FILE NAME: Johns-Manville (JMA)

DATE: 1966

DOC#: JMA138

DOCUMENT DESCRIPTION: Contract Unit Claim File: Dean Clark

WORKERS' COMPENSATION APPEALS BOARD - CALIFORNIA
(INDUSTRIAL ACCIDENT COMMISSION, prior to 1966)

APPLICANT DEAN CLARK (deceased) CASE # LA 292043

Asbestos Worker

DATE CLAIM FILED February 15, 1966 - Refiled March 22, 1966

INJURY ALLEGED Lung injury/Due to inhalation of asbestos & other foreign substances

ALLEGED DATE OF INJURY 1940-1966

EMPLOYER/INSURER Baldwin Ehret-Hill, et.al.

58 employers/carriers including J-M Sales

No apparent Canadian carrier

OTHER NOTES After Compromise & Release with majority of defendants

Applicant proceeded to trial against MetalClad/AETNA and Mundet Cork/AETNA.

Undisputed injury.

Petitions for Reconsideration (statute of limitations) on both sides.

DATE OF RESOLUTION May 20, 1969 March 23, 1971

RESOLUTION Compromise & Release Findings & Award - Opinion

$5,410.50 Settlement After Reconsideration
$7,500 Award + costs

DOCUMENTS COPIED

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3) Findings & Award/Opinion After Reconsideration	4

CLAIMANT Dean Clark

California Workers' Compensation Appeals Board

CARRIERS INVOLVED:

oThe AETNA Casualty & Surety Co.
oAmerican Automobile Ins. Co.
oAmerican Employers Ins. Co.
●American Motorists Ins. Co.
●Argonaut Ins. Co.
oAssociated Indemnity Corp.
oCalifornia Casualty Indemnity Exchange
oCalifornia Compensation & Fire Co.
●Casualty Ins. Co. of California
oEmployers Liability Assurance Corp.Ltd.
oEmployers Mutual Liability Ins. Co. of Wisconsin
oFidelity & Casualty Co. of New York
●Fireman's Fund Ins. Co.
oGeneral Accident, Fire & Life Assurance Corp. Ltd.
oGlobe Indemnity Co.
oGuarantee Insurance Co.
oGreat American Ins. Co.
●Hardware Mutual Casualty Co. (Sentry Ins. Co.)
●Industrial Indemnity Co.
●Industrial Indemnity Exchange
●Insurance Co. of North America
●Liberty Mutual Ins. Co.
oLumberman's Mutual Casualty Co.
oMaryland Casualty Co.
oMichigan Mutual Liability Co.
oMission Insurance Co.
oNational Automobile & Casualty Ins. Co.
oNew Amsterdam Casualty Co.
oOcean Accident & Guarantee Corp.Ltd.
●Pacific Employers Ins. Co.
oPacific Indemnity Co.
●Reliance Ins. Co. (Standard Accident Ins. Co.)
oRoyal Indemnity
oSecurity Ins. Co. of Hartford (U.S. Casualty Ins. Co.)
●State Compensation Insurance Fund
oTransport Indemnity Co.
●The Travelers Ins. Co.
oThe United Pacific Ins. Co.
oU.S. Fidelity & Guaranty Co.
oZenith National Ins. Co.
oZurich Ins. Co.
o_____
o_____
o_____
o_____
o_____

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DEAN CLARK, (DECEASED)
MAURINE CLARK

Applicant

vs.

MUNDET CORPORATION, OWENS CORNING FIBERGLAS CORPORATION, METAL CLAD INSURLATION COMPANY, - THE AETNA CASUALTY AND SURETY COMPANY

Defendant

CASE No. 66 LA 292-043'

C E R T I F I C A T I O N

I hereby certify that the attached documents are true and correct copies of the original documents filed in the records of this office in the above-entitled matter.

ATTEST my hand and the Seal of the Workers' Compensation Appeals Board of the State of California.

ALFRED C. WILLIAMS
Workers' Compensation Judge
Workers' Compensation Appeals Board

Dated at San Francisco, California, this 31 day of March, 1981

DIA WCAB Form 118 (REV 1-79)

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS

JOHN B. FIELD, M.D., PH.D.
DIPLOMATE AMERICAN BOARD OF INTERNAL MEDICINE
ROX SAN MEDICAL BUILDING
465 NORTH ROXBURY DRIVE
BEVERLY HILLS, CALIFORNIA
CRESTVIEW 8-0633

RECEIVED
STEVEN ROSEMAN
LAW OFFICES
FEB 1 1967
A.M. 7|8|9|10|11|12| 1|2|3|4|5|6 P.M.

January 30, 1967

Mr. Steven Roseman
1621 West Ninth St.
Los Angeles, Calif. 90015

Re: Dean Clark, deceased

Dear Mr. Roseman:

I have had the opportunity to study and review the records and autopsy reports on the above. In addition I have requested and received a work record on Mr. Clark. In brief, this record documents the fact that for many years Mr. Clark worked in an atmosphere where he was exposed to asbestos, under conditions where the asbestos dust was continually in the air, on his outer garments and skin and entering the orifices.

After a prolonged illness Mr. Clark passed away on March 4, 1966 at which time a detailed autopsy revealed a bronchogenic carcinoma with numerous metastases as well as emphysema and fibrosis of the lungs. In addition the fibrosis was associated with the presence of asbestos bodies.

Discussion: I have undertaken the opportunity to investigate and evaluate some of the extensive and growing literature on the subject of asbestos and cancer and as many outstanding authorities have stated, see in this situation an analagy to the exposure of the radium watch dial workers and other industrial carcinogens. The supportive literature is growing rapidly and the evidence is almost overwhelming in favor of this association. I can quote a few of the many pertinent references.

Dewy and Adler in Somerset, N. J., the site of an asbestos plant, have accumulated 37 proven cases of asbestosis and lung carcinoma (personal communication). In "Thoracic Diseases" by E. H. Rubin and M. Rubin, W.B. Saunders, Phila., 1962, p. 462 "Exposure to asbestos is known to carry increased hazards for the development of lung cancer." On p. 708-710 "lung cancer has been found as a frequent complication of asbestosis in as high as 30% of the cases" and as compared to exposure to silicosis where only 1.32% of the workers have been found to have lung cancer. K. Doll: "Mortality From Lung Cancer in Asbestos Workers", Brit. J. Indust. Med., 12, 81, 1955, reported that 15 out of 105 asbestos workers died with lung cancer and E.R.A. Merewether in the Proceedings of the Third International Conference of Experts on Pneumoconiosis, Sydney, Australia, 1950, reported 31 of 160 deaths in asbestos workers to be due to lung cancer. In J.R. Pignall's "Carcinoma of the Lung", Livingstone, Ltd., Edinburgh, 1958, p. 50, "It is evident therefore that lung cancer is a specific industrial hazard of asbestos workers" and in the two volume "Chest Diseases" by P.M. Perry and Sir Thomas H. Sellors, Butterworths, London, 1963, Vol. 1, p. 547, it is pointed out that in Germany carcinoma of the lung in asbestos workers is now recognized as an industrial disease.

Perhaps one of the most authoritative sources of reference now available is in the Annals of the New York Academy of Sciences, 1965, Vol. 132, p. 1-766, which is a Conference On The Biological Effects of Asbestos and which devotes the section from p. 507 to 685 on the relationship between asbestos and cancer. In brief, in an article by Buchanan, p. 517, it is pointed out that there is in England a high and increasing relation of lung cancer in asbestos workers both male and female and "The conclusion

ADMITTED IN EVIDENCE
Exh. 2

of a study is that even when viewed against the steadily rising incidence of lung cancer in the population as whole, there seems little doubt that there is a special risk of an intrathoracic tumor if asbestos is also present in the lung." In the United States Hammond, Selikoff and Churg, p. 523, report that in a study of deaths of New York City asbestos insulation workers 20% died of carcinomas of the lung (or pleura). Similar reports from other parts of the world are given including that of Dresden asbestos workers, p. 573, and other areas. Finally, the Working Group on Asbestos and Cancer plotting a protocol for further study, p. 710, states "there is evidence of association between exposure to asbestos and malignant neoplasia." "The types of tumors which have been shown to be associated with exposure to asbestos dust are: 1. Carcinoma of the lung; 2. Diffuse mesothelioma of the pleura and peritoneum."

Another outstanding world authority on occupational cancers, W.C. Hueper, who has objectively detailed much of the relevant information in a new monograph "Occupational and Environmental Cancers of the Respiratory System", Springer-Verlag; New York, 1966, p. 47, concludes that "Although cancer of the lung does not seem to be the most frequent fatal complication of asbestosis, it is evidently sufficiently frequent for elevating the lung cancer rate as a group and there is a serious sequela of exposure to asbestos."

In a discussion of the clinopathologic relations Hueper indicates that it is characteristic that the lung cancer has associated fibrosis and the presence of asbestos bodies. In all of these items there is a distinct correlation in the autopsy findings on Mr. Clark.

Thus, it is my considered professional belief that the long and continued exposure to asbestos by Mr. Clark was a direct and probable cause of his development of cancer of the lung which brought about his demise.

Trusting that this report is of assistance to you,

Very truly yours,

John B. Field, M.D., Ph.D.

JBF:sm
enc.

HERLIHY, HERLIHY, JONES & NELSON
Attorneys at Law
727 West Seventh Street
Los Angeles, California 90017

Telephone No. 627-4911

Attorneys for Defendants

WORKMEN'S COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MAURINE CLARK, WIDOW,
DEAN CLARK, DECEASED,

Applicant

vs.

BALDWIN EHRET-HILL, INC.
a corporation, et al

Defendants

CASE NO. 66 LA 292 043

COMPROMISE AND RELEASE AGREEMENT

SOCIAL SECURITY NO. 327-07-9443

The parties hereto, for the purpose of Compromise only, agree as follows:

1. That the applicant Maurine Clark claims that Dean Clark while employed at various places in the State of California, as an asbestos worker, during the period beginning in the year 1940 and ending on March 4, 1966, sustained injury arising out of and in the course of such employment, resulting in the death of the said Dean Clark on or about March 4, 1966, as the result of the claimed injury.

At various times during the period aforesaid the said deceased employee was employed by the following named employers, parties to this Agreement, were at said times insured as to Workman's Compensation Liability in the State of California by the hereinafter named Insurance Carriers:

Isotherm Company, Insured by Hardware Mutual Casualty Co.;

W. A. Bechtel Co., Insured by Industrial Indemnity Exchange;

Plant Asbestos Co., Insured by Industrial Indemnity Co.;

Baldwin Ehret-Hill,Inc., a corporation, and Kitzman Plumbing & Heating Co., Insured by Insurance Company of North America;

J. T. Thorpe, Inc., Thorpe Insulation Co., Marine Engineering & Supply Co., Insured by Pacific Employers Insurance Co.;

Stearns & Rogers Corp., Insured by Reliance Insurance Co.;

Johns Manville Sales Corp., Armstrong Cork Co., Armstrong Contracting Co., Insured by The Travelers Insurance Co.;

Fibreboard Paper Products Corp., Plant Rubber & Asbestos Works both Permissibly Self-Insured;

Thorpe Insulation Co., Los Angeles Cork Co., Technical Service Co., Insured by Fireman's Fund Insurance Co.;

Coast Insulation Products Co., Insured by Argonaut Insurance Co.;

Los Angeles Cork Co., Insured by Zurich Insurance Co.;

Accurate Insulation Co., Insured by Casualty Insurance Company of California;

J. T. Thorpe, Inc., Insured by American Motorists Insurance Co.;

Accurate Insulation Co., Western Asbestos Co., R. T. Dinwiddie, Inc., Insured by State Compensation Insurance Fund;

Unafrax Construction Co., Industrial Service & Engineering Co. of California, United Cork Companies Corp., Insured by Liberty Mutual Insurance Co.;

2. The actual weekly wages of the employee at the time of the claimed injury were maximum.

3. That no payments of compensation to the applicant were made during his lifetime on account of the claimed injury.

4. The applicant Maurine Clark being of adult age, states

and warrants that she was the lawful wife of the deceased employee and was the sole and only dependent of said deceased employee and was wholly dependent upon him at the time of the deceased employee's injury.

5. The parties hereby agree to settle any and all claims of said dependent, both as a dependent and an heir-at-law of the said deceased employee on account of the claimed injury and the death of said employee at a payment of the sum of $5,410.50, payable in one lump sum to applicant, less attorney's fees, less valid liens of record, if any. Less $200.00 to Dr. John Field, less $86.47 to Steven Roseman for Costs.

That said payment shall be made by the above-named carriers as follows:

Hardware Mutual Casualty Co.	$ 235.00
Industrial Indemnity Exchange	333.00
Industrial Indemnity Company	414.00
Insurance Company of North America	180.00
Pacific Employers Insurance Co.	846.00
Reliance Insurance Co.	67.50
The Travelers Insurance Co.	621.00
Fibreboard Corp. and Plant Rubber Asbestos Works	180.00
Fireman's Fund Insurance Co.	1,035.00
Argonaut Insurance Co.	65.00
Zurich Insurance Co.	90.00
Casualty Insurance Company of California	39.00
American Motorists Insurance Co.	450.00
State Compensation Insurance Fund	585.00
Liberty Mutual Insurance Co.	270.00
	$5,410.50

Parties hereby agree that all medical, hospital and burial expenses required by reason of the alleged injury and the death of the employee shall be paid by the applicant herein.

7. The name and address of applicant's attorney is: 1543 W. Olympic Boulevard Steven Roseman, ~~1621 West Ninth Street~~, Los Angeles, California, who requests a fee of $ 700.00, having received nothi by way of fee previously.

8. REASON FOR COMPROMISE:

That a bona fide dispute exists by and between the parties hereto as to all of the facts except as to admission of certain employment, earnings, and the coverages herein alleged. That all of the parties hereto have attempted to evaluate the applicant's claim and believe that the consideration to be paid hereunder is fair and adequate as to those parties who have joined in this Agreement. That the said defendants wish to buy their peace.

9. It is further agreed that the Release and Compromise herein shall cover and include all employers of the deceased employee whether named herein or not during such periods as said employers were insured against Workman's Compensation Liabilities by the Insurance Carriers named herein as parties hereto.

10. For the purpose of determining the lien claim filed herein for the unemployment compensation disability benefits or unemployment compensation benefits and extended duration benefits whic have been paid under or pursuant to the California Unemployment Insurance Code, the parties propose the following division of the su agreed upon for settlement and release of this case:

$_____for temporary disability covering the period _____to_____

$_____for accrued medical expense paid or incurred by the employee.

$_____for future medical care.

$_____for permanent disability.

11. Upon approval of this Compromise Agreement by the Workmen's Compensation Appeals Board or a Referee, and payment in accordance with the provisions hereof, said employee releases and

forever discharges said employers and insurance carriers from all claims and causes of action, whether now known or ascertained, or which may hereafter arise or develop as a result of said injury, including any and all liability of said employers and said insurance carriers and each of them to the dependents, heirs, executors, representatives, administrators or assigns of said employee.

12. In further consideration of the payment in accordance herewith, applicant agrees that this release will apply to all unknown and unanticipated injuries and damages resulting from such accident, casualty, event, and/or employment, as well as all those now disclosed, and all rights under section 1542 of the Civil Code of California are hereby expressly waived.

Section 1542 of the Civil Code of California reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

13. In further consideration of the payment of the aforesaid sum, applicant agrees that this release extends to and covers the executors, administrators, heirs, representatives, successors, assigns, officers, directors, agents, servants, and employees of the defendants, and each of them, and the physicians, surgeons, and nurses of the defendants, and each of them, whether acting individual or on behalf of them or either of them.

WITNESS the signature hereof this 20 day of January, 1969 at Los Angeles, California.

Maurine Clark - Applicant

Steven Roseman-Attorney for Applicant

By: _____
HARDWARE MUTUAL CASUALTY CO.
a corporation

By: _____
INDUSTRIAL INDEMNITY COMPANY
a corporation

By: _____
INDUSTRIAL INDEMNITY EXCHANGE
a corporation

By: _____
RELIANCE INSURANCE CO.
a corporation

By: _____
THE TRAVELERS INSURANCE CO.
a corporation

By: _____
FIBREBOARD CORP. & PLANT RUBBER ASBESTOS WORKS, PERMISSIBLY SELF-INSURED

By: _____
FIREMAN'S FUND INSURANCE CO.
a corporation

By: _____
ARGONAUT INSURANCE CO.
a corporation

By: _____
ZURICH INSURANCE CO.
a corporation

By: _____
CASUALTY INSURANCE COMPANY OF CALIFORNIA, a corporation

By: _____
AMERICAN MOTORISTS INSURANCE CO., a corporation

By: _____
STATE COMPENSATION INSURANCE FUND
a corporation

By: _____
LIBERTY MUTUAL INSURANCE CO.
a corporation

INSURANCE COMPANY OF NORTH AMERICA
a corporation
By: _____
HERLIHY, HERLIHY, JONES & NELSON

PACIFIC EMPLOYERS INSURANCE CO.
a corporation
By: _____
HERLIHY, HERLIHY, JONES & NELSON

STATE OF CALIFORNIA
COUNTY OF _____ } ss.

On this 20 day of _____ A.D. 1969 before me the undersigned a Notary Public in and for the said County and State, residing therein, duly commission and sworn, personally appeared MAURINE CLARK known to me to be the person whose name is subscribe to the within Instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate

WORKMEN'S COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DEAN CLARK, Deceased, By MAURINE CLARK, his Widow,

Applicant,

vs.

MUNDET CORPORATION; OWENS CORNING FIBERGLAS CORPORATION; METAL CLAD INSULATION COMPANY; THE AETNA CASUALTY AND SURETY COMPANY;

Defendants.

CASE NO. 66 LA 292-043

OPINION AND DECISION AFTER RECONSIDERATION

On October 14, 1971, this Board issued its Opinion and Order Admitting Documentary Evidence and Notice of Intention to Submit. By that document this Board noticed its intention to resolve this controversy by the issuance of an award based upon the calculations contained in the Memorandum of V. M. Latino of the Permanent Disabili Rating Bureau which was received in evidence with the Board's Order of October 14, 1971. No objections or other requests have been made within the period of time allowed. therefor by this Board's said Notice of Intention of October 14, 1971. Accordingly, for the reasons stated in the Opinion portion of our said Order of October 14 1971, the Board for its Decision After Reconsideration orders, finds and awards as follows:

O R D E R

IT IS HEREBY ORDERED that, as and for this Board's Decision After Reconsideration, the Findings and Award filed herein on March 23, 197 be and they are hereby amended to read as follows:

FINDINGS OF FACT

1. Dean Clark, born December 2, 1907, while employed as an asbestos worker at various places within the state of California

for the period commencing 1940 to March 4, 1966 sustained injury in the nature of an occupational disease affecting his lungs arising out of and in the course of his said employment with various employ which injury resulted in his death on March 4, 1966.

2. Said employee left surviving him and wholly dependent upon him his wife, Maurine Clark, applicant herein.

3. During said period from 1940 to March 4, 1966, said employe was employed by, among others, Mundet Corporation, Owens Corning Fiberglas Corporation and Metal Clad Insulation Company who were at the time of such employment insured for workmen's compensation liability by defendant The Aetna Casualty and Surety Company.

4. Applicant, pursuant to the provisions of Labor Code Section 5500.5 has elected to proceed against the employers named in Finding No. 3 and against the insurance carrier found to have insured said employers for workmen's compensation liability.

5. Applicant on or about May 20, 1969 entered into a Compromis and Release with defendant insurance carriers Hardware Mutual Casual Company, Industrial Indemnity Exchange, Industrial Indemnity Company Insurance Company of North America, Pacific Employers Insurance Compa Reliance Insurance Company, The Travelers Insurance Company, Fibrebo Corporation and Plant Rubber Asbestos Works, Fireman's Fund Insurance Company, Argonaut Insurance Company, Zurich Insurance Company, Casual Insurance Company of California, American Motorists Insurance Company State Compensation Insurance Fund and Liberty Mutual Insurance Compan and, said Compromise and Release agreement was filed herein on July 1 1969 and was approved by this Board on August 27, 1969.

6. The insurance carriers listed in Finding No. 5 above, who entered said Compromise and Release agreement, covered workmen's compensation liability for various employers listed in said agreement, which employers employed the employee herein during the period of the occupational disease as specified above.

31 PM

7. Said defendant, The Aetna Casualty and Surety Company, is entitled to credit against compensation awarded herein to the exten that the periods of employment covered by said Compromise and Relea agreement contributed to the employee's injury herein and to his death resulting therefrom.

8. The periods of employment covered by said Compromise and Release agreement have contributed to said employee's injury and his death resulting therefrom to the extent of 31.02 percent.

9. Burial expenses were incurred by applicant in excess of the sum of $600.00.

10. Decedent self-procured medical treatment for this injury without notice of need to defendants herein.

11. Applicant reasonably, actually and necessarily incurred expense for report and appearance of John B. Field, M.D. in the sum of $500.00.

12. This cause of action is not barred by the Statute of Limitations.

13. The reasonable value of the services of applicant's attorney is $1,000.00

A W A R D

AWARD IS MADE in favor of Maurine Clark against The Aetna Casual and Surety Company, a corporation, as follows:

(a) Death benefits in the sum of 68.98 percent of $17,500.00 or $12,071.50, payable forthwith, less the sum of $1,000.00 payable to applicant's attorney, Steven Roseman, as attorney's fee herein.

(b) Reimbursement of burial expenses in the sum of $600.00

(c) Reimbursement of medical-legal costs in the sum of $500.00 payable to Dr. John B. Field.

PM

(d) Interest as provided by law from March 23, 1971.

WORKMEN'S COMPENSATION APPEALS BOARD

Arthur J. Castanos

I CONCUR.

Reuben C. Allen DEPUTY

CONCURRING, BUT NOT SIGNING
JACK H. BRADLEY

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA
NOV 15 1971

SERVED BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD.

Vincent V. Rosal

PM