

" C O P Y "



" C O P Y "

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF OCCUPATIONAL HYGIENE
286 Congress Street, Boston 10

August 19, 1952

3-32

P. S. Thorsen Company
47 1/2 E St.
South Boston, Mass.

Gentlemen:

On Aug. 8 our engineer, Mr. Elise Comproni, visited your operations at the Salem Willows Power Station in connection with a study being made of exposure of workers to asbestos dust during piping and boiler installation.

Enclosed is a copy of a report by Mr. Comproni in which the findings of this study are summarized.

We wish to thank you for your cooperation in this matter.

Very truly yours,

Hervey B. Elkins,
Chief of Laboratory

Enc.
HBE:MM

During the survey no mixing operation could be found in actual progress, thus prohibiting the taking of air samples. However, unaware that he was being observed, one workman was instructed to mix a 100 lb. bag of asbestos shorts by his foreman. During the pouring of the dry content into the mixing box no visible dust could be detected in the breathing zone of the mixer and only a very small amount of dust could be seen a few inches above the mixing box. The time that this dust was apparent was only a matter of seconds since the asbestos cement was immediately wet down with a hose.

Of three companies contacted it was found that it is not a company policy to have chest x-rays of the employees taken. It was also learned that all members of the companies contacted belong to an asbestos workers union and it is not a union policy to have its members x-rayed. Of the 28 men interviewed 10 had at least one chest x-ray taken within the last five years and three men had two x-rays taken within the past five years. A large number of this group had x-rays taken by the State Mobile X-Ray Unit.

From observation there did not seem to be an apparent dust hazard in the occupation of pipe covering or in the mixing of cement for pipe and boiler covering. The act of boiler blocking operation could not be witnessed since there was no blocking job in progress at the time of the survey. For complete information on this occupation air analyses should be taken while a boiler blocking job is in progress.

SC:EM:V

11
Heller

Platter 1-22-45 to 5-11-45 # 2055.7
150
2-2-5
6 78 1/2 for 43 for 1000/2

Inter-Office Communication

Armstrong Cork Company

To Mr. D. M. Wegman, Insurance Department, Lancaster 9/11/53
From J. H. Appleyard, Pensacola 1944 1 715.50
2 996.75
3 834.00
4 453.75
Subject

This morning, we received the enclosed letter from the Florida Industrial Commission Workmen's Compensation Director indicating a claim against Armstrong Cork Company on behalf of Donald Everett claiming disability resulting from asbestosis contracted during employment during 1944-45. We have examined the records of our plant and have no file on any such individual; however, in the course of his letter, Mr. Durrance refers to employment in or about Tampa, which leads us to believe that this man may have been employed by the contract division of our company. We felt that you would want to know about the pending claim so that appropriate preparation might be instituted.

JHA:HSI
Enclosure

cc: Mr. E. N. Lee

370-07-6772 6-7-53

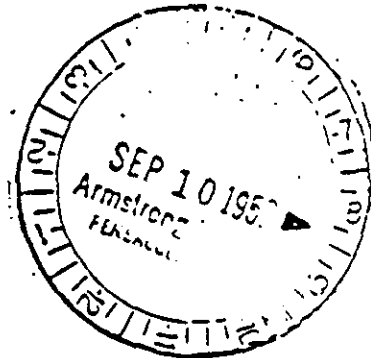
1942 Retort

1944 Jacksonville

1945

FLORIDA INDUSTRIAL COMMISSION
WORKMEN'S COMPENSATION DIVISION
TALLAHASSEE

September 9, 1953



Miss Lucille Snowden
Attorney at Law
808-10 Seybold Building
Miami 32, Florida

Re: Claim No. S-85602, Floyd Hyatt vs.
Armstrong Cork Company, D/A 1944 &
1945

Dear Miss Snowden:

We have your letter of September 1 filing claim against Armstrong Cork Company on behalf of Floyd Hyatt for disability resulting from asbestosis, which you state was contracted during 1944 and 1945 in the course of the claimant's employment. You request that the case be set down for hearing in Miami if the employer will agree, as the claimant and the doctors live in that area.

It appears that this matter has not previously been reported to this office; therefore, we have established a file by assigning our number S-85602 to your letter, which we are today forwarding to Deputy Commissioner George C. McCaughan, Miami, with the understanding that the hearing will be held there unless the Armstrong Cork Company objects to this arrangement. A copy of this letter is being forwarded to the Armstrong Cork Company, self-insurers, and they are requested to advise Mr. McCaughan if they prefer that the hearing be held at Tampa where the injury occurred or whether it is agreeable for him to conduct the hearing.

Very truly yours,

Rodney Durfance
RODNEY DURFANCE
Director

JCC:lfc

cc: Mr. George C. McCaughan
Deputy Commissioner
1051 Seybold Building
Miami 32, Fla. (Encl. - file)
cc: Mr. J. E. Appleyard, Personnel Mgr.
Armstrong Cork Company
P. O. Box 351
Pensacola, Florida

E H Wayman

September 15, 1953

Mr. D. B. Edgar
V-L. P. Shriver Agency
1801 Union Bank Bldg.
Pittsburgh 22, Pa.

Dear Dave:

We are enclosing a copy of a letter from the Florida Industrial Commission regarding a workmen's compensation claim filed by Floyd Hyatt.

Records indicate this man was employed by our Detroit District Office in 1942 and our Jacksonville, Florida, Office in 1944 and 1945 as a building mechanic.

Our payroll records prior to 1945 have been destroyed. However, 1945 records indicate Mr. Hyatt was employed in Florida from January 22, 1945, to August 11, 1945, as a plasterer at \$1.50 per hour.

In normal times we use plasterers to erect corkboard. During World War II, due to the manpower shortage, we might have used this man to apply pipe covering. Kasebey & Mattison, manufacturer of this heat insulation material, have told us employees have been manufacturing this product for years without any ill effects. This appears to be a pretty weak claim.

We assume Standard will reply to the last sentence in Mr. Durrance's letter dated September 9, 1953. If you require additional information, let us know.

Very truly yours,

RCS:AE

Enclosure

R. C. Schieff, Jr.
Tax Department

*also cc of our letter
to Mr. W. C.*

September 15, 1953

Mr. George C. McCaughan
County Commissioner
1051 Seybold Building
Miami 32, Florida

De McCaughan:

We acknowledge the receipt of a copy of a letter written by Mr.
Durrance to Miss Lucille Savchen regarding the alleged disability of
Mr. Durrance.

Our records indicate Mr. Hyatt was in our employ as a building
worker engaged in the erection of insulating materials.

We did not self-insure this type of work but had workmen's compensa-
tion coverage with the Standard Accident Insurance Company.

A copy of Mr. Durrance's letter has been forwarded to the agent who
handled the Standard Accident account at that time.

Very truly yours,

AMSTERDAM CORK COMPANY

EC5:JH

Copies to:
Mr. D. B. Edger
V-L. P. Shriver Agency
Pittsburgh 22, Pa.
Mr. J. H. Appleyard, Pensacola Plant

R. C. Schleit, Jr.
Tax Department



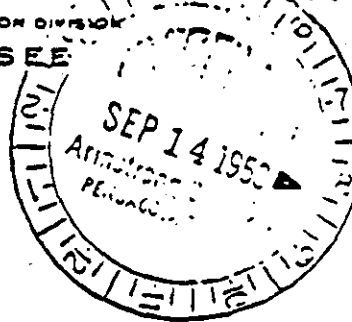
FLORIDA INDUSTRIAL COMMISSION

WORKMEN'S COMPENSATION DIVISION
TALLAHASSEE

STATE OF FLORIDA
TALLAHASSEE

Office of Deputy Commissioner
51 Seybold Building
Miami 32, Florida

September 11, 1953



JAMES T. VOCELLE
CHAIRMAN
H. E. WOLFE
INDUSTRY MEMBER
L. R. WESTON
LABOR MEMBER

RODNEY DURRANCE
DIRECTOR

Armstrong Cork Company
P.O. Box 351
Tallahassee, Florida

Attention: Mr. J. E. Appleyard, Personnel Manager

S-85602 Floyd Wyatt v. Armstrong Cork Company

Re: Claim:

The above matter has been referred to this office for attention, in for benefits under the Workmen's Compensation Act having been filed by the employee, through his attorney, Miss Lucille Snowden. Copy of the claim is enclosed.

In accordance with letter of September 9, 1953, from Mr. Rodney Durrance, Director, to Miss Snowden, kindly advise at your very earliest convenience whether it is agreeable with you for the hearing to be held in Miami or whether you prefer that it be held in Tampa. You have, no doubt, received a copy of Mr. Durrance's letter by this time.

Thanking you for your prompt attention to this matter, I am

Very truly yours,

GEORGE C. MCCAUGHEY
Deputy Commissioner

Encl.

CC: Miss Lucille Snowden
Attorney at Law
Seybold Building
Miami 32, Florida

C
O
P
Y

LUCILLE SNOWDEN
Attorney at Law

Miami 32, Florida

September 1, 1953

Florida Industrial Commission
Workmen's Compensation Division
Tallahassee, Florida

Re: Floyd Hyatt vs Armstrong Cork Co. Date of Disability,
August 12, 1953.

Dear Sirs:

Floyd Hyatt files claim against the Armstrong Cork Co. for disability resulting from asbestosis which was contracted during 1944 and 1945 with the above named employer, while claimant worked at the McCloskey Ship Yards at Tampa, Florida.

Since we do not know the name of this employers' carrier, nor do we know this employers' address, we wish this letter to constitute notice of disability from any earnings as of August 12, 1953, and claimant's knowledge of his condition as of the last week of August, 1953.

It is requested that hearing be set on this case preferably in Miami, if the carrier will agree, as the doctors and claimant live in this area.

Claimant has requested that I represent him in this case.

Sincerely,
/s/

Lucille Snowden
Attorney at Law

D. H. FERRY, JR., Chairman of the Board
C. K. PLATT, President
C. S. BROWN, Vice Pres. & Secy. & Treas.
L. K. KIRK, Vice Pres. & Treasurer
J. P. HACKER, Vice President



PAUL WILSON, Vice President
E. A. WARRICK, Vice President
P. E. LAYTON, Vice President
and General Counsel
R. A. WHITE, Vice President

Standard Accident Insurance Company

INCORPORATED 1904

CASUALTY INSURANCE • FIDELITY AND SURETY BONDS

CLAIM DEPARTMENT
FRANK V. COFFEY, CLAIM REPRESENTATIVE
5TH FLOOR BARNETT NAT'L BANK BLDG.
JACKSONVILLE 1, FLA.

September 17, 1953

Y-L. P. Shriver Agency,
1801 Union Park Bldg.,
Pittsburgh 22, Penna.

Attention Mr. D. B. Egan

RE: Floyd Hyatt vs Armstrong Cork Co.,
d/a 1944 and 1945

Gentlemen:

We acknowledge your letter of September 16, 1953,
enclosing papers in connection with the above.

These papers are being forwarded today to our
Miami, Fla. Claim Office, Mr. Jack Walker, Claim Representative,
Standard Accident Insurance Company, 320 Miracle Mile Road,
Coral Gables, Florida, where the matter will receive prompt
attention.

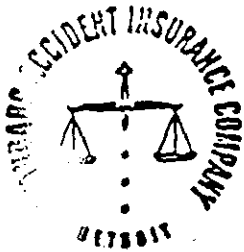
Yours very truly,

F. V. Coffey
F

X

cc-Mr. R. C. Schiedt, Jr.,
Armstrong Cork Co.,
Lancaster, Penna.

cc- Standard Accident Ins. Co.,
320 Miracle Mile Road,
Coral Gables, Fla.
Attention Mr. Jack Walker, Claim Rep.



V-L. P. SHRIVER AGENCY, General Agent

1801 UNION BANK BLDG.

PITTSBURGH 22, PENNSYLVANIA

Phone Grant 1-7300

September 16, 1953

Mr. R. C. Schiedt, Jr.
Tax Department
Armstrong Cork Company
Ebensburg, Penna.

Dear Mr. Schiedt:

Claim No. S-85602 - Floyd Hyatt vs Armstrong Cork Co.
Date of Accident 1944 and 1945

This will acknowledge receipt of your letter dated September 15th, with enclosures, in connection with the above. Per copy of letter attached, we have forwarded all papers to the Jacksonville, Florida Office of the Standard Accident Insurance Company for the necessary attention.

Should additional information be required, you will hear further from either the Standard Accident Insurance Company or this office. We shall keep you advised as to developments.

Very truly yours,

V-L. P. SHRIVER AGENCY

Dave
D. B. Edgar

DBE:maw

cc: Frank V. Coffee, Claim Rep.
Standard Accident Ins. Co.
401-402 Barnett Nat'l. Bank Bldg.
P. O. Box 359
Jacksonville 1, Florida



September 16, 1953

Frank V. Coffee, Claim Representative
Standard Accident Insurance Company
401-402 Barnett Nat'l. Bank Building
P. O. Box 359
Jacksonville 1, Florida

Dear Mr. Coffee:

Re: Floyd Hyatt vs Armstrong Cork
Co., D/A 1944 & 1945

We are attaching copy of the following letters:

Florida Industrial Commission to Miss Lucille Snowden, Atty.
at Law, dated September 9th, 1953.

Armstrong Cork Co. to Florida Deputy Commissioner, dated
September 15th, 1953.

Armstrong Cork Co. to V-L. P. Shriver Agency, dated September
15th, 1953.

From the correspondence you will note that Miss
Snowden is filing claim against our assured, Armstrong Cork
Co., on behalf of Floyd Hyatt for disability resulting from
asbestosis, which is alleged to have been contracted during
1944 and 1945 in the course of the claimant's employment.
The letter from the Armstrong Cork Co. to us dated September
15th sets forth the employment record of the claimant.

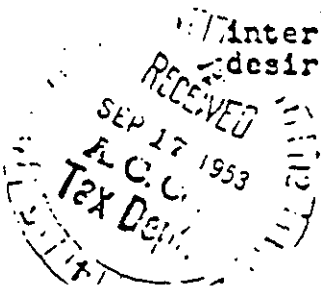
We are also enclosing coverage information for our
assured's policies for the 1944 and 1945 years. The Standard
Accident Insurance Company covered all operations in the
State of Florida, except their manufacturing plant at
Pensacola.

Would you kindly do the necessary to protect the
interests of this good assured. If further information is
desired, do not hesitate to call upon us.

Thanking you, we are

Very truly yours,

V-L. P. SHRIVER AGENCY



Inter-Office Communication

Armstrong Cork Company

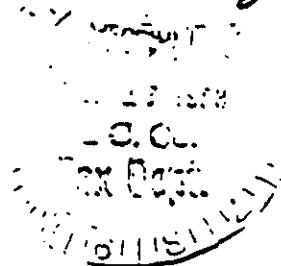
To Mr. Edward Wegman, Insurance Dept., Lancaster 9/15/53
From K. K. Schubring, Personnel Dept., Pensacola
Subject

Enclosed you will find correspondence relating to a compensation claim made by one Floyd Hyatt.

We have no record of ever having employed Mr. Hyatt at the Pensacola Plant. It is possible that he worked during 1944-45 as an employee in contract operations of the Building Materials Division. We are therefore sending to you the correspondence which we have received relating to this claim.

KKS:HSI
Enclosure

K. K. Schubring





FLORIDA INDUSTRIAL COMMISSION

The Deputy Commissioner will hold a
conference between all parties in
Commission Office on Dec. 15
1953 at 9:00 A.M.
Please come prepared to limit and to
state the issues.

November 3, 1953
1051 Seybold Building
Miami, Florida
Office of the Deputy Commissioner

Notice of Hearing

Claim No. 5-35602

Employee Floyd Wyatt, in care of his attorney

Attorney for Employee Lucille Snowden, Seybold Building, Miami, Florida

Employer Armstrong Cork Company, Lancaster, Pennsylvania

Insurer Standard Accident Insurance Co., c/o Dixon, DeJarnette & Bradford, Attorneys

Attorney for Employer or Insurer Dixon, DeJarnette & Bradford, First National Bank Building,
Miami, Florida

TO THE PARTIES ADDRESSED:

A hearing will be held in the above case at 1051 Seybold Building, Miami, Florida

By agreement of parties.

at 9:30 o'clock A. M. December 22, 1953.

THIS HEARING IS PART OF A SCHEDULE; IT CANNOT BE POSTPONED WITHOUT CONSIDERABLE
INCONVENIENCE AND EXTRA EXPENSE. POSTPONEMENT CANNOT BE HAD EXCEPT UPON
STRICTLY LEGAL GROUNDS:

SUBJECT OF HEARING (Here state question in dispute) TO DETERMINE THE MERITS OF THE CLAIM
FOR COMPENSATION BENEFITS FOR DISABILITY RESULTING FROM AGENTOSIS CONTRACTED
DURING 1942 AND 1943 WHILE EMPLOYED AT REEDER'S SHIP YARDS, TAMPA, FLORIDA

The parties to this hearing should arrange to have all witnesses present to testify promptly at the time and
place above given. (Subpoenas will be issued upon request of parties or counsel.)

The right is reserved to take such action as the law permits if either party fails to appear at the time and place
set for this hearing.

CC: Above Parties, Tallahassee Office
Reg. to Carrier's Attorney

FLORIDA INDUSTRIAL COMMISSION

George T. McLaughlin

October 30, 1953

Standard Accident Insurance Co.
214 South Fifth St.
Philadelphia 6, Penna.

Attention: Mr. H. Johnson
File #43938

We acknowledge the receipt of your letter of October 26 concerning alleged occupational disease suffered by Floyd Hyatt.

Payroll detail prior to 1945 has been destroyed, however, our records indicate the following wages were paid in the periods indicated.

Fourth quarter of 1942 \$157.64
employed in Michigan

First quarter 1944 \$715.50
Second " 996.75
Third " 834.00
Fourth " 453.75

Employment occurred in Florida

1945 employment detail in Florida follows:

<u>Week Ended</u>	<u>Total Hours</u>	<u>Total Wages</u>
1/23/45	16	\$ 24.00
1/30	40	60.00
2/6	32	48.00
2/13	16	24.00
2/20	48	78.00
2/27	48	78.00
3/6	48	78.00
3/13	48	78.00
3/20	48	78.00
3/27	40	60.00
4/3	48	78.00
4/10	48	78.00
4/17	48	78.00
4/24	48	78.00
5/1	40	84.00
5/8	56	78.00
5/15	40	66.00
5/22	48	78.00

October 30, 1953

<u>Week Ended</u>	<u>Total Hours</u>	<u>Total Wages</u>
5/29/45	48	\$ 78.00
6/5	48	78.00
6/12	48	78.00
6/19	48	78.00
6/25	52	93.00
7/2	48½	81.75
7/9	8	12.00
7/16	48	78.00
7/23	48	78.00
7/30	40	66.00
8/6	48	78.00
8/13	40	
	Total :	\$2,033.75

Hyatt's original employment started sometime in the fourth quarter of 1942 and terminated due to "no work" August 11, 1945.

Due to the tight labor market during the war, it is quite possible Hyatt was employed as a pipe coverer.

Since you did not enclose a wage statement in your letter, do not hesitate to contact us if we failed to give you all the information ordinarily appearing on the wage statement.

Very truly yours,

ARMSTRONG CORK COMPANY

RCSjr:HJE

R. C. Schiedt, Jr.
Tax Department

Floyd Hyatt

1942

1

—

Unich
Detroit

2

—

3

—

Rate 1.50 / hr
in Detroit

4

157.64

Rate 1.62 / hr
in Detroit

1944

1

715.50

Florida
Jacksonville

2

996.75

3

834.00

4

453.75

} Rate 1.50 / hr
Jacksonville
Tampa

1945

1

606.00

2

1023.00

3

459.75

4

none

} Rate 1.50 / hr
Jacksonville
Tampa

Wm 10/25

D. W. FERRY, JR., Chairman of the Board
R. H. PLATT, President
F. S. BROWN, Vice Pres. & Secretary
L. E. KIRK, Vice Pres. & Treasurer
J. P. HACKER, Vice President

PAUL WILSON, Vice Pres. & Secy.
E. A. WARRICK, Vice Pres. & Secy.
P. E. LAYMON, Vice Pres. & Secy.
and General Counsel
H. A. WHITE, Vice President



Standard Accident Insurance Company

INCORPORATED 1900

CASUALTY INSURANCE • FIDELITY AND SURETY BONDS

PHILADELPHIA BRANCH OFFICE

STANDARD ACCIDENT BUILDING
214 SOUTH FIFTH ST.
PHILADELPHIA 6, PENNA.

PHONE LO 3-2518

SAMUEL J. CARR
RESIDENT VICE-PRESIDENT

October 26, 1953

Armstrong Cork Company

Lancaster, Penna.

457455-500

Att: Payroll Section

Re: File #488988 - Armstrong Cork Co
Floyd Hyatt - Acc: ?

Gentlemen:

During the years 1944 and 1945, this company was the Workmen's Compensation Carrier for Armstrong Cork Company.

We have been advised by our Tampa, Florida Office that during this time you had one Floyd Hyatt in your employ as a plasterer. It is alleged that during that time Mr. Hyatt was working at the McCloskey Shipyard in Tampa as a plasterer and due to the shortage of employees was used to wrap pipes with asbestos. Recently his attorney made claim to the Workmen's Compensation Division for total disability as a result of contracting asbestosis during this period of working in your employ. We are enclosing a wage statement and request that you complete same. Also, it is requested that you advise us, if possible, when Mr. Hyatt came to work for your company, when he left your employ, his reasons for leaving, and if possible, any period of time in which while your employee, he would have come in contact with this asbestos material.

Thanking you in advance for your cooperation, I remain,

Very truly yours,

H. Johnson

H. Johnson
Claim Repr.

EJ:dd



D. W. FERRY, JR. Chairman of the Board
R. H. PLATT, Vice President
F. S. BROWN, Treasurer & Secretary
L. K. KIRK, Vice Pres. & Treasurer
J. P. HACKER, Vice President



PAUL WILSON, Vice President
E. A. WASHICK, Vice President
P. E. LAYMON, Vice President
and General Counsel
H. A. WHITE, Vice President

Standard Accident Insurance Company

(INCORPORATED 1922)

CASUALTY INSURANCE • FIDELITY AND SURETY BONDS

ISIDORE J. CARR
RESIDENT VICE-PRESIDENT

PHILADELPHIA BRANCH OFFICE

STANDARD ACCIDENT BUILDING
214 SOUTH FIFTH ST.
PHILADELPHIA 6, PENNA.

PHONE LO 3-4314

December 21, 1953

Armstrong Cork Company
Manchester, Penna.

Mr. R. C. Schiedt, Jr.
Tool Department

Re: File #488988 - Armstrong Cork
Floyd Hyatt

Dear Sir:

Thank you very much for your prompt answer to our letter of October 26th, 1953, requesting wage information on the above claimant.

The writer has been endeavoring to get a specimen of the type covering used on the job which you did at the McCroskey Whipyard in 1944 and 1945, but to date I have been unsuccessful. I called at the manufacturer of this asbestos pipe covering, the Heasby & Madison Company, in Ambler, Penna. and explained the situation, but they felt that they could not give the material directly to me, but rather requested that I have someone from the Armstrong Cork Company go through the process, and if the material was available, they would supply the same. We desire to get a specimen of this material in order that we may have it analyzed. At this time I request that if you do not have some of the material on hand at your plant, would you kindly write to Heasby-Madison Company and try and secure some of the same?

Thank you very much for your cooperation in this matter.

Very truly yours,

H. Johnson
Claim Repr.

HJ:dd

D. W. FERRELL, Jr. Chairman of the Board
S. W. PLATT, President
F. S. BROWN, Vice Pres. & Secretary
L. K. KIRK, Vice Pres. & Treasurer
J. P. HACKER, Vice President



PAUL WILSON, Vice President
E. A. WERNICA, Vice President
P. E. LAYMON, Vice President
and General Counsel
H. A. WHITE, Vice President

Standard Accident Insurance Company

INCORPORATED 1922

CASUALTY INSURANCE • FIDELITY AND SURETY BONDS

SAMUEL J. CARR
Resident Vice-President

PHILADELPHIA BRANCH OFFICE
STANDARD ACCIDENT BUILDING
214 SOUTH FIFTH ST.
PHILADELPHIA 6, PENNA.

PHONE LO 3-4514

December 21, 1953

Armstrong Cork Company
Lancaster, Penna.

Att: R. C. Schiedt, Jr.
Tax Department

Re: File #488988 - Armstrong Cork
Floyd Hyatt

Dear Sir:

Thank you very much for your prompt answer to our letter of October 26th, 1953, requesting wage information on the above claimant.

The writer has been endeavoring to get a specimen of the type covering used on the job which you did at the McCroskey Shipyard in 1944 and 1945, but to date I have been unsuccessful. I called at the manufacturer of this asbestos pipe covering, the Heasby & Madison Company, in Ambler, Penna. and explained the situation, but they felt that they could not give the material directly to me, but rather requested that I have someone from the Armstrong Cork Company go through the process, and if the material was available, they would supply the same. We desire to get a specimen of this material in order that we may have it analyzed. ~~At~~ At this time I request that if you do not have some of the material on hand at your plant, would you kindly write to Heasby-Madison Company and try and secure some of the same?

Thank you very much for your cooperation in this matter.

Very truly yours,

H. Johnson
Claim Repr.

HJ:dd

FLORIDA INDUSTRIAL COMMISSION
WORKMEN'S COMPENSATION DIVISION
TALLAHASSEE, FLORIDA

CLAIM NO: 5-85602 DATE OF ACCIDENT 195

EMPLOYEE: FLOYD BYATT
C/O LUCILLE SNYDER
808-810 Seybold Building
Miami 32, Florida

Represented by: :

LUCILLE SNYDER
Attorney at Law
808-810 Seybold Building
Miami 32, Florida

EMPLOYER: ARMSTRONG COKE COMPANY
Lancaster, Pennsylvania

CARRIER: STANDARD ACCIDENT INSURANCE COMPANY
320 Miracle Mile
Coral Gables, Florida

Represented by:

DIXON, DeJARNETTE & BRADFORD
Attorneys at Law
First National Bank Building
Miami 32, Florida

Compensation Order

Deputy Commissioner George C. McCaughae
808-810 Seybold Building
Miami, Florida

S-65602
Floyd Hyatt v.
Armstrong Cork Co.

After due notice to the parties, a hearing on the above entitled claim was conducted by the undersigned Deputy Commissioner at Miami, in Dade County, Florida, on January 3, 1954.

Upon consideration of the evidence presented in respect of such claim, the undersigned Deputy Commissioner finds that:

1. The Florida Industrial Commission has jurisdiction over the parties and the subject matter.

2. The claimant was employed by the Armstrong Cork Company during the years 1944 and 1945, at the McCloskey Ship Y. in Tampa, Florida, as a building mechanic engaged in the erection of insulating material, which occupation required the claimant to work in a confined space with blocks of asbestos material and to be constantly exposed to asbestos dust, which was so dense as to fog his glasses and penetrate his ears, nose, mouth and eyes. In the course of this work, the claimant inhaled considerable quantities of the asbestos dust. During the last thirteen weeks of his employment by the employer, the claimant's average weekly earnings were \$46.52, making his rate of compensation \$23 per week.

At the first hearing, the carrier controverted the claim on the ground that the statute of limitations had run against the claim and that the employer had not had notice within the time required by statute.

Testimony revealed that the claimant began to be short of breath in 1943 and to thereafter have a slight cough, but did not seek medical attention until he went to Dr. Bruener for treatment in November of 1952, who diagnosed the ailment as being silicosis. This examination was occasioned by a chance x-ray taken by a Community Chest Mobile X-ray Unit during a tuberculosis prevention drive. On August 31, 1953, the claimant went to Dr. Isaac B. Cippos, who, after an extensive examination, diagnosed the claimant's complaint as being asbestosis directly attributable to

the employment with the employer. This was the first time the claimant had any inkling that he was suffering from asbestosis. Thereafter, on September 1, claim was filed on behalf of claimant for compensation on the basis of asbestosis as an occupational disease, and, on September 9, 1933, a notice was mailed to the employer, which was acknowledged by letter of September 11, 1933 from the employer.

Dr. Cippes testified before the Deputy Commissioner that the claimant was permanently totally disabled and would continue to be so for the rest of his life. Claimant testified that he was unable to be out of bed for more than a very short period of time and was unable to do any form of labor. He described in detail the conditions in which he worked with the employer, and the description of the conditions were those as described as likely to cause the disease by Dr. Cippes.

The insurance carrier's only testimony was in the nature of the report of Dr. M. Jay Flipse, who found the claimant to be suffering from pulmonary emphysema and bilateral pulmonary fibrosis. The Deputy Commissioner finds that the claimant does suffer from asbestosis, as testified to by Dr. Cippes, and as a direct result of his employment by the Armstrong Cork Company, and that the same falls within the provisions of Chapter 440.13-1 as occupational disease.

The Deputy Commissioner interprets the requirement for notice to the employer to be notice within 90 days of the time the claimant becomes aware of the nature of the injury or occupational disease, and the Deputy Commissioner finds that notice was given within the time required.

The Deputy Commissioner further finds that the rate of compensation is that which was in effect at the time of the exposure of the claimant to asbestos dust in 1943, to-wit, \$22 per week.

WHEREFORE, it is the order of the undersigned Deputy

Commissioner that the employer, Armstrong Cork Company, by its insurance carrier, Standard Accident Insurance Company, do:

1. Pay claimant, Floyd Hyatt, permanent total disability compensation from August 18, 1952, at the rate of \$22 per week.

2. Furnish claimant such medical benefits as the nature of his condition due to the occupational disease requires.

3. Pay the charges of Dr. E. C. Brunner and Dr. Isaac E. Cippen, for examination and medical treatment, within the limits prescribed by the Medical Fee Schedule, and reimburse claimant for such payments as he may have made toward the charges made by the physicians.

4. Reimburse claimant to the extent of \$39.25 for drugs and medicines purchased by him at the direction of Dr. E. C. Brunner in the treatment of the occupational disease.

5. Pay to Lucille Snowden the sum of \$500, as a reasonable fee for the services performed on behalf of claimant herein.

DONE AND ORDERED at Miami, Florida, this 12 day of January, 1954.


GEORGE C. MCLAUGHLIN, as Deputy Commissioner
Florida Industrial Commission

(S E A L)

CC: Parties
Attorneys
Florida Compensation Rating Bureau

This is to certify that a copy hereof has been sent by registered mail to the claimant and to the employer at the known address of each, on

12 day of January,
FLORIDA INDUSTRIAL COMMISSION

By T. H. [Signature]

[Signature]
(11117)

D. H. KERRY, JR. Chairman of the Board
E. H. PLATT, President
F. S. BROWN, Vice Pres. & Secretary
C. K. KIRK, Vice Pres. & Treasurer
J. D. HACKER, Vice President



PAUL WILSON, Vice President
E. A. WARMICA, Vice President
P. E. LAYTON, Vice President
and General Counsel
W. A. WHITE, Vice President

Standard Accident Insurance Company

INCORPORATED 1904

CASUALTY INSURANCE • FIDELITY AND SURETY BONDS

SAMUEL J. CARR
Regional Vice President

PHILADELPHIA BRANCH OFFICE
STANDARD ACCIDENT BUILDING
214 SOUTH FIFTH ST.
PHILADELPHIA 6, PENNA.

PHONE LO 1-8116

March 15, 1954

Armstrong Cork Company
Lancaster, Penna.

Att: R. C. Schiedt, Jr.
Tax Dept.

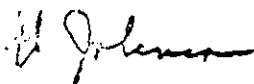
Re: Our file F-488988 - Armstrong Cork Co.
Floyd Hyatt

Dear Mr. Schiedt:

We will acknowledge receipt of your letter of February 12, 1954, and
I wish to take this opportunity to thank you for your cooperation.

You requested that I let you know if we did not receive the pipe covering
within a week, and inasmuch as a period of three weeks has now elapsed
and we have not received the requested material, will you kindly check and
see if the material has been shipped.

Very truly yours,


H. Johnson
Claim Repr.

mailed 

EH:dd

February 12, 1954

Armstrong Accident Insurance Company
South Fifth St.
Philadelphia 6, Pennsylvania

On Attention: Mr. H. Johnson

In reply to your letter of February 11, I have arranged to send
the section of the pipe covering requested.

Let me know if you don't receive it within a week.

Very truly yours,

ARMSTRONG CORP COMPANY

WCS:KOR

R. C. Schiedt, Jr.
Tax Department

W. H. HARRIS, President
F. S. DROWN, Vice President
L. R. KIRK, Vice Pres. & Treasurer
J. P. HACHER, Vice President



W. A. WAGNER, Vice President
R. E. LAMMON, Vice President
and General Counsel
H. A. WHITE, Vice President

Standard Accident Insurance Company

INCORPORATED 1922

CASUALTY INSURANCE • FIDELITY AND SURETY BONDS

SAMUEL J. CARR
RESIDENT VICE PRESIDENT

PHILADELPHIA BRANCH OFFICE

STANDARD ACCIDENT BUILDING

214 SOUTH FIFTH ST.

PHILADELPHIA 6, PENNA.

PHONE LO 3-6518

February 11, 1954

Armstrong Cork Company
Lancaster, Penna.

Att: George C. Scheidt, Jr.
Tax Department

Re: #488988 -- Armstrong Cork Co. -- Floyd E.

Dear Sir:

When I wrote you on December 1, 1953, requesting that if possible, you get a specimen of the type of asbestos covering used on the job which the Armstrong Cork Company did at the McCloskey Shipyard in 1944 and 1945, in the state of Florida. We find that this material had originally been manufactured by the Heasby & Madison Company in Ambler, Penna., and while I did approach them directly they felt that a request for the material should be made by the Armstrong Cork Company.

As you probably know, this case has rather serious "potentialities" and if it is at all possible, we would like to get some of this asbestos material for analyzation purposes. If this material is not available at this time, however, it would be appreciated if you would advise the writer of same in order that I can communicate with our Florida Office and keep them abreast of this situation.

Thanking you very much for your cooperation in this matter, I remain,

Yours very truly,

H. Johnson
H. Johnson

Claim Repr.

EJ:dd

**1. CUSTOMER'S ACKNOWLEDGMENT
CONTRACT FOREMAN'S
BUILDING MATERIALS DIVISION, LANCASTER, PA.**

BRANCH OFFICE	OUR REQ. NO.	CUST. ORDER NO.	F. O. B.		DATE SOLD	DATE REQUESTED	DATE PROMISED	DATE SHIPPED
New York APPROVED	291134		Ambler, P.A. R/A		2/15/54	AL Once		
			SHIPPED FROM			VIA		
	HQ Chicago		Ambler				Paid May - Prepaid	
AG-OFFICE	PRICE LIST NO.	WGT. & PIECES	DEFINITE ORDER NO.				SPECIAL BILLING AND SHIPPING INSTRUCTIONS - SALES AND USE	
2-74	TONE -							

End of - Prepaid

TAK NOT APPLICABLE

Attn: H. Johnson
Cladem Hops

ACKNOWLEDGE
WITH THANKS

This is a copy of your order exactly as we have entered it. If incorrect in any way, please notify us (1) before it is shown above) at once referring to our order number.

The goods sold hereunder are warranted to be free from defects of material and workmanship, but this warranty extends only to the goods and excludes all other warranties. The defective goods may be returned to Seller after inspection by, and upon receipt of a written notification from, Buyer. Goods so returned and found to be defective will be replaced or repaired without charge, but Seller will not be liable for loss or damage directly or indirectly arising from the use of the goods or from any other cause beyond the control of Seller. The remedy expressly provided in this replacement or repair of defective goods. Every claim on account of defective goods, direct or indirect, for any other cause, shall be deemed waived by purchase or use made in writing within thirty (30) days from the receipt of a bill of lading, which such claim closes.

An assertion or undertaking of 30% of the quantities specified to be considered fulfillment of this order.

Delay or failure to perform any contract in accordance with the terms of this order shall be excused by (a) act of God, fire, flood, earthquake, war, pest, or other unforeseen circumstances, (b) government action, (c) labor disputes, (d) transportation, (e) inclement weather, (f) insurrection, war, riot, or other circumstances beyond the control of the contractor, (g) material, inability to meet current labor requirements, or (h) any other cause beyond the control of Seller. Any of the foregoing conditions resulting in delay or failure to perform shall excuse such delay or failure in that the conditions shall exist and arise hereafter in case of such delay or failure in that the contractor shall have exercised due diligence to prevent such delay or failure for any of the above reasons, either party may cancel the contract upon notice in writing given to the other (a) by registered mail or by personal delivery, or (b) by telegram or teletype, or (c) by facsimile, or (d) by electronic mail, or (e) by any other means of communication, and the contract shall be terminated as of the date of such notice.

There are no wasteful expenditures or under-bidlines etc. implied in respect to the funds covered by the order. Both Purchaser and Seller have agreed to pay for the amount which Seller is authorized to pay on account of any such manufacturer's expense, or sales taxes or charges which may be established as to be levied by any Governmental authority (domestic or foreign) on merchandise sold hereunder, or any part thereof, or the taxes, fees, etc., or delivery charges or when the manufacturer applicable to the manufacturer thereof, insofar as the same may be levied, shall be delivered to the manufacturer of the goods, in the approval of Seller's Sales and Collection Department, at Rochester, N. Y.

100

III. INSTRUCTIONS

March 29, 1954

Standard Accident Insurance Company
214 South Fifth Street
Philadelphia 6, Pennsylvania

Gentlemen: Attention: Mr. H. Johnson

Please let me know immediately if you have not received the
pipe covering.

Very truly yours,

ARMSTRONG CORX COMPANY

RCSjr:NCR

R. C. Schiedt, Jr.
Tax Department

D. M. PERRY, JR., Chairman of the Board
R. M. PLATT, President
F. S. BROWN, Vice Pres. & Secretary
L. K. KIRK, Vice Pres. & Treasurer
J. P. HACKER, Vice President



PAUL W. COON, Vice President
C. A. WARRICK, Vice President
P. E. LAYTON, Vice President
and General Counsel
H. A. WHITE, Vice President

Standard Accident Insurance Company

INCORPORATED 1888

CASUALTY INSURANCE - FIDELITY AND SURETY BONDS

SAMUEL J. CARR
Resident Vice-President

PHILADELPHIA BRANCH OFFICE

STANDARD ACCIDENT BUILDING

214 SOUTH FIFTH ST.

PHILADELPHIA 6, PENNA.

PHONE LO 3-7518

APRIL 7, 1954

ARMSTRONG CORK CO.
LANCASTER, PA.
ATT: R. C. SCHIEDT, JR.

RE: OUR FILE #F-488988
ASSURED: ARMSTRONG CORK CO.
INJURED: FLOYD HYATT
ACCIDENT: UNKNOWN

DEAR SIR:

IN REFERENCE TO YOUR LETTER OF MARCH 29, 1954, INQUIRING AS TO WHETHER WE RECEIVED THE ASBESTOS PIPE COVERING, IT HAS BEEN RECEIVED AND WE ARE FORWARDING TO OUR FLORIDA OFFICE TO BE ANALYZED.

THANK YOU VERY MUCH FOR YOUR COOPERATION IN THIS MATTER, I REMAIN,

VERY TRULY YOURS,

H. JOHNSON
CLAIMS REPRESENTATIVE

HJ:FB

FLORIDA INDUSTRIAL COMMISSION
TALLAHASSEE, FLORIDA

March 1, 1954

FILE NO: 170

RULE NO. 12 OF THE COMMISSION'S RULES OF PROCEDURE; AND
RULE 28 (e)(f) AND (g) OF THE SUPREME COURT RULES.

SUPPLEMENT TO RULES OF PROCEDURE IN WORKMEN'S COMPENSATION CASES
BEFORE THE FLORIDA INDUSTRIAL COMMISSION, ADOPTED BY THE COMMISSION
IN REGULAR SESSION FEBRUARY 8, 1954.

RULE NO. 12

Effective February 1, 1954

Record for Review by the Supreme Court;
Petitioner to File Directions for
Preparation of Transcript when
Record Exceeds 75 pages.

(a) When the original transcript of the proceeding before and the order of the Deputy Commissioner which were reviewed by the Full Commission, together with the originals of any motions or other instruments filed in connection with such review, and the original order of the Full Commission sought to be reviewed by writ of certiorari filed in the Supreme Court of Florida, exceed 75 pages, at the time copies of the petition are served upon the Commission and other parties, counsel for the petitioner shall file with the Commission written directions for the preparation of a transcript of such parts of the record he deems essential to dispose of the question raised and shall serve a copy of such written directions upon each of said parties or their counsel. Within ten days after service of the petition on the Commission and other parties to the cause as required by rule of the Supreme Court, the Director of the Workmen's Compensation Division shall file in the Supreme Court a transcript of such parts of the record of the proceedings the petitioner seeks to have reviewed as counsel for petitioner shall have so directed.

(b) When any parts of the record not included in the transcript filed in the Supreme Court in accordance with the directions of the petitioner are deemed by opposing counsel to be necessary to the disposition of the question raised, opposing counsel may secure from the Commission for proffer in the Supreme Court a supplemental transcript of such other parts of the record as they deem necessary.

(c) The party at whose direction such transcript or supplemental transcript is prepared shall pay to the Commission the cost of the preparation of same, which may be assessed as costs in the case, unless such party is relieved of paying same as provided in paragraph (c) of Rule No. 6.

RULE NO. 28 (e)(f) AND (g) OF THE SUPREME COURT RULES

"Certioraris in Industrial Cases

"(e) Orders of the Florida Industrial Commission entered pursuant to Section 440.25, Florida Statutes 1951, as amended by Section 8, Chapter 28241, Laws of Florida, Acts of 1953, shall be reviewed only by writ of certiorari pursuant to Section 5, Article V of the Constitution upon a petition filed in this Court within sixty days from the date the order sought to be reviewed was entered. The petition by its nature amounts to a request to exercise the Court's discretion, and if granted, the questions raised will be determined. Being the order of a Commission exercising quasi judicial power the Court will not only determine whether or not the proceeding accord with the essential requirements of law, but if found to meet this test will then determine whether or not there is adequate, sufficient or substantial legal evidence to sustain the findings of the Commission. The Court will not weigh the probative force of conflicting evidence but will confine its examination to the nature of the evidence relied on to sustain the order. If the petition is denied no opinion will be written.

"(f) The Florida Industrial Commission shall be made a party respondent to every petition filed under this rule and at the time the petition is filed in the Supreme Court the petitioner shall give notice thereof to the Industrial Commission and other parties to the proceedings by serving a copy of the petition upon each of said parties or their counsel, together with a copy of the supporting brief of the petitioner.

"Transcripts of Records in Industrial Cases

"(g) Within ten days after service of the petition on the Industrial Commission and other parties to the cause as required by this rule, the Director of the Workmen's Compensation

Division shall transmit to the Supreme Court the original transcript of the proceeding before the Deputy Commissioner which was reviewed by the Full Commission, the originals of any motions, or other instruments filed in connection with such review by the Full Commission, and the original order of the Full Commission sought to be reviewed, which shall constitute the record-for-review by the Supreme Court; provided that such record be not over 75 pages. In the event it exceeds 75 pages, the Director of the Commission shall file in the Supreme Court a transcript of such parts of the record of the proceedings the petitioner seeks to have reviewed as counsel for petitioner deems essential to dispose of the question raised. Unless shown by opposing counsel to be necessary, no other record shall be required."

FLORIDA INDUSTRIAL COMMISSION
WORKMEN'S COMPENSATION DIVISION
TALLAHASSEE

7-2-54
R.C.V.

May 4, 1954

Mr. Duane Anderson
Dixon, DeJarnette & Bradford
Attorneys at Law
First National Bank Building
Miami, Florida

Re: Floyd Hyatt vs.
Armstrong Cork Co.
Claim No. S-85602

Dear Mr. Anderson:

Enclosed is a copy of the Order of the Full Commission in the captioned cause, which was entered and copies mailed to the parties on May 4, 1954.

Also enclosed are copies of (1) Rule No. 12 of the Commission's Rules of Procedure; and, (2) Rule No. 28 (e), (f) and (g) of the Supreme Court Rules. These items are not enclosed to encourage further litigation but are set forth merely to inform any party who may desire to contest the decision of the Full Commission of the correct procedures to be followed.



Very truly yours,

Rodney Durrance
RODNEY DURRANCE
Director

EP
Encl.

cc: Mr. Floyd Hyatt (Reg.)
Miss Lucille Snowden
Armstrong Cork Co. (Reg.)
Standard Accident Ins. Co.
Mr. George C. McCaughan
Florida Comp. Rating Bureau

C O P Y

FLORIDA INDUSTRIAL COMMISSION
WORKMEN'S COMPENSATION DIVISION
TALLAHASSEE, FLORIDA

CLAIM NO: S-85002 DATE OF ACCIDENT August 31, 1953

EMPLOYEE: FLOYD HYATT
c/o Lucille Snowden
208-810 Jaybold Building
Miami 32, Florida

Represented by:

Lucille Snowden
Attorney at Law
501 N. W. 1st St., Miami, Fla.

EMPLOYER: ARMSTRONG COAL COMPANY
Lancaster, Pennsylvania

CARRIER: STANDARD ACCIDENT INSURANCE COMPANY
320 Miracle Mile
Coral Gables, Florida

Represented by:

Dixon, DeJarnette & Bradford
First National Bank Building
Miami 32, Florida

COMPENSATION ORDER

This cause came on to be heard upon application for
section of an order by the deputy commissioner awarding compensation
for an occupational disease of asbestosis.

There is substantial competent evidence in the record
to support the order of the deputy. The employer contends that
a statute of limitation has run against the claim. Certainly the
two year period for filing a claim under section 440.19 had not
expired upon the date that the claim was filed. The time of
discovery of an occupational disease is the date of an employee's
becoming actually incapacitated. The claimant was not totally
incapacitated by the occupational disease of asbestosis, as is
required before compensation can be paid under section 440.151
(6) until August 12, 1953. Claim was filed on September
1, 1953 and notice given to the employer on September 8, 1953.
As stated above, the two year period for filing a claim is satis-
fied and the requirement of notice within ninety days to the employ-
er under section 440.151 (7) is also fulfilled.

The employer contended, upon oral argument, that since
the legislature required death from an occupational disease to
occur within three hundred fifty weeks after the last exposure to
be compensable, then they could not intend for more disability
to be compensable if it results after the three hundred fifty
weeks. See section 440.151 (1) (a). This contention entirely
overlooks the fact that silicosis, asbestosis or any dust diseases
are treated separately in subsection six of the occupational
disease portion of the law. This section appears to recognize that
these diseases usually develop over a period of years before they
become known. Therefore the provision in subsection six, that
disability or death from asbestosis shall be compensable

to any occupation unless during the ten years preceding the date of disablement the employee has been exposed to the dust over a period of not less than five years, refutes the employers argument in this regard. Certainly the period of three hundred fifty weeks was not meant to apply to a disease that ordinarily does not make its appearance known before five to ten years after exposure.

Although the matter was not brought specifically to our attention, it appears from a study of the record that there is no evidence to substantiate the deputy's award of permanent total disability from the date of August 16, 1952. The claimant first began to lose time from work in October of 1952 by his own testimony. He did not become totally disabled until August 12, 1953, and the order of the deputy appears to be in error in this regard. It is thereupon,

The Order Of The Commission that the order of the deputy commissioner be and the same hereby is modified to indicate that the claimant is entitled to permanent total disability compensation from August 12, 1953, at the rate of \$22 per week rather than from the date of August 16, 1952. It is further

Ordered that the order of the deputy commissioner, other than as modified above, be and the same hereby is affirmed. It is further

Ordered that the employer, by and through its carrier, shall pay to claimant's attorney the sum of Three Hundred Twenty-five Dollars (\$325), which is a reasonable fee for representing the claimant in this cause before this Commission.

Done and Ordered at Tallahassee, Leon County, Florida,
this ^{4th} ~~15th~~ day of ^{May} ~~April~~, A. D. 1954.

FLORIDA INDUSTRIAL COMMISSION

/s/ James T. Vocelle

JAMES T. VOCELLE, chairman

(S E A L)

/s/ L. R. Weston

L. R. WESTON, Member

cc: Lloyd Hysor
Lucille Snowden
Armstrong Cork Company
Standard Accident Insurance Company
Nixon, DeJernette & Bradford
Doonty McGaughey
Florida Compensation Rating Bureau

This is to certify that on this, the
4th day of May 1954,
the above Order was entered and a copy
sent by registered mail to each inter-
ested party at his last known address.

FLORIDA INDUSTRIAL COMMISSION

By

B. Phillips

Legal Sec'y
(Title)



FLORIDA INDUSTRIAL COMMISSION

CLAIMANT IS REQUIRED

April 7 19 58

TO BE PRESENT AND

1050 Seybold Bldg.

PREPARED TO TESTIFY

Miami 32, Fla.

Office of the Deputy Commissioner

INITIAL
NOTICE OF HEARING

Claim No. S-85602 DA 1944 & 1945 Carr. #76-C-488988

Employee FLOYD HYATT, c/o Kaplan & Ser

Attorney for Employee KAPLAN & SER, 608 Seybold Bldg., Miami 32, Fla.

Employer ARMSTRONG CORN CO., Lancaster, Pa.

Insurer STANDARD ACCIDENT INS. CO., 1120 Ponce deLeon Boulevard,
Coral Gables, Fla.

Attorney for Employer or Insurer

TO THE PARTIES ADDRESSED:

A hearing will be held in the above case at 1050 Seybold Bldg., Miami, Fla.

at 2:30 o'clock P M Monday, May 12, 1958

THIS HEARING IS PART OF A SCHEDULE; IT CANNOT BE POSTPONED WITHOUT CONSIDERABLE INCONVENIENCE AND EXTRA EXPENSE. POSTPONEMENT CANNOT BE HAD EXCEPT UPON STRICTLY LEGAL GROUNDS:

SUBJECT OF HEARING (Here state question in dispute) To determine merits of

claim for continued compensation benefits, attorneys' fees, 20% penalty and interest.

The parties to this hearing should arrange to have all witnesses present to testify promptly at the time and place above given. (Subpoena will be issued upon request of parties or counsel.)

The right is reserved to take such action as the law permits if either party fails to appear at the time and place set for this hearing.

FLORIDA INDUSTRIAL COMMISSION

CC: Parties
Certified to carrier

HURTON H. COHEN
Deputy Commissioner

April 11, 1958

Mr. B. R. Shriver
V. L. P. Shriver Agency
1801 Union Bank Building
Pittsburgh 22, Pa.

Dear Sir:

Subjects: Floyd Hyatt - Florida
Workmen's Compensation Claim

We presume Standard Accident Insurance Company received a notice of the hearing May 12, 1958, but just in case, we enclose a copy.

Very truly yours,

R. C. Schiedt, Jr.
Insurance Department

JEL

Enclosure

Fidelity and Deposit Company

HOME OFFICE OF MARYLAND BALTIMORE 3

FIDELITY AND SURETY
BONDS



BURGLARY AND GLASS
INSURANCE

W. L. P. SHRIVER AGENCY
GENERAL AGENTS

1801 UNION BANK BUILDING
PITTSBURGH 22

TELEPHONE
GRANT 1-7800

April 14, 1958

Mr. R. C. Schiedt, Jr.
Insurance Department
Strong Cork Company
Lancaster, Pennsylvania

APR 15 1958

Re: Floyd Hyatt - Florida
Workmen's Compensation Claim

Dear Dick:

Thank you for your letter enclosing the Notice of Hearing on the above claim.

With kindest personal regards, I am

Very truly yours,

W. L. P. SHRIVER AGENCY


W. L. P. Shriver

BRS:esm

Hyatt, Floyd
Mia.

Case No. S '85602'

Employer ARMSTRONG Cork Co
Year ?

Date of Injury Contacted during 1944 & 1945
Injury Asbestosis

Remarks letter
bd

The Commission has assigned the above Case Number to this file. All future reports and correspondence concerning this injury MUST refer to this number.
Florida Industrial Commission, Workmen's Compensation Division

999

Date: 1/1/59
C. J. [Signature]
FLORIDA INDUSTRIAL COMMISSION
WORKMEN'S COMPENSATION DIVISION
TALLAHASSEE, FLORIDA

Decision No. 2-880

Subject File Nos. B-35; B-5

CLAIM NO.: S-85602

DATE OF ACCIDENT: August 12, 1953

EMPLOYEE:

FLOYD HYATT
c/o Kaplan & Ser
808 Seybold Building
Miami 32, Florida

Represented by:

Lucille Snowden and
Messrs. Kaplan & Ser
808 Seybold Building
Miami 32, Florida

EMPLOYER:

ARMSTRONG CORK COMPANY
P.O. Box 100
Pittsburgh, Pennsylvania

CARRIER:

STANDARD ACCIDENT INSURANCE COMPANY
320 Miracle Mile
Coral Gables, Florida

Represented by:

Messrs. Dixon, DeJarnette, Bradford,
Williams, McKay & Kimbrell
908 Ainsley Building
Miami, Florida

COMPENSATION ORDER OF FULL COMMISSION

This cause came on to be heard upon application of the employer and carrier for review of an Order of the Deputy Commissioner dated May 22, 1959, awarding the claimant compensation for permanent total disability for a period of 700 weeks.

Claimant was employed by the Armstrong Cork Company from January 29, 1944 to August 13, 1945, as a building mechanic engaged in

the erection of insulating material. In this occupation, the claimant contracted asbestosis. The claimant, subsequent to August 13, 1945, worked for several employers, but was not exposed to asbestos fumes.

On August 12, 1953, the illness had progressed to a point where the claimant was forced to terminate his employment. Since that date, he has been permanently and totally disabled. On September 1, 1953, the claimant filed a claim for workmen's compensation benefits and the Deputy Commissioner awarded the claimant compensation for permanent total disability. This Order of the Deputy Commissioner was affirmed by the full Commission and no appeal from the full Commission's Order was taken. Pursuant to the award of compensation by the Deputy Commissioner, the insurance carrier paid the claimant the sum of \$5,000 at the rate of \$22 per week, the maximum rate of compensation payable under the Workmen's Compensation Law at the time of claimant's last exposure to asbestos fumes. After the insurance carrier had paid the sum of \$5,000 in compensation benefits to the claimant, payment of compensation was terminated. Thereafter, the claimant filed a claim, contending that he was entitled to 700 weeks' compensation, which is the maximum payable under the law existing in 1953. The Deputy Commissioner agreed with this point of view and awarded the claimant compensation for 700 weeks. The employer and carrier have applied for a review from said Order of the Deputy Commissioner, urging essentially that the Order of the Deputy is contrary to the law and that such Order is in violation of the due process clause of the 14th Amendment to

ORIGINAL

the Constitution of the United States.

The sole issue on this review is one of law, that is, whether claimant's benefits are those provided by the 1945 law or those authorized under the 1953 law, when the claimant became permanently disabled. Section 440.20(13), Florida Statutes, (1945), provides, viz.:

"The total compensation payable under this chapter for disability and death shall in no event exceed the sum of five thousand dollars in addition to any benefits under Chapter 440.13 for medical services and treatment and under subsection (1) of Section 440.16 for funeral expenses."

Section 440.15 of the 1953 provides, in part, as follows, viz.:

"Compensation for disability shall be paid to the employee . . . (1) PERMANENT TOTAL DISABILITY: (a) . . . total disability adjudged to be permanent, sixty per cent of the average weekly wages shall be paid to the employee during the continuance of such total disability; but in no event shall such payments be made in excess of seven hundred (700) weeks."

In our opinion, the case of Phillips v. City of West Palm Beach Fla. 1953, 70 So. 2d 345, is controlling. In the Phillips case, claimant's injury occurred in July 1945 and compensation was paid, however, in 1951 the injured foot was amputated and additional compensation was paid for the permanent disability occurring in 1951. The 1945 law provided payment of compensation should not exceed \$5,000. The claimant contended that the 1951 law was applicable and he should receive compensation for his permanent disability in accordance with the latter law since his permanent disability did not occur until 1951. The Court, in rejecting the claimant's contention, stated, viz.:

"To hold that Chapter 26877, §2 of the Laws of 1951 is retroactive would make it a violation of Section 10, Article 1 of the Constitution of the United States and constitute it in impairment of the obligation of contract."

It has long been established in Florida that the Act itself is notice of its provisions to employers and employees alike and that same constitutes a contract between the employer and employee, and insurance carrier, if one, once the parties have accepted the provisions of the Act. (See Hardware Mutual Casualty Co. v. Carlton, Fla. 1942, 9 So. 2d 359; Stansell v. Marlin, Fla. 1943, 14 So. 2d 892; Williams v. American Surety Co., Fla. App. 1958, 99 So. 2d 877.) It is clearly apparent from the law as stated by our appellate courts that the provisions of the Workmen's Compensation Law in effect at the time of employment become a part of the contract of employment. Section 440.151(6)(c) of the 1945 Workmen's Compensation Law, provides a definite amount of liability for disability resulting from silicosis and asbestosis by providing a total sum for such disability in the amount of \$500 if the disability occurred in July of 1945, the month in which this particular provision had its effective date. The Act further provided additional amounts to be paid in the amount of \$50 per month, which is added to the \$500 from July 1945 until the time the asbestosis became totally disabling. In the instant cause, the claimant was not totally disabled until August of 1953 and the maximum amount he would be entitled to would be \$500 plus \$50 per month from July 1945 until August 1953, or a sum of \$5,350. However, in the same section of the Act, the following is stated:

"Such progressive increase in the limits to the aggregate

compensation and benefits for disability and death shall continue until the limit upon such benefits fixed in this Workmen's Compensation Law is reached."

It is clear that the legislature did not, in providing for the progressive increase of compensation, intend to increase the total amount of compensation payable greater than that provided in Section 440.20(13), which limits the compensation recoverable to \$5,000. In our opinion, the Deputy Commissioner erred, as a matter of law and the claim for additional compensation benefits must be dismissed.

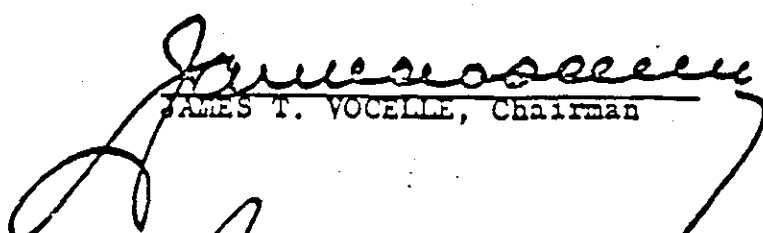
Having considered the cause upon the record, briefs, and oral argument of counsel for the parties and it appearing that the Order of the Deputy Commissioner does not comply with the essential requirements of law, it is

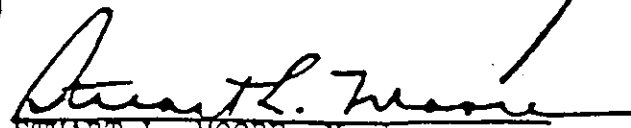
ORDERED that said Order of the Deputy Commissioner dated May 22, 1959, be and the same is hereby reversed and said claim for additional workmen's compensation benefits be and the same is hereby dismissed.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this _____, A. D. 1959.

November 19

FLORIDA INDUSTRIAL COMMISSION


JAMES T. VOCELLE, Chairman


STUART L. MOORE, Member

SEAL

D I S S E N T

I cannot agree with the conclusions reached by the majority of my colleagues. It is the general principle of Workmen's Compensation Law that the law in force at the time of an injury or accident governs the rights of the parties. This poses the question as to what constitutes the time of injury where we have an occupational disease. Section 440.151(1)(a), Florida Statutes, states in part, viz.:

"Where the employer and employee are subject to the provisions of the workmen's compensation law, the disability or death of an employee resulting from an occupational disease as hereinafter defined shall be treated as the opening of an injury by accident . . ."

Section 440.151(6)(a), provides, in part, viz.:

"Disability from silicosis, asbestosis, or any dust disease . . . shall be allowed only when the employee is incapacitated from performing any remunerative employment." (Emphasis Supplied).

In the instant cause, the claimant, under the terms of the statute, was not disabled until August 1953 and no other conclusion can be drawn. The employer and carrier urged that an application of a new law would be retroactive in the violation of state and federal constitutional provisions. They also rely upon the case of Phillips v. City of West Palm Beach, Fla. 1953, 70 So. 2d 345. It should be noted that the court, in the Phillips case, stated the following:

"The acceptance of application of workmen's compensation statutes by the employer, employee, and insurance carrier constitutes a contract between the parties embracing the provisions of the statutes as they exist at the time of any injury compensable under terms of statutes." (Emphasis Supplied).

In the instant cause, by the terms of Section 440.151, the compensable injury did not occur until August of 1953. The facts in

ORIGINAL

the instant cause are analagous with those existing in the case of Semon v. George H. Flenn Corp., 166 NYS 2d 835, wherein the New York board allowed the claimant a higher rate of compensation although the injurious exposure occurred prior to his disablement and at a time when the compensation rate was lower. It is further noted that Section 38 of the New York Compensation Law is almost identical to our Florida section, 440.151(1)(a). The New York section has the following language, viz.:

"The 'disablement' from an occupational disease 'shall be treated' as the happening of an accident."

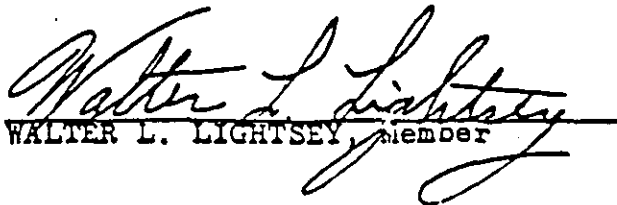
The New York court had this to say, viz.:

"It is the date of disablement and not the date of last exposure which is controlling. In occupational diseases, the time of contraction is sometimes unknown and its development may be a slow process. For this reason the disablement is regarded as the 'accident' and the right to compensation in such a case depends on the disablement."

As stated by the Pennsylvania Supreme Court in the case of Pekorafsky v. Glen Alden Coal Co., 89 A. 2d 890, viz.:

"The liability of employer to pay compensation is fixed as of the day of last exposure while the duty to make such payments and the amount thereof becomes fixed upon the date when disability occurs." (Emphasis Supplied).

For the above reasons, I would affirm the Order of the Deputy Commissioner.


WALTER L. LIGHTSEY, member

cc:
Floyd Hyatt
Lucille Snowden
Kaplan & Ser
Armstrong Cork Co.
Standard Accident Ins. Co.
Dixon, DeJarnette, Bradford, Williams, McKay & Kimbrell
Deputy MacKenzie

-85602

This is to certify that on this,
November 11, 1959, the
above Order was filed in the office of
the Florida Industrial Commission at
Tallahassee and a copy sent by certifie
mail to each interested party at his
last known address.

FLORIDA INDUSTRIAL COMMISSION

BY /s/ J. W. Rivers

Secretary
(Title)

/jwb

ORIGINAL

FLORIDA INDUSTRIAL COMMISSION
WORKMEN'S COMPENSATION DIVISION
TALLAHASSEE, FLORIDA

MAY 25 1959 WLH

1945

CLAIM NO: S-35602 DATE OF ACCIDENT August 12, 195 3

EMPLOYEE: FLOYD STATT
c/o Kaplan & Ser
808 Seybold Building
Miami 32, Florida

Represented by: LUCILLE SHOEDEN and
KAPLAN & SER
808 Seybold Building
Miami 32, Florida

EMPLOYER: ARMSTRONG COKE COMPANY
Lancaster
Pennsylvania

CARRIER: STANDARD ACCIDENT INSURANCE COMPANY
320 Miracle Mile
Coral Gables, Florida

Represented by: DIXON, DOJAENETTE & BRADFORD
Ainsley Building
Miami, Florida

COMPENSATION ORDER
BY
BUSTON M. COHEN
DEPUTY COMMISSIONER
MIAMI, FLORIDA

W.C.L. Form No. 4
COPY

A prior order entered in this cause on January 12, 1954, awarded permanent total compensation benefits to the claimant on the basis that claimant had contracted silicosis.

On January 30, 1958, claim was filed in this cause alleging that the carrier for the employer erred in terminating payments of compensation to the claimant after paying only \$5,000.00 in compensation benefits to him. Claimant contended that because he is permanently and totally disabled, he is entitled to 700 weeks under the provision of Section 440.15 (1) (a) as amended in 1953.

Hearing was conducted by the undersigned Deputy Commissioner in this cause on May 12, 1958, at which time counsel for both parties were instructed to prepare Briefs on the legal question involved.

After considering the Briefs and the legal question involved, the undersigned Deputy Commissioner finds as follows:

1. That the Florida Industrial Commission has jurisdiction of the parties and the subject matter.
2. That although the claimant was last injuriously exposed to the substance causing his silicosis in 1945, he actually became incapacitated as a result of this disease on August 12, 1953. In an earlier decision in this case the Full Florida Industrial Commission stated "the time of the injury for an occupational disease is the date of an employee's becoming actually incapacitated". At the time of claimant's injury,

the statute in existence would spell out the benefits to which he would be entitled. On August 31, 1953, the Workmen's Compensation Law provided benefits to the claimant for permanent total disability amounting to 700 weeks. It follows, therefore, that the carrier erred in terminating benefits to the claimant in 1957, after the payment of \$5,000.00.

3. Claimant was represented by the law firm of Kaplan & Ser, who have by their services secured an additional \$10,000.00 for the claimant, and the undersigned finds that \$1,500.00 is a reasonable fee for the legal services rendered claimant in this proceeding.

WHEREFORE, it is the order of the undersigned Deputy Commissioner that the employer, Armstrong Cork Company, by and through its carrier, Standard Accident Company, do:

1. Pay to claimant, Floyd Hyatt, compensation for his permanent total disability for a period of 700 weeks, at his compensation rate of \$32.00 per week, commencing August 16, 1953, the carrier to take credit for all payments of compensation for this type of disability made since that time, together with interest thereon at the rate of 6% per annum from the dates when compensation should have been made.

2. Pay claimant's attorneys, Kaplan & Ser, the sum of \$1,500.00 as a reasonable fee for services rendered to claimant in this proceeding.

CIRCUIT NO. 1
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3. Pay the costs in this proceeding.

DONE AND ORDERED at Miami, Florida, this 22nd day
of May, 1959.

Barton M. Cohen

/s/ Barton M. Cohen
Barton M. Cohen, Deputy Commissioner
Florida Industrial Commission

(SEAL)

CC: Parties

This is to certify that the foregoing Order
was entered on the 22nd day of May,
1959 and that a copy thereof was sent on
said date by certified mail to the claimant
and to the employer at the last known
address of each.

Florida Industrial Commission

By: /s/ E. B. Coatsworth
Secretary

vm No. 11
COPY