FILE NAME: Fluor (FLU)

DATE: 1964

DOC#: FLU003

DOCUMENT DESCRIPTION: Worker's Compensation Docket

# WORKERS' COMPENSATION APPEALS BOARD

## STATE OF CALIFORNIA

JACQUELINE CLANCY, as party applicant in her individual capacity and as personal representative and next of kin of (Leo J.Streithorst, deceased),

*Applicant*

vs.

WESTERN ASBESTOS COMPANY, et al, and STATE COMPENSATION INSURANCE FUND, et al,

*Defendant*

CASE No. 60 SF 192-145

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

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

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

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

Dated at San Francisco, California, this 16th day of April, 1984.

DIA WCAB FORM 115 (NEW 1-78)

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS

kirwan associates

REMIT TO:
p.o. box 11018
san francisco ca 94101
(415) 664-3062

LEGAL DOCUMENT DUPLICATING SERVICE

PERTAINING TO: L. J. STREITHORST

WORKER'S COMPENSATION APPEALS BOARD

SAN FRANCISCO

Revised 7-17-62 - gh
Streithorst, WP 192-14

| OFFICIAL ADDRESS RECORD | | SERVED 2ND DA | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | 2-3-62 | 5-1-62 | 6-7-62 | 10-31 | | | |
| LIEN CLAIMANT | | | | | | | | |
| Department of Employment | P. O. Box 1857, Oakland | | | | ✓ | | | |
| APPLICANT | | | | | | | | |
| Jacqueline Clancy ~~L. J. Streithorst~~ Atty. | 3320 Sacramento, Berkeley ~~2637 Lincoln Ave., Richmond~~ | ✓ | ✓ | ✓ | ✓ | | | |
| ATTORNEYS FOR APPLICANT | | | | | | | | |
| Smith, Parrish, Paduck & Clancy | 501 Financial Center Bldg Oakland 12 | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| EMPLOYERS | | | | | | | | |
| (C) (1) Western Asbestos Co. | 675 Townsend St., S.F. 3 | ✓ | ✓ | ✓ | ✓ | | | |
| (B) (1) Plant Asbestos Co. | 1300 - 64th St., Emeryville | ✓ | | ✓ | ✓ | ✓ | | |
| (4) Fluor Maintenance Co. mail ret 5-9-62 | 406 Ward St., Martinez | ✓ | | ✓ | ✓ | | | |
| Fluor Maintenance Co. | P. O. Box 22, Los Angeles | ✓ | | ✓ | ✓ | ✓ | | |
| (3) C. F. Braun & Co. | 1000 S. Fremont Ave, Alhambra | ✓ | | ✓ | ✓ | ✓ | | |
| (2) Armstrong Cork Co. | 304 Shaw Rd., So. S.F. | ✓ | | ✓ | ✓ | ✓ | | |
| (5) Owen Leinio, dba San Jose Asbestos Co. | 1140 Lennon Way, San Jose | ✓ | | ✓ | ✓ | ✓ | | |
| (E) San Jose Asbestos Co. | 1140 Lennon Way, San Jose | ✓ | | ✓ | ✓ | ✓ | | |
| Coas. Ayers Co. | 693 Minnesota St., S.F. | ✓ | | | | | | |
| (G) (C) Fiberglas Eng. & Supply Div. | 1200 - 17th St., S.F. 7 | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| (F) (C) J. T. Thorpe Co. | 1351 Ocean Ave., Emeryville | ✓ | | ✓ | ✓ | ✓ | | |
| (6) Mundet Cork Corp. | 440 Brannan St., S.F. 7 | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| Metal Clad Insulation Co. | 21759 Western, Torrance | ✓ | | ✓ | ✓ | ✓ | | |
| (H) Aetna Steel Products Corp. | 61 Broadway, New York, N.Y. | ✓ | | ✓ | ✓ | | | |
| (7) Van Arsdale & Harris Co. | 595 Tunnel Ave., S.F. 24 | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| (8) Bay Cities Asbestos Co. mail ret 5-1-62 | Fifth Ave & E.12th St, Oakland | ✓ | | | ✓ | ✓ | | |
| Atlas Heating & Ventilating | 357 - 4th St., S.F. 7 | ✓ | | ✓ | ✓ | ✓ | | |
| M. W. Kellogg Co. | Foot of Danforth Ave. | ✓ | | ✓ | ✓ | ✓ | | |

Revised 7-17-62 - gh
Streithorst, SF 192-145

OFFICIAL ADDRESS RECORD

SERVICE AND DA

| INSURANCE CARRIERS | |
|---|---|
| (1) State Comp. Ins. Fund | 525 Golden Gate Ave., S.F. |
| (8) ~~Industrial Indemnity Co.~~ | ~~350 Sansome St., S.F. 6~~ |
| (10) ~~Continental Casualty Co.~~ | ~~433 California St., S.F.~~ |
| (3) ~~American Motorists Ins. Co.~~ | ~~417 Montgomery St., S.F.~~ |
| (7) ~~Travelers Insurance Co.~~ | ~~1956 Webster St., Oakland 12~~ |
| (2) ~~Standard Acci. Ins. Co.~~ | ~~433 California St., S.F.~~ |
| (5) ~~Hardware Mutual Cas. Co.~~ | ~~20 Battery St., S.F. 6~~ |
| ~~Argonaut Insurance Co.~~ | ~~210 Sansome St., S.F. 6~~ |
| (4) Aetna Cas. & Sur. Co. | 220 Montgomery St., S.F. 6 |
| (9) Pacific Employers Ins. Co. | 244 Pine St., S.F. 4 |
| (6) ~~Hartford Acci. & Ind. Co.~~ | ~~720 California St., S.F.~~ |
| (8) Industrial Ind. Exch. | 350 Sansome St., S.F. 6 |

| ATTORNEYS FOR INSURANCE CARRIERS | |
|---|---|
| (1) (2) (3) (5) (7) Hanna & Brophy | 1540 San Pablo Ave., Oakland 12 |
| (4) Sedgwick, Detert, Moran & Arnold, By T.P. Niedermuller | 100 Bush St., S.F. 4 |
| (1) James J. Vonk | |
| (8) O. Howard Cliff | |
| (9) Mullen & Filippi | 315 Montgomery St., S.F. 4 |
| (10) ~~John Y. Wilkes~~ | |
| ~~Probeck, Phleger & Harrison By: Rinaldo Sciaroni, Jr.~~ | ~~111 Sutter St., S.F. 4~~ |

Revised 4-27-60 - gh
Streithorst, SF 192-145

| LIEN CLAIMANT | OFFICIAL ADDRESS RECORD | SERVICE AND DATE |
|---|---|---|
| Dept. of Employment | P.O. Box 1679, Oakland, Calif. 6-2-60 | |
| APPLICANT | | |
| L. J. Streithorst | 2637 Lincoln Ave., Richmond | ✓ ✓ ✓ |
| ATTORNEY FOR APPLICANT | | |
| Smith, Parrish, Paduck & Clancy | 501 Financial Center Bldg Oakland 12, Calif. | ✓ ✓ ✓ |
| EMPLOYERS | | |
| Western Asbestos Co. | 675 Townsend St., S.F. 3 | ✓ ✓ |
| ~~Plant Asbestos Co.~~ | ~~1390 - 64th St, Emeryville~~ | |
| ~~Flour Maintenance Co., aka Fluor Maintenance Co.~~ | ~~406 Ward St, Martinez, Calif.~~ Mailed Ret. 5-9-60 | ✓ ✓ |
| Flour Maintenance Co., aka Fluor Maintenance Co. | P. O. Box 22, Los Angeles | ✓ ✓ |
| C. F. Braun & Co. | 1000 S. Fremont Ave., Alhambra | ✓ ✓ |
| Armstrong Cork Co. | 304 Shaw Rd., So. San Francisco | ✓ ✓ |
| Owen Leirio, dba San Jose Asbestos Co. | 1140 Lennon Way, San Jose | ✓ ✓ |
| San Jose Asbestos Co. | 1140 Lennon Way, San Jose | ✓ ✓ |
| Chas. Ayers Co. | 698 Minnesota St., S.F. | ✓ ✓ |
| Fiberglas Eng. & Supply Div. | 1290 - 17th St., S. F. | ✓ ✓ |
| J. T. Thorpe Co. | 1351 Ocean Ave., Emeryville | ✓ ✓ |
| Lorentsen Co. | 2267 Market St., Oakland | ✓ ✓ |
| J. T. Thorpe & Son | 1351 Ocean Ave., Emeryville | ✓ ✓ |
| Kundet Cork Corp. | 440 Brannan St., S.F. | ✓ ✓ |
| Metal Clad Insulation Co. | 21159 Victory Boulevard, Canoga Park, Calif. Los Angeles, Calif. | ✓ ✓ |
| Aetna Steel Products Corp. | 61 Broadway, New York, N.Y. | ✓ ✓ |
| Van Arsdale & Harris Co. | 595 Tunnel Ave., S.F. | ✓ ✓ |
| Bay Cities Asbestos Co. | Mailed Ret. 5-11-60 Fifth Ave & E. 12th St Oakland | ✓ ✓ |

Revised 4-27-60 - gh
Streithorst, SF 192-145

| INSURANCE CARRIERS | OFFICIAL ADDRESS RECORD | SERVICE AND DAT: 3-1-60 | 5-5-60 | 11-30-61 |
|---|---|---|---|---|
| State Comp. Ins. Fund | 525 Golden Gate Ave., S.F. | ✓ | ✓ | |
| ~~Industrial Indemnity Co.~~ (Insurance 11-29-61) | ~~350 Sansome St, S.F. 6~~ | ✓ | ✓ | ✓ |
| ~~Continental Casualty Co.~~ (Insurance 11-29-61) | ~~433 California St, S.F.~~ | ✓ | ✓ | ✓ |
| ~~American Motorists Ins. Co.~~ (Insurance 11-29-61) | ~~417 Montgomery St, S.F.~~ 5660 - 1956 Webster St. Oakland 12 | ✓ | ✓ | ✓ |
| ~~Travelers Insurance Co.~~ (Insurance 11-29-61) | ~~315 Montgomery St, S.F. 4~~ | ✓ | ✓ | ✓ |
| ~~Standard Accident Ins. Co.~~ (Insurance 11-29-61) | ~~433 California St, S.F.~~ | ✓ | ✓ | ✓ |
| ~~Hardware Mutual Cas. Co.~~ (Insurance 11-29-61) | ~~20 Battery St, S.F.~~ | ✓ | ✓ | ✓ |
| ~~Argonaut Insurance Co.~~ (Insurance 7-1-60) | ~~210 Sansome St, S.F. 6~~ | ✓ | ✓ | |
| Aetna Casualty & Surety Co. | 220 Montgomery St, S.P. 6 | ✓ | ✓ | ✓ |
| Pacific Employers Ins. Co. | 244 Pine St, S.P. 4 | ✓ | ✓ | ✓ |
| ~~Hartford Acci. & Ind. Co.~~ (Insurance 11-29-61) | ~~720 California St, S.F.~~ | ✓ | ✓ | ✓ |
| ~~Industrial Indemnity Exch.~~ (Insurance 11-29-61) | ~~350 Sansome St, S.F. 6~~ | ✓ | ✓ | ✓ |

ATTORNEYS FOR INSURANCE CARRIERS

| | | | | |
|---|---|---|---|---|
| Leonard & Murphy | 1540 San Pablo Ave Oakland | ✓ | ✓ | ✓ |
| Lange & Wilson by J. F. Vandermuller | 100 Bush St S.F. 4 | ✓ | ✓ | ✓ |
| Lange & Wilson | | | | ✓ |
| Francis K. Mahoney | | | | ✓ |
| Brobeck, Phleger & Harrison | 315 Montgomery St. S.F. 4 | | | ✓ |
| John X. Mathers | | | | ✓ |
| Bronson, Bronson & McKinnon | 111 Sutter St, S.F. 4 | | | |
| attn: Ronald Beaumont, Jr. | | | | |

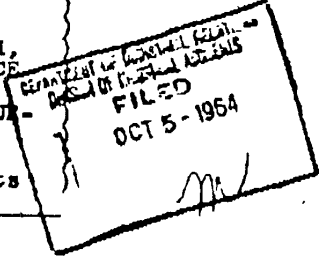
# OFFICIAL ADDRESS RECORD

| SERVICE AND DATE | | |
|---|---|---|
| | Lien Claimant | |
| | Applicant | |
| | L. J. Streithorst | 2637 Lincoln Ave., Richmond |
| | Attorney for Applicant | |
| | Smith, Parrish, Paduck & Clancy 501 Financial Ctr. Bldg., Oakland | |
| | Employer | |
| | Attorney for Employer | |
| | Insurance Company | |
| | Attorney for Insurance Company | |

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

PANEL ONE

| | |
|---|---|
| JACQUELINE CLANCY, as party applicant in her individual capacity and as personal representative and next of kin of Leo J. Streithorst, deceased<br><br>Applicant<br><br>vs<br><br>WESTERN ASBESTOS COMPANY, et al, and STATE COMPENSATION INSURANCE FUND, AETNA CASUALTY & SURETY COMPANY, PACIFIC EMPLOYERS INSURANCE COMPANY, et al<br><br>Defendants | CASE NO. 60 SF 192-145<br><br>ORDER OF DISMISSAL |




This case was returned to the calendar for further hearing by Order of the Commission filed May 19, 1964. On July 30, 1964, an Order was made taking said case off calendar. On September 1, 1964 applicant's attorney addressed a letter to the Commission requesting that the application filed by applicant be dismissed.

GOOD CAUSE APPEARING THEREFOR:

IT IS ORDERED that the Application filed herein March 4, 1960 be, and the same hereby is, dismissed.

INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

JACQUELINE CLANCY, as party applicant in her individual capacity and as personal representative and next of kin of Ivo J. Sweitherst deceder t, **Applicant**

vs.

WESTERN AVIATION COMPANY, et al, and STATE COMPENSATION INSURANCE FUND, ALASKA CASUALTY & SURETY COMPANY, PACIFIC EMPLOYERS INSURANCE COMPANY, et al, **Defendants**

No. 60 SF 102-145

**MINUTES OF HEARING**
( CONTINUED )
and
ORDER TAKING OFF CALENDAR

JUL 30 1964
FILED
BY

**Place and Time:** San Francisco, July 30, 1964, 10:00 a.m.

**Referee:** JOHNSON
**Reporter:** PATERSON

**Appearances:** Applicant not present; represented by Smith, Parrish, Padova & Clancy, Attorneys (Joseph E. Smith appearing).

Defendant State Compensation Insurance Fund represented by Bradford Kilip, Attorney.
Defendant Alaska Casualty & Surety Company represented by Sedgwick, Detert, Moran & Arnold, Attorneys, (Theodore P. Niedermuller, making a special appearance).
Defendant Pacific Employers Insurance Company represented by Mullen & Filippi, Attorneys (John R. Thompson appearing).
Defendant Industrial Indemnity Company, Industrial Indemnity Exchange, represented by Jack E. Goodkin, Attorney.

NO TESTIMONY TAKEN

GOOD CAUSE APPEARING THEREFOR, IT IS ORDERED That the above entitled matter be and the same hereby is taken off calendar, and all further action on the matters now pending herein are ended, subject to being reset, after notice, upon request of any of the parties hereto. Service of the Order taking off calendar is waived.

Emily B Johnson

EMILY B. JOHNSON, Referee

Remarks: Defendant Pacific Employers Insurance Company made several motions, counsel has been instructed to put them in writing.

Recommended: [illegible] attorney is to file a list of his employers and

RECEIVED
JUN 8 - 1964
INDUSTRIAL ACCIDENT COMMISSION

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION

OF THE STATE OF CALIFORNIA

CASE NO. 60 SF 192-14

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS
FILED
JUN 8 - 1964

L.J. STREITHORST,

Applicant,

vs.

WESTERN ASBESTOS COMPANY, et al, and STATE COMPENSATION INSURANCE FUND, AETNA CASUALTY & SURETY COMPANY, PACIFIC EMPLOYERS INSURANCE COMPANY, et al,

Defendants.

PETITION FOR RECONSIDERATION

STATE COMPENSATION INSURANCE FUND, a defendant herein, petitions for reconsideration of the ORDERS (Vacating Order of Dismissal) (Substituting Party Applicant) and (Returning to Calendar) upon the following grounds:

1. That by such Orders, the Commission acted without and in excess of its powers.

2. That the evidence does not justify the Findings of Fact.

STATEMENT OF THE CASE

The aforesaid ORDERS, by which this defendant has been aggrieved, were dated (and presumably made) May 12, 1964 and received by this defendant on May 20, 1964. May 12, 1964 was some seven days prior to the date on which this defendant's ANSWER TO PETITION FOR RECONSIDERATION and/or MOTION TO SET

CONTENTIONS

In addition to the contentions set forth in defendant's said Answer and incorporated herein, this defendant strongly contends that your Honorable Commission erred in the exercise of jurisdiction in the making of said ORDERS.

Defendant also contends that there is inequity in setting aside dismissal of only certain defendants while allowing prior dismissals to stand unvacated. This is not stating that it would have been just and equitable to vacate all dismissals, but merely in emphasis of the unjustice in vacating any of the dismissals.

DISCUSSION

Applicant's hybrid petition (in legal contemplation) was either a Petition for Reconsideration or a Petition to Reopen. It met the requirements of neither.

Labor Code Section 5903 sets forth the grounds upon which a petition for reconsideration may be made and further provides "and no other /ground/."

Applicant's petition did not mention a single one of any such grounds and cannot validly be treated as a petition for reconsideration.

Assuming that applicant intended his petition as one to reopen, Labor Code Sections 5803 and 5805 then appear to be the governing provisions supplemented by the Commission's Rules of Practice and Procedure (Section 10711).

Section 10711 of said rules requires that petitions to

been the "Executrix of the Estate" of the deceased employee constitute good cause to reopen.

Anderson vs. Superior Court, 187 Cal. 95 shows that:

> "IT IS THE DUTY OF THE PERSONAL REPRESENTATIVE OF A DECEASED PLAINTIFF TO HAVE PENDING LITIGATION BROUGHT TO TRIAL WITHIN THE STATUTORY PERIOD."

Laches and lack of diligence for over 18 months can hardly be an excuse for good cause. Although the Commission has stated its belief that the decedent's heirs should not be penalized because of the failure or inability of employee's attorneys to ascertain and advise the Commission of his death, such attorneys by letter of October 8, 1962 advised the Commission that the employee "...has been confined to Brookside Hospital seriously ill and will be unable to attend the hearing on October 11, 1962." The man died FOUR DAYS after the date scheduled for hearing and the attorneys, seven days before the death, knew that the man was in the named hospital. The decedent's executrix had a duty to have the pending litigation brought without waiting 18 months to make an appearance.

In passing, two items are worth mentioning:

1. The fatally defective petition shows neither that Jacqueline Clancey qualified nor, if so, is still acting as an Executrix. Notwithstanding the opening paragraph of said petition it nowhere even states that she is a daughter or heir of the decedent.

2. There is not even an attempt to show an excuse for the attorneys failure to timely object to the Notice of Intention

action and concludes the rights of the parties in that particular action; Dowling vs. Polack, 18 Cal. 626. A dismissal for delay in or want of prosecution is not a judgment on the merits but rather a refusal to hear and determine on the merits; Bell vs. Solomons, 162 Cal 105. But, such a dismissal deprives the court of jurisdiction to hear or determine any motion unrelated to the dismissal; Lord vs. Garland (1946) 27 Cal.2d 840.

Once lost, jurisdiction cannot be regained even by stipulation of the parties; Sauer vs. Superior Court, 74 Cal.App.580.

Aside from the power conferred by Section 473 of the Code of Civil Procedure, the trial court cannot vacate its decision, once it is made, on grounds of judicial error. Thus, where the record shows that there is no mere mistake or inadvertence on the part of the trial court, and that an order of dismissal was the order intended to be made, an appellate court will not vacate that order; Hunt vs. United Artists (1947) 79 Cal.App.2d 619, 625.

In the instant matter, there had been several Notices of Intent to Dismiss and quite obviously the actual Dismissals were not made by mere mistake or inadvertence on the part of the trial court. If she, in fact, has legal status to do so, Jacqueline Clancy is not prevented from filing her own application for hearing on the merits on the same cause as shown by the Olwell case (supra).

Mrs. Clancy fails to meet either the requirements for a petition for reconsideration or the requirements for a petition to reopen.

The trial tribunal having made its judicial determination to dismiss the case lost jurisdiction (save as otherwise provided for good cause) to reopen the matter.

Strip the conclusions from the petition which is under attack and there is not even a skeleton left.

There is no equity in vacating a dismissal as to some defendants and not vacating dismissals of other defendants.

Eighteen months delay by a personal representative in pursuing litigation is laches not capable of excuse.

WHEREFORE, defendant prays that the ORDERS made May 12, 1964, be vacated and nullified and that the Order of Dismissal, dated March 31, 1964 be affirmed, ratified and reinstated.

Copies of this Petition for Reconsideration have been mailed to the parties indicated below.

Respectfully submitted,

David P. Freeman
Attorney for Defendants

Dated in San Francisco, California
this 8th day of June, 1964.

cc - Smith, Parrish, Paduck & Clancy
315 Financial Center Building
Oakland, California

cc - Department of Employment
P.O. Box 1857
Oakland, California
cc - Pacific Employers Insurance Company
244 Pine Street
San Francisco, California
cc - Western Asbestos Co.
675 Townsend Street
San Francisco, California
cc - Mundet Cork Corp.
550 Brannan Street
San Francisco, California
cc - Fiberglass Engineering & Supply Co.
1200 - 17th Street
San Francisco, California
cc - Van Arsdale & Harris Co.
595 Tunnel Avenue
San Francisco, California
cc - Aetna Casualty & Surety Co.
220 Montgomery Street
San Francisco, California
cc - Claims Department

VERIFICATION

Under penalty of perjury I declare the truth of the following: (a) That the contents of the foregoing document are true and correct of my own knowledge, except as to matters stated therein on information and belief; (b) that the matters so stated are believed by me to be true and correct; and (c) that I make this verification because the facts set forth in said document are within my knowledge and because as attorney for one of the defendants herein, I am more familiar with such facts than are the officers of said defendant.

David O'Treem
Attorney for Defendant

Dated this 8th day of June, 1964.
in San Francisco, California.

RECEIVED
MAY 20 1964
INDUSTRIAL ACCIDENT COMMISSION
SAN FRANCISCO OFFICE

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

CLAIM NO. 60 SF-192-145

L. J. STREITHORST,

Applicant,

vs.

WESTERN ASBESTOS COMPANY, et al, and STATE COMPENSATION INSURANCE FUND, AETNA CASUALTY & SURETY COMPANY, PACIFIC EMPLOYERS INSURANCE COMPANY, et al,

Defendants.

ANSWER TO PETITION FOR RECONSIDERATION and/or MOTION TO SET ASIDE DISMISSAL FOR WANT OF PROSECUTION

FILED
MAY 20 1964

Comes now, defendant STATE COMPENSATION INSURANCE FUND, with this its Answer to Petition for Reconsideration and/or Motion to Set Aside Dismissal for Want of Prosecution, and in respect thereof alleges:

1. State Compensation Insurance Fund denies that the Petition for Reconsideration shows any grounds for granting of Reconsideration of the Order of March 31, 1964.

2. State Compensation Insurance Fund denies that the Petition to Set Aside Dismissal for Want of Prosecution shows any grounds for doing so.

3. And for a further separate answer and affirmative defense to all claims asserted by petition in the above entitled matter, State Compensation Insurance Fund alleges that all said claims are barred by the provisions of Sections 5400 to

lungs over a period of many years. Several employers and insurance carriers filed an Answer.

Applicant took no steps to bring the case to hearing and on or about September 29, 1961, certain defendants filed a Petition to Dismiss for Want of Prosecution. On November 29, 1961, Dismissal for Want of Prosecution was issued as to those certain defendants. On December 1, 1961, State Compensation Insurance Fund filed a Petition to Dismiss for Want of Prosecution. A Notice of Intention to Dismiss for Want of Prosecution dated December 8, 1961 was issued by the Industrial Accident Commission, George W. Lane, Referee. Written objection was to be made within 15 days from date of service. On December 27, 1961, (19 days later) applicant's attorney filed an objection to Notice of Intention to Dismiss for Want of Prosecution. On June 20, 1962, another Notice of Intention to Dismiss for Want of Prosecution was served by the Industrial Accident Commission. On July 3, 1962, the State Compensation Insurance Fund renewed its request for a Petition to Dismiss for Want of Prosecution. On July 11, 1962, the applicant's attorney filed an objection to Notice of Intention to Dismiss for Want of Prosecution. On August 3, 1962, the case was set for hearing on October 11, 1962. By letter of October 8, 1962, the applicant's attorney informed the Industrial Accident Commission that Mr. Streithorst had been confined to Brookside Hospital seriously ill. On October 11, 1962, applicant's attorney appeared and stated that the applicant was then hospitalized in what appeared to be a terminal condition.

the case was ordered dismissed for failure of prosecution.

CONTENTIONS

1. The claim of Jacqueline Claney is barred by the Statute of Limitations as provided by Labor Code Sections 5400 to 5412, inclusive, and particularly by Labor Code Section 5406, which provides:

> "5406. The period within which may be commenced proceedings for the collection of the benefits provided by Article 4 or Chapter 2 of Part 2 of this division is one year from:
> (a) The date of death where death occurs within one year from date of injury; or
> (b) The date of last furnishing of any benefits under Chapter 2 of Part 2 of this division, where death occurs more than one year from the date of injury; or,
> (c) The date of death, where death occurs more than one year after the date of injury and compensation benefits have been furnished.
> No such proceedings may be commenced more than one year after the date of death, nor more than 240 weeks from the date of injury."

Leo J. Streithorst died on October 15, 1962. No compensation benefits have been furnished. No award has been made. More than 240 weeks have passed since the date of injury alleged to be July 21, 1959 (See petitioners' Application, Case 60 SF-192-145) Ruiz v. I.A.C. (1955) 45 Cal. 2d 409, 289 P. 2d 229, 20 CCC 265. State Compensation Insurance Fund v. I.A.C. (1958) 23 CCC 177.

2. Only persons aggrieved directly or indirectly, by a final Order, Decision or Award of the Commissioner or

proceedings at the time of filing of the Petition for Reconsideration and/or Motion to Set Aside Dismissal for Want of Prosecution. At the time of the filing of the petition, Jacqueline Clancy was not substituted in place and stead as the personal representative and next of kin of L. J. Streithorst, the applicant. Jacqueline Claney had no status as a party to the proceedings. Since no party can petition for reconsideration after 20 days following Dismissal for Want of Prosecution, Jacqueline Claney is now barred by the Statute of Limitations. Labor Code Section 5903.

3. Labor Code Section 5900 et. seq. provides for the means of reconsideration from an Order or Decision of a referee, Section 5903 provides:

> "5903. At any time within twenty days after the service of any final order, decision or award made and filed by a commissioner or a referee granting or denying compensation, or arising out of or incidental thereto, any person aggrieved thereby may petition for reconsideration upon one or more of the following grounds and no other:
> (a) That by such order, decision, or award made and filed by a commissioner or a referee, the commission acted without or in excess of its powers.
> (b) That the order, decision, or award was procured by fraud.
> (c) That the evidence does not justify the findings of fact.
> (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
> (e) That the findings of fact do not support the order, decision, or award.
> Nothing contained in this section shall limit the grant of continuing jurisdiction contained in sections 5803 to 5805 inclusive."

In the absence of an allegation of

4. Petitioner fails to distinguish a petition for reconsideration from a petition to reopen and fails to give some indication to justify a reopening of the case. Petitioner has not alleged any ground to reopen this case and by the facts shown therein it is clear that the petitioner or petitioner's counsel, or both, have exercised a lack of diligence in bringing the case to hearing. See e.g. Consolidated Western Steel v. I.A.C., (1962) 205 Cal. App. 2d 275, 27 CCC 159; U.S. Pipe & Foundry Company v. I.A.C., supra.

(a) It required more than one and one-half years for the applicants to get the case to hearing. Application was filed on March 4, 1960 and hearing was finally set for October 11, 1962. During this period, Dismissal for Want of Prosecution was granted to several defendants.

(b) As long ago as July 11, 1962, applicant's attorney claimed to have the alleged medical evidence needed to prosecute his case. (See Objection to Notice of Intention to Dismiss for Want of Prosecution, dated July 11, 1962)

(c) Dated December 8, 1961, Notice of Intention to Dismiss within 15 days if no written objection be made was served by the Industrial Accident Commission through Mr. George W.

another objection (July 11, 1962) finally filing medical reports that dated from May of 1961.

(d) Applicant's attorney actually knew the location (Brookside Hospital) of Mr. Streithorst during Mr. Streithorst's terminal illness. It seems inconceivable that applicant's attorney would not inquire as to his aged client's health. (See petitioner's attorney's letter to the Industrial Accident Commission dated October 8, 1962.)

(e) At the hearing of October 11, 1962 applicant's attorney knew the applicant was seriously ill and at the time had actual or constructive knowledge that the applicant's condition was terminal. Applicant, L. J. Streithorst, died on October 15, 1962 at age 72. Notwithstanding, over one and one-half years have elapsed before applicant's attorney attempted to bring this case to termination.

(f) As provided by the Labor Code, applicant's attorney had ample time to object to the Notice of Intention to Dismiss ordered by the Industrial Accident Commission, George

that autopsy findings confirm applicant's original claim that he was disabled because of asbestosis, (but this man died of carcinoma). The alleged autopsy findings would not constitute the discovery "new evidence" upon which reconsideration will lie even if the same were timely. Labor Code Section 5903. (d) "Tender of merely new cumulative evidence does not constitute valid ground for reconsideration." I.A.C. Rule 10870 (f) See Clendaniel v. I.A.C. (1941) 17 Cal. 2d 659, 111 P. 2d 314, 6 CCC 85.

WHEREFORE, it is respectfully prayed that the Petition for Reconsideration and/or Motion to Set Aside Dismissal for Want of Prosecution be denied.

Copies of this Answer to Petition for Reconsideration and/or Motion to Set Aside Dismissal for Want of Prosecution have been mailed on the persons and addresses shown below.

Respectfully submitted,

Attorneys for Defendant
State Compensation Insurance Fund

Dated at San Francisco, California
this 19th day of May, 1964
cc-
Smith, Parrish, Paduck & Clancy, Attorneys at Law
315 Financial Center Building, Oakland, California
Mullen & Filippi, Attorneys at Law
315 Montgomery Street, San Francisco, California
Hanna & Brophy, Attorneys at Law
2540 San Pablo Avenue, Oakland, California

VERIFICATION

Under penalty of perjury I declare the truth of the following: (a) That the contents of the foregoing document are true and correct of my own knowledge, except as to matters stated therein on information and belief; (b) that the matters so stated are believed by me to be true and correct; and (c) that I make this verification because the facts set forth in said document are within my knowledge and because as attorney for the defendant herein, I am more familiar with such facts than are the officers of said defendant.



Dated at San Francisco, California
this 19th day of May, 1964

# CALIFORNIA INSPECTION RATING BUREAU

1453 MISSION STREET
SAN FRANCISCO 3, CALIFORNIA

R. O. O'BRIEN
F. L. DAVIS
J. H. HOYAJIAN

RECEIVED
APR 4 - 1960
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS

March 31, 1960

ATTENTION R. T. Read
FILE General File

Department of Industrial Relations
Industrial Accident Commission
P. O. Box 603
San Francisco 1, California

Attention: George W. Lane, Referee

RE: L. J. STREITHORST V. WESTERN ASBESTOS CO., ET AL
Claim No. SF 192-145

Dear Sir:

In reply to your letter of March 11, 1960, we wish to send the following information.

Western Asbestos Co., 675 Townsend St., San Francisco, California
State Compencation Insurance Fund, Policy No. D 93224-56, 1-1-56-57, Policy No. D 93224-57, 1-1-57-58, Policy No. D 93224-58, 1-1-58-59 Policy No. D 93224-59, 1-1-59-60.

Plant Asbestos Co., 1300 Fourth St., Emeryville, California
Industrial Ind. Co., Policy No. CP 602110, 1-1-58-59 and Policy No. CP 608056, 1-1-59-60.

Fluor Maintenance Co., 406 Ward St., Martinez, California
Associated Ind. Corp., Policy No. 480285, 4-25-52-53

Continental Cas. Co., Policy No. 6409667, 4-25-53-54, Policy No. (Not available) 4-25-54-55, Policy No. 1907635, 4-25-55-56, Policy No. 1894526, 4-25-56-57, Policy No. 1894526, 4-25-57-58, Policy No. 1894526, 4-25-58-59.

C. F. Braun & Co., 1000 South Fremont Ave., Alhambra, California
American Motorists Ins. Co., Policy No. CM 420840-1-1-52-53 and Policy No. CM 426012, 1-1-53-54.

Lumbermens' Mutual Casualty Co., Policy No. C 426654, 1-1-53-54

American Motorists Ins. Co., Policy No. CM 426012, 1-1-54-55, Policy No. CM 426012, 1-1-55-56, Policy No. CM 426012, 1-1-56-57, Policy No. CM 426012 1-1-57-58, and Policy No. CM 426012, 1-1-58-59.

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DIVISION OF INDUSTRIAL ACCIDENTS

Department of Industrial Relations
Industrial Accident Commission

March 31, 1960
General File

Armstrong Cork Co., 304 Shaw Road, South San Francisco, California
Travelers Ins. Co., Policy No. 2047243, 1-1-52-53, Policy No. 2673804, 1-1-53-54, Policy No. 3386210, 1-1-54-55, Policy No. 4490459, 1-1-55-56, Policy No. 4991518, 1-1-56-57, Policy No. 6483814, 1-1-57-58, Policy No. 7226992, 1-1-58-59.

San Jose Asbestos Co., San Jose, California

We are submitting coverage for Owen Leinio dba: San Jose Asbestos Co., 1140 Lennon Way, San Jose.

Hardware Mutual Casualty Co., Policy No. 605551, 3-9-56-57, Policy No. 705080, 3-9-57-58.

Chas. Ayers Co., 698 Minnesota St., San Francisco, California (Nothing prior to 5-26-53).
Argonaut Insurance Co., Policy No. 105668, 5-26-53-1-1-54, Policy No. 114699, 1-1-54-55, Policy No. 133858, 1-1-55-56, Policy No. 147705, 1-1-56-57, Policy No. 02044, 1-1-57-58.

Fiberglas Engineering & Supply Division, 1200-17th St., San Francisco, California
Aetna Casualty & Surety Co., Policy No. 31C 733, 9-1-54-55, Policy No. 31C 784, 9-1-55-56, Policy No. 31C 822, 9-1-56-57

Lorentzen Co., 2267 Market St., Oakland, California
Industrial Ind. Co., Policy No. 501 CP 00429, 1-1-55-56.

Aetna Steel Products Corporation, 61 Broadway, New York.
Hartford Accident and Ind., Policy No. US 995537, 10-6-45-46, Policy No. US 65089, 10-6-46-47, Policy No. US 125006, 10-6-47-48.

Bay Cities Asbestos Co., Ltd., Fifth Ave. & E. 12th St., Oakland, California
Industrial Ind. Exchange, 3-31-43 until 3-31-45 (Policy numbers not available), Effective 3-31-45 Policy No. 6-5-01168.

Very truly yours,

R. T. Read, Superintendent
Underwriting Department

By Rex Oja

RO:gr

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL ACCIDENT COMMISSION

Industrial Accident Commission
RECEIVED
MAR 1 1960
Oakland Office

FILED
as of 3-4-60
Per

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS
FILED
MAR 4 1960
Oakland Office

# APPLICATION

60 SF CASE NO. 192145

L. J. STREITHORST — APPLICANT

2637 LINCOLN AVE, RICHMOND — APPLICANT'S ADDRESS

vs.

Social Security No.

SEE ATTACHED SHEET — EMPLOYER

SEE ATTACHED SHEET — EMPLOYER'S ADDRESS

EMPLOYER'S INSURANCE CARRIER

INSURANCE CARRIER'S ADDRESS

OTHER PARTY

ADDRESS

1. L. J. STREITHORST (NAME OF EMPLOYEE), _____ (DATE OF BIRTH), alleges that while employed as a Insullation installer from 1944-1959 on July 21, 1959 (DATE OF INJURY) 19____, at _____ (CITY, TOWN OR PLACE WHERE INJURY occurred), California, by _____ (NAME OF EMPLOYER), he sustained injury arising out of and in the course of the employment, as follows:

work as insullation installer from 1944 to July 1959 (EXPLAIN HOW INJURY WAS RECEIVED) resulting in

Chest disability namely pneumoconiosis, probably asbestosis. (STATE WHAT PARTS OF BODY WERE INJURED AND SUBSEQUENT RESULTS)

2. _____ (NAME OF INSURANCE COMPANY OR, IF EMPLOYER WAS NOT INSURED, STATE WHETHER SELF-INSURED OR UNINSURED) was the employer's insurance carrier on date of injury.

3. July. 21, 1959 (PERIOD OFF WORK DUE TO THE INJURY) _____ (DATE RETURNED RETURNED TO WORK) _____ (DATE LAST MEDICAL TREATMENT)

4. Was compensation paid? No (YES OR NO) $_____ (TOTAL PAID) $_____ (WEEKLY RATE) _____ (DATE OF LAST PAYMENT)

5. Earnings at time of injury $ Maximum @_____ (DAILY OR WEEK) The basis of pay was_____ (STATE PAY PERIOD OR HOURLY RATE. IF HOURLY A DAY AND DAYS A WEEK)

Was there any overtime?_____ (YES OR NO) Were lodging, board, or other advantages given?_____ (YES OR NO) $_____ (WEEKLY VALUE)

6. Was medical treatment needed?_____ (YES OR NO) Who furnished treatment?_____

_____ (GIVE NAMES OF DOCTORS WHO TREATED THE INJURY AND STATE WHO PAID THEIR BILLS)

7. Use this space only if injury resulted in death. Date of death_____

_____ (GIVE NAMES, ADDRESSES AND RELATIONSHIP OF DEPENDENTS AND AGES OF ALL MINORS)

8. This application is filed to determine liability for:

a. Temporary disability Yes (YES OR NO) b. Permanent disability Yes (YES OR NO) c. Medical treatment Yes (YES OR NO) d. Medical costs_____ (YES OR NO)

e. Litigation expense_____ (YES OR NO) f. Death benefit_____ (YES OR NO) g. Burial expense_____ (YES OR NO) h._____ (STATE ANY OTHER DEMANDS)

9._____ (LIST CASE NUMBERS OF ANY OTHER APPLICATIONS FILED)

*WHEREFORE, it is requested that a time and place be fixed for hearing and that an award be made granting such relief as may be proper under the Workmen's Compensation Laws of California.*

OAKLAND March 3, 1960

L. J. STREITMORST
637 LINCOLN AVE.
RICHMOND, CALIF.

ASBESTOS EMPLOYERS - 1944 to 1959

| | | |
|---|---|---|
| 1959 | WESTERN ASBESTOS CO. | 675 TOWNSEND ST., S.F. 3 |
| | PLANT ASBESTOS CO. | 1300 (SIXTY-FOURTH ST., EMERYVILLE 6 |
| 1958 | WESTERN ASBESTOS CO. | 675 TOWNSEND ST., S.F. 3 |
| | FLOUR MAINTENANCE CO. | 406 WARD ST., MARTINEZ P.O.BOX 22, L.A. |
| | C. F. BRAUN & CO. | 1000 SO. FREMONT AVE., ALHAMBRA, CAL. |
| | ARMSTRONG CORK CO. | 304 SHAW RD., SO. S.F. |
| 1957 | SAN JOSE ASBESTOS CO. | SAN JOSE, CALIF. |
| | WESTERN ASBESTOS CO. | 675 TOWNSEND ST., S.F. |
| | ARMSTRONG CORK CO. | 304 SHAW RD., SO. S.F. |
| | FLOUR MAINTENANCE CO. | 406 WARD ST., MARTINEZ |
| | PLANT ASBESTOS CO. | 1300 (SIXTY-FOURTH ST., EMERYVILLE 8 |
| | CHAS. ALLEN CO. | 690 MINNESOTA ST., S.F. |
| 1956 | FIBERGLAS LTG. & SUPPLY DIV. (Till Post of 1956) | 1200 - 17th St., S.F. |
| 195[illegible] | FIBERGLAS LTG. & SUPPLY CO. | 1200 - 17th St., S.F. |
| | J. C. W. CO. | 1301 OCEAN AVE., EMERYVILLE |
| | CHAS. ALLEN CO. | 690 MINNESOTA ST., S.F. |
| | LONGYEAR CO. | 2917 WEBB ST., OAKLAND |
| | FLOUR MAINTENANCE CO. | 406 WARD ST., MARTINEZ |
| 195[illegible] | J. C. W. CO. | 1301 OCEAN AVE., EMERYVILLE |

(Over)

| | | |
|---|---|---|
| 1953 | WESTERN ASBESTOS CO. | 675 TOWNSEND ST., S.F. 3 |
| | J. T. THORPE & SON | 1351 OCEAN AVE., EMERYVILLE |
| | REX REGNELL | 1421 LANDIS ST., RENO, NEVADA |
| 1952 | WESTERN ASBESTOS CO. | 675 TOWNSEND ST., S.F. |
| | RUBBER CORK COMP. | 440 BRANNAN ST., S.F. |
| 1951 | CHAS. AYERS CO. | 698 MISSISSIPPI ST., S.F. |
| | RUBBER CORK COMP | 440 BRANNAN ST., S.F. |
| | METAL CLAD INSULATION CO. | LOS ANGELES, CALIF. |
| | WESTERN ASBESTOS CO. | 675 TOWNSEND ST., S.F. 3 |
| 1950 | ARMSTRONG CORK CO. | 304 SHAW ROAD., SO. S.F. |
| | J. T. THORPE & SON | 1351 OCEAN AVE., EMERYVILLE |
| 1949 | WESTERN ASBESTOS CO. | 675 TOWNSEND ST., S.F. |
| | J. T. THORPE CO. | 1351 OCEAN AVE., EMERYVILLE |
| 1948 | ALPHA STEEL PRODUCTS CORP. | 61 BROADWAY, NEW YORK |
| | WESTERN ASBESTOS CO. | 675 TOWNSEND ST., S.F. |
| 1947 | ALPHA STEEL PRODUCTS CORP (All of 1947) | 61 BROADWAY, NEW YORK |
| 1946 | ALPHA STEEL PRODUCTS CO. | 61 BROADWAY, N.Y. |
| | RUBBER CORP CO. | 440 BRANNAN ST., S.F. |
| 1945 | VAN ARSDALE & HARRIS | 599 FIFTH ST., S.F. |
| | BAY CITIES ASBESTOS CO. (Taken over by Western Asbestos Co.) | FIFTH AVE. & S.P. 18th St., OAKLAND |
| 1944 | VAN ARSDALE & HARRIS - Division of Van Arsdale-Harris Lumber Co. (No longer in business) | 599 FIFTH AVE., S.F. |
| | BAY CITIES ASBESTOS CO., LTD. (Reported to Western Asbestos Co.) | FIFTH AVE. & S.P. 18th St., OAKLAND |