

FILE NAME: Johns-Manville (JMA)

DATE: 1966

DOC#: JMA143

DOCUMENT DESCRIPTION: Contract Unit Claim File: Kenneth Martin
Frederick

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

APPLICANT KENNETH MARTIN FREDERICK (deceased) by CASE # F 16482
Asbestos Insulation Installer spouse & son

DATE CLAIM FILED Sept. 13, 1966

INJURY ALLEGED Inhalation of asbestos particles to lung

ALLEGED DATE OF INJURY 1960-66 extended as add'l employers are joined

EMPLOYER/INSURER Fiberglass Engineering/AETNA, et. al.
including J-M Sales/Travelers

No apparent Canadian insurer

OTHER NOTES "No clear cause & relation of injury to employment"
State of the (medical) art discussion among
AETNA doctors

DATE OF RESOLUTION Nov. 2, 1972

RESOLUTION Compromise & Release \$13,500 settlement

DOCUMENTS COPIED		# OF PAGE
1)	7/9/68 Med Rpt of Miller to State Comp. Ins. Fund.	1
2)	7/28/66 Med Rpt of Powell to AETNA	2
3)	7/26/66 Med Rpt of Lippett to AETNA	3
4)	7/26/66 Med Rpt of Ford to AETNA	2
5)	7/7/66 Med Rpt of Mau to AETNA	1
6)	Compromise & Release	4

CLAIMANT

Kenneth Martin Frederick

10

California Workers' Compensation Appeals Board

CARRIERS INVOLVED:

- The AETNA Casualty & Surety Co.
- oAmerican Automobile Ins. Co.
- oAmerican Employers Ins. Co.
- oAmerican Motorists Ins. Co.
- Argonaut Ins. Co.
- oAssociated Indemnity Corp.
- oCalifornia Casualty Indemnity Exchange
- oCalifornia Compensation & Fire Co.
- oCasualty Ins. Co. of California
- oEmployers Liability Assurance Corp.Ltd.
- oEmployers Mutual Liability Ins. Co. of Wisconsin
- oFidelity & Casualty Co. of New York
- oFireman's Fund Ins. Co.
- oGeneral Accident, Fire & Life Assurance Corp. Ltd.
- oGlobe Indemnity Co.
- oGuarantee Insurance Co.
- oGreat American Ins. Co.
- oHardware Mutual Casualty Co. (Sentry Ins. Co.)
- Industrial Indemnity Co.
- oIndustrial Indemnity Exchange
- oInsurance Co. of North America
- oLiberty 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.
- oPacific Employers Ins. Co.
- oPacific Indemnity Co.
- oReliance Ins. Co. (Standard Accident Ins. Co.)
- oRoyal Indemnity
- oSecurity Ins. Co. of Hartford (U.S. Casualty Ins. Co.)
- State Compensation Insurance Fund
- Transport Indemnity Co.
- The Travelers Ins. Co.
- oThe United Pacific Ins. Co.
- U.S. Fidelity & Guaranty Co.
- oZenith National Ins. Co.
- oZurich Ins. Co.

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1 WORKERS' COMPENSATION APPEALS BOARD

2 STATE OF CALIFORNIA

3 MINNIE LOUISE FREDERICK and
4 BRUCE FREDERICK,
5 KENNETH MARTIN FREDERICK (DECEASED)

CASE No. 66 F 16482

6 Applicant

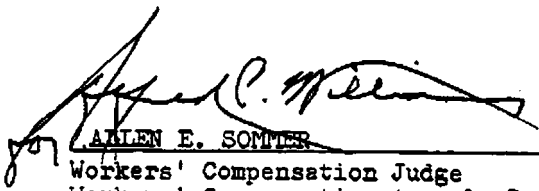
7 vs.
8 FIBERGLASS ENGINEERING & SUPPLY,
9 et al

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

10 Defendant

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

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

16
17
18
19 
20 AXLEN E. SOMMER

Workers' Compensation Judge
Workers' Compensation Appeals Board

21
22
23
24 Dated at San Francisco,
25 California, this 23 day
26 of March 1981
27

GENERAL SURGERY
THORACIC SURGERY
VASCULAR SURGERY

ORLAND G. DAVIES, JR., M.D.
JACK D. THORBURN, M.D.
PARKER POWELL, M.D.
159 NORTH THISTA STREET
FRESNO 1, CALIFORNIA
268-8441

July 28, 1966
Division of Industrial Accidents - Fr
RECEIVED

OCT 10 1966

Aetna Life & Casualty
Sasualty & Surety Division
Suite 800 Del Webb Center
2220 Tulare Street
Fresno 21, California

FILE
FRESNO 10000
Workmen's Compensation Appeals Bd.

Re: Kenneth M. Frederick, deceased
Our # 10141

Atten: John S. Backer
Claim Representative

Dear Mr. Backer:

You have requested information regarding the recently deceased patient, Mr. Kenneth Frederick.

Mr. Frederick was first seen by me on July 6, 1965, at the request of Doctor Mau because of pain in his right calf. I felt that this represented pain radiating from a herniated lumbar disc and referred the patient to Doctor Lippert who subsequently operated upon him with relief of his symptoms. I did not see the patient again until May 24, 1966 when Doctor Mau again asked me to see the patient who was in the hospital at that time. In addition to the pulmonary problems and fever which he had had, the patient had developed right leg pain which was different than the pain he had previously had. He stated that he had again become ill in March of 1966 with a pulmonary infection and that subsequent to that he had felt weak and had lost his appetite. The leg pain developed during the course of this illness and had been quite severe and required pain medication.

At the time of our examination there was no evidence of vascular disease or interabdominal mass which could explain the cause of the leg pain. The evening following our examination the patient stated that the leg pain disappeared and we did not see him subsequently.

Consequently, I have seen the patient on two occasions for leg pain but have never done a complete pulmonary examination.

In answer to your question regarding the cause and effect relationship between his employment as a fiberglass worker and his carcinoma of the lungs, I know of no proved relationship. An opinion from one whose main experience has been in industrial medicine might well be more valuable.

Aetna Life & Casualty
Re: Frederick, Mr. Kenneth M. (Deceased)
Our # 10141

Page 2
July 28, 1966

Also, I do not know what the patient's smoking habits were and what relationship this might play to his disease.

I am afraid this has not been too enlightening a response but it is the best that I am able to give.

Yours truly,

A handwritten signature in dark ink, appearing to read "Parker Powell, M.D.", with a large, stylized initial "P" and a flourish at the end.

Parker Powell, M.D.

PP:ajt

JOHN W. PACE, M.D.
DAVID S. ZELEAR, M.D.
ROBERT G. LIPPERT, M.D.
2940 NORTH FRESNO STREET
FRESNO 3, CALIFORNIA

July 26, 1966

Aetna Casualty & Surety Co.
Suite 800, Del Webb Center
Fresno 21, Calif.

Re: Kenneth M. Frederick
Emp: Owens Corning Fiberglas

Attn: John S. Backer

Dear Sir:

The above named patient was admitted to my service at St. Agnes Hospital on 7-8-65 at the request of Dr. Parker Powell. Enclosed is a copy of my History & Examination dictated at that time.

Lumbar spine films on 7-8-65 showed narrowing of L5-S1 with some hypertrophic arthritic changes. A chest film was also obtained on this date. Enclosed is a copy of these reports.

A pantopaque myelogram was performed on 7-9-65. This study revealed a defect at L5-S1 on the right. A copy of this report is also enclosed.

A laminectomy was performed on 7-13-65 with removal of an extruded intervertebral disc at the lumbosacral level on the right. Postoperatively, the patient made an uneventful recovery and was discharged home on 7-20-65. Final diagnosis at that time was extruded intervertebral disc lumbosacral, right, asbestosis.

The patient was seen in my office for several recheck examinations, showing consistent improvement and was dismissed from my care on 10-26-65.

Mr. Frederick was next seen on 5-9-66. At this time he had been off work approximately one month with pneumonia. Unrelated to any particular activity, he began to have aching in the right calf and foot. This gradually became worse, involving the thigh. There was minimal low back pain and no left leg pain. The pain tended to be aggravated by walking and standing.

Examination on 5-9-66 revealed the patient to be quite ill-appearing and pale. There was a full range of painless back motions. There was no spasm or tenderness on palpation of the back musculature. Straight leg raising is carried to 90° on the left without pain, and on the right elevation to 90° caused slight discomfort. The sciatic nerve on the right was quite tender on palpation. The ankle jerk was absent on the right. There was no hypesthesia.

Auscultation of the lungs suggested decreased air entry over the right lung field with a suggestion of some dullness in the basal regions on the right. The abdomen was negative. Liver and spleen were not palpable.

It was felt the history and findings were quite suggestive of an occult neoplasm. Particularly, the possibility of a retroperitoneal neoplasm was raised. The patient was referred back to Dr. Mau, his referring physician. Dr. Mau was contacted by telephone and further investigation along these lines recommended. The patient was subsequently admitted to Fresno Community Hospital by Dr. Mau and extensively investigated by Dr. Mau and, additionally, by a medical consultant, Dr. Woo. Their studies failed to illustrate a neoplasm at that time. Additionally, I again re-examined the patient in hospital, as did Dr. Powell, without finding a definite cause for his problem. A repeat myelogram was performed during that admission without revealing any pathology. During this time the patient's pain receded and actually seemed to disappear over a matter of a day or two, so that he was discharged - a diagnosis not having been established. Subsequently, I was advised by Dr. Mau that he was readmitted to the hospital a few weeks later and at that time a diagnosis of an oat cell carcinoma of the lungs established. The patient was not seen by this examiner on this last admission.

COMMENT: From the neurosurgical point of view, this patient was originally treated for a lumbosacral disc extrusion - to which surgery he responded very satisfactorily. Subsequently, he presented with findings leading to the diagnosis of occult retroperitoneal neoplasia which could not be definitely demonstrated, despite extensive study in hospital. On a subsequent admission a neoplasm of the lung was finally demonstrated.

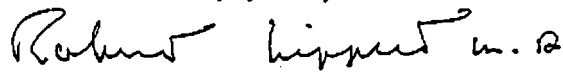
The patient did have a longstanding history of asbestosis with findings as outlined above which would, of course, be industrially related. Insofar as the relation of his neoplasm to his asbestosis

Re: Kenneth M. Frederick

Page 3

is concerned, my reading would indicate an incidence as high as 13% of carcinoma of the lungs in patients with asbestosis. This would, I feel, strongly suggest a direct relationship between the patient's tumor and his occupation. Such an opinion, however, is somewhat far afield in my chosen specialty and I would suggest an opinion be obtained from an Internist or surgeons specializing in the treatment of pulmonary diseases.

Very truly yours,



R. G. Lippert, M. D.

RGL/vl
encls.

BRUCE M. BERG, M.D.
GEORGE G. WOLF, M.D.
OWEN K. STEINBACH, M.D.
MAX S. MILLAR, M.D.

CENTRAL CALIFORNIA MEDICAL CENTER
3004 NORTH FRESNO STREET
FRESNO, CALIFORNIA 93703
TELEPHONE 229-8537

INTERNAL MEDICINE

July 9, 1968

DEPT. OF MEDICAL SERVICES - Fresno
RECEIVED

JUL 16 1968

State Compensation Insurance Fund
Post Office Box K
Fresno, California

FILED
FRESNO OFFICE
Workmen's Compensation Appeals Board

Re: A - 17003
Kenneth M. Frederick

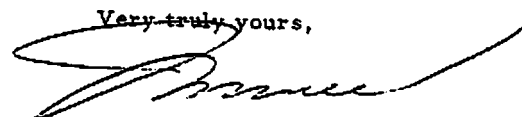
Attention Maurice Nyberg, Claims Adjuster

Gentlemen:

With regard to your inquiry of June 21, 1968, I am not aware of any known relationship between exposure to fiberglass and development of the type cancer leading to this man's death.

A period of continuous exposure to fiberglass alone, without concomitant exposure to asbestos, would not have contributed to this man's demise.

Very truly yours,



M. S. Millar, M. D.

MSM/wb

MAURICE NYBERG

JUL 11 1968

FRESNO, D.O.

Joseph B. Ford, Jr., M.D.

THORACIC SURGERY
2844 FRESNO STREET
FRESNO, CALIFORNIA 93721
248-7878

BRONCHOSCOPY
ESOPHAGOSCOPY

July 26, 1966

John S. Backer
Aetna Life and Casualty
2220 Tulare Street
Fresno, California

Re: Kenneth Frederick
Owens Corning Fiberglas

Dear Mr. Backer:

This is in reply to your letter of July 13, 1966 requesting information regarding Mr. Kenneth Frederick.

I saw this patient in consultation on June 8, 1966 at Fresno Community Hospital at the request of Dr. Allen Mau. He had been hospitalized for further investigation of his complaints of persistent and increasing cough in addition to progressive shortness of breath since an episode of pneumonia in April 1966. Chest x-rays had revealed consolidation in the right lower lobe posteriorly and there was a prominent right hilar area in addition to pleuritis on the right side. There were previous x-rays taken in April 1966 which showed essentially the same changes except during the interim there had been an apparent increase of fluid on the right side. He had previously been hospitalized in May 1966 for two weeks and at that time he was noted to have a large liver in addition to the pulmonary findings. At that time he was seen in consultation by Dr. Joseph Woo and because he was complaining of pain in the right leg, he was also seen in consultation by Dr. Lippert. His past history revealed that he had had a laminectomy in July 1965 for a herniated disc. Chest x-rays dated July 1965 revealed nodular densities in both lower lung fields which were attributed to chronic asbestosis.

Physical examination revealed a fairly well developed and nourished 50 year old white male who appeared ill. His respirations were shallow, rapid and grunting. His nail beds appeared dusky. There was no evidence of adenopathy. The trachea was in the midline. There was dullness to percussion over the lower one-half of the right chest posteriorly and the lower one-third anteriorly with diminished breath sounds. Rales were heard over both lower lobes. The liver was considerably enlarged and tender to palpation.

It was my impression that the patient most likely had a bronchogenic carcinoma on the right side with metastases to the liver. Bronchoscopy was recommended

2 - 7/26/66

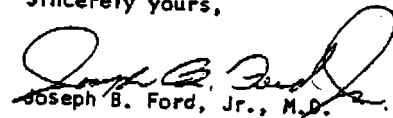
Re: Kenneth Frederick

and was performed on June 9, 1966. There appeared grossly to be tumor tissue in the right lower lobe bronchus arising at the level of the superior segment and extending down the bronchus about one centimeter. Several small biopsies were taken and the pathological diagnosis was small cell anaplastic carcinoma of bronchogenic origin.

Mr. Frederick was not considered a candidate for surgery because of the presence of pleural fluid and the fact that he most likely had extensive metastases to the liver. It was also felt that irradiation would not result in any appreciable palliation.

As you have already indicated, the cause and effect relationship between his employment as a fiberglas worker and his disease is a difficult question to answer. I personally believe that heavy cigarette smoking is the major cause of bronchogenic carcinoma but recognize the possibility that other air pollutants and industrial carcinogens may play some role. However, from my present knowledge of bronchogenic carcinoma I would say that his disease was not related to his employment as a fiberglas worker.

Sincerely yours,


Joseph B. Ford, Jr., M.D.

JBF:ms

ALLEN MAU, M. D.
2538 NO. FRESNO STREET
FRESNO, CALIFORNIA 93703

TELEPHONE 222-5270

July 7, 1966

Mr. John S. Backer
2220 Tulare Suite 8000
Fresno, California

Re: Mr. K. M. Frederick

Dear Mr. Backer:

Mr. Kenneth Frederick's present illness started about March 1966, when he developed an apparent "flu-like" illness which progressed to a right lower lobe pneumonitis over the subsequent month. However following his recovery from the pneumonia, he continued to have complaints of generalized lethargy, weakness, malaise, loss of weight, appetite, strength, and low grade afternoon fevers.

Diagnostic studies were started during April 1966 and Mr. Frederick was hospitalized from May 12-27, 1966 at the Fresno Community Hospital. During this period of hospitalization no diagnosis was made, altho a suspected neoplasm was the primary consideration. While in the hospital he was also seen by Joseph Woo, M. D., Robert Lippert, M. D. and Parker Powell, M. D. all of Fresno, California.

Following his discharge he continued to do poorly and he was readmitted to the Fresno Community Hospital on June 8, 1966 and was seen in consultation by Joseph Ford, M. D., who subsequently performed a bronchoscopy; the latter procedure revealed a bronchogenic carcinoma of the right lower lobe of the lung.

At the present time Mr. Frederick is at home. He is being treated symptomatically and there is probable spread of the neoplasm to the pleura, liver, and possibly the brain. It is doubtful if surgery, radiation, or chemotherapy would offer any hope of recovery to Mr. Frederick.

I am unable to state categorically that there is a cause and effect relationship between Mr. Frederick's work and his present illness. As you are probably aware, Mr. Frederick has worked with asbestos for 20-25 years and has had radiographically demonstrable asbestosis for the past few years. Mr. Frederick has also smoked approximately 1 package of cigarettes daily for the past 20-25 years. There are at present, trends in medical literature, which would suggest a statistically higher incidence of lung cancer in smokers and in persons with asbestosis.

Mr. Frederick was readmitted to the Fresno Community Hospital on July 7, 1966 and expired on the morning of July 8, 1966.

Yours truly,

Allen Mau
Allen Mau, M. D.

WORKMEN'S COMPENSATION APPEALS BOARD
DIVISION OF INDUSTRIAL ACCIDENTS
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

COMPROMISE AND RELEASE (Dependency Claim)

SCIF NO. A 17003
CASE NO. 66 F 16482

(Mr.) MINNIE LOUISE FREDERICK SOCIAL SECURITY NO. 383-14-5703
(Mrs.) KENNETH MARTIN FREDERICK-DECEASED 2021 Glendon, Los Angeles, Calif.
(Miss)

VARIOUS EMPLOYERS (SEE ADDENDUM)

VARIOUS CARRIERS (SEE ADDENDUM)

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

The above-named applicant claim⁵ that KENNETH MARTIN FREDERICK
various placed in California xxx from November, 1936 - July 8, 1966
by Various employers, then insured as to workmen's compensation liability
by Various carriers sustained injury arising out of and in the course of such
employment as follows: Claims to have suffered lung damage resulting in death.

2. The death of said employee occurred on July 8, 1966, as a result of the claimed injury.
3. The actual weekly wages of the employee at the time of claimed injury were Maximum, while average weekly wages (statutory) were Maximum.

4. Payments of compensation to the employee in his lifetime on account of the claimed injury were None.
5. The applicant herein claim to have been dependent upon said employee at the time of claimed injury, and state the names, ages, relationship to, and the extent of dependency upon said deceased employee to have been as follows:

NAME	AGE	RELATIONSHIP	EXTENT OF DEPENDENCY
Minnie Louise Frederick	Adult	Widow	Total
Bruce Frederick	20	Son	Partial

6. The parties hereby agree to settle any and all claims of said dependent on account of the claimed injury and the death of said employee by payment of the sum of \$13,500.00, payable as follows to \$500.00 to Bruce Frederick, balance to Minnie Louise Frederick, less \$1,177.55 payable to Fresno Community Hospital, less \$408.00 payable to Dr. Allen Mau and less a reasonable attorney's fee.

7. The parties hereby agree (if such items of expense be claimed) that medical, hospital and burial expense required by reason of the alleged injury and the death of the employee shall be borne as follows: All by applicant

The name and address of applicant's attorney (if any): Fryer, Karr & Millett, 1229 "N" Street,
Fresno, California 93721

who requests a fee of \$ 1,350.00, having been previously paid \$ NONE

9. Reason for compromise. Dispute exists as to whether or not injury or death AOE/COE.
Dispute exists as to periods of employment with various employers.
Dispute exists as to whether or not which, if any, period of employment
contributed to the alleged injury or death.

10. The undersigned request that this compromise agreement and release be approved.

11. Upon approval of this compromise agreement as provided by law, and payment in accordance with the provisions of said order of approval, said applicants and each of them do hereby release and forever discharge said employer and said insurance company of and from all claims, demands, actions or causes of action, of every kind or nature whatsoever, on account of, or by reason of the injury and death sustained as aforesaid by the employee, and in particular of any, all and every claim or cause of action which the undersigned, heirs, executors, representatives, or administrators may have had, now have, or shall hereafter have against said employer, said insurance carrier, and each of them under Division IV of Labor Code of the State of California.

12. It is agreed by all parties hereto that the filing of this document is the filing of an application on behalf of the applicant, and that it may be set for hearing as a regular application, reserving to the parties the right to put in issue any of the facts admitted herein, and that if hearing is held with this document used as an application the defendants' shall have available to them all defenses that were available as of the date of filing of this document, and that it may thereafter be approved, disapproved, or a decision issued after a hearing has been held and the matter regularly admitted.

13. For the purpose of determining the lien claim filed herein for the unemployment compensation disability and/or unemployment compensation benefits which have been paid under or pursuant to the California Unemployment Insurance Code, the parties propose the following division of the sum agreed upon for settlement and release of this case:
\$ _____ for temporary disability covering the period None filed to _____
\$ _____ for accrued medical expense paid or incurred by the employee.
\$ _____ for future medical care.
\$ _____ for permanent disability.

14. Provisions of Labor Code Section 5313 are waived.

(The above segregation must be fair and reasonable and must be based on the real facts of the case. There should be no attempt made to deprive the lien claimant of a reasonable recovery consistent with all the amounts involved.)

WITNESS the signature hereof this 2nd day of November, 1972 at Long Beach, Calif.

Minnie Louise Frederick
MINNIE LOUISE FREDERICK, Applicant

Bruce Frederick
BRUCE FREDERICK, Applicant

Fryer, Karr & Millett

By: Samuel J. Fryer
Attorneys for Applicants
See Addendum, Page 2, for signatures of carriers.

WITNESSES
THE APPLICANT'S SIGNATURE MUST BE ATTESTED BY TWO DISINTERESTED PERSONS OR ACKNOWLEDGED BEFORE A NOTARY PUBLIC.

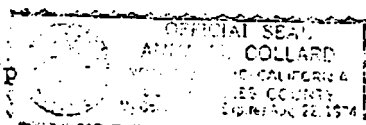
STATE OF CALIFORNIA

County of San Bernardino

On this 2nd day of November, A.D. 1972, before me, ANNA M. COLLARD
a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared
MINNIE LOUISE FREDERICK & BRUCE FREDERICK

known to me to be the person S whose name S are
subscribed to the within instrument, and acknowledged to me that they executed the same.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

DRH:jpp



Anna M. Collard
Notary Public in and for said County and State of California

ADDENDUM

<u>INSURANCE CARRIER</u>	<u>EMPLOYER</u>	<u>CONTRIBUTION</u>
U. S. Fidelity and Guaranty Co.	Thomas B. Douglas dba Douglas Insulation Co.	\$ 25.00
Transport Indemnity Co. Adjusting Agent for -	Lone Star Industries Successor to Pacific Cement & Aggregates	\$ 25.00
Industrial Indemnity	Lorentzen Company	\$ 200.00
Aetna Casualty and Surety Co.	Owens Corning Fiber- glass Corp.	\$ 500.00
Argonaut Insurance Co.	Western Asbestos Co.	\$ 1,000.00
Travelers Insurance Co.	Armstrong Contracting & Supply Corp. Johns Mansville Corp. Armstrong Cork Co.	\$ 1,000.00
State Compensation Insurance Fund	Western Asbestos Co.	\$10,750.00

See Page 2 of Addendum for signatures of various carriers.

Division of Industrial Accidents - Fresno
RECEIVED
NOV 1 6 1972
FILER
FRESNO OFFICE
Workmen's Compensation Appeals Board

U. S. FIDELITY AND GUARANTY CO.

By: Robert Costanzo
ROBERT COSTANZO, Its Attorney

TRANSPORT INDEMNITY CO.

By: J. M. Glee
HANNA & BROPHY, Attorneys

INDUSTRIAL INDEMNITY

By: J. M. Glee
HANNA & BROPHY, Its Attorneys

AETNA CASUALTY AND SURETY CO.

By: William K. Gillespie
CREEDE, DAWSON & GILLASPIE, Its Attorneys

ARGONAUT INSURANCE CO.

By: Raymond L. Ferraro
STUTSMAN, NAGEL, FERRARI AND COLE,
Its Attorneys

TRAVELERS INSURANCE CO.

By: John D. McFeeters
CAMPBELL & McFEETERS, Its Attorneys

STATE COMPENSATION INSURANCE FUND

By: Donald R. Heller
DONALD R. HELLER, Attorney