ANGELES, CALIFORNIA

NOVEMBER 27, 1959

S E A L