BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

CASE NO. 62 LA 235-371

Ex. # PC-27 ✓
For Id. ✓ In Evd.
Date: 2/3/82
GERALD DONIS, C.S.R.

ARTHUR H. MILLER,)
Applicant)
vs.)
PLANT ASBESTOS, et al,)
Defendants)

ORDER JOINING
PARTIES DEFENDANT

PLAINTIFF'S EXHIBIT 533a
PENGAD-Bayonne, N.J.



GOOD CAUSE APPEARING THEREFOR:

IT IS HEREBY ORDERED that the following parties be joined as parties defendant in the above-entitled casse:

Merchants Fire Dispatch, Ltd.
J. T. THORPE, INC.
Pacific Indemnity Company
Pacific Employers Insurance Company
Marine Engineering & Supply Co.
✓Armstrong Cork Company
Employers Mutual Liability Ins. Co. of Wisconsin
Standard Accident Insurance Co.
The Travelers Insurance Company
Plant Rubber and Asbestos Works
Larson & Larson
Brudin Brothers, A.E. & Oscar W. Brudin
George M. Nason
National Auto. & Casualty Co.
Guarantee Insurance Company
Murray Friedland, Paramount Process Co.
Mundet Cork Corporation
Aetna Casualty & Surety Co.
Fibreboard Paper Products Corporation
Cork Insulation Company, Inc.
Roderick Lynch Asbestos Company
Munger & Munger
Thomas H. Hogan Company
Thorpe Insulation Company
J. T. Thorpe & Son, Inc.
Fireman's Fund Insurance Co.
Zurich Insurance Company
C. F. Braun & Company
American Motorists Ins. Co.
Armstrong Contracting & Supply Co.
Plant Asbestos Co.
Industrial Indemnity Co.

WGB:mcn

W. G. BENES
Referee
INDUSTRIAL ACCIDENT COMMISSION

Above parties also served;
Copy of application
" " letter from Dept. of Health, Education and Welfare
" " " " California Inspection Rating Bureau dated October 23, 1962.
" " " " Herlihy & Herlihy, dated October 30, 1962

DATED AT LOS ANGELES, CALIFORNIA

DEC 4 - 1962

P-ARMSTRONG-96

Ex. # PC-270
For Id. ✓
Date: 2/3/82
GERALD DUNIS, C.S.R.

The Travelers

The Travelers Company
The Travelers Indemnity Company

LOS ANGELES OFFICE
[illegible]
LOS ANGELES 4, CALIFORNIA
[illegible]

December 6, 1962

Re: Arthur H. Miller
vs.
Armstrong Cork Company &
Armstrong Contracting & Supply Co

Armstrong Contracting & Supply Company
4400 East Bandini Boulevard
Los Angeles 23, California

Attention: Mr. Robert B. Ross

Gentlemen:

We have been joined as a party defendant on the above captioned matter.

Please advise us of the periods of employment with your Company, also Armstrong Cork Company, reason for termination and duties, job description, and earnings so that we might process this matter.

The period of employment that was covered by Travelers for Armstrong Contracting & Supply is around March of 1961 to September of 1961. For Armstrong Cork Company for the period around December 1960.

Your cooperation will be greatly appreciated.

Very truly yours,

JOSEPH BILCHAK
Hearing Representative

JB:mt

P-ARMSTRONG-96

Ex. # AC-27J
For Id. ✓
Date: 2/3/62
GERALD D..., C.S.R.

December 26, 1962

Mr. R. B. Ross
Armstrong Contracting & Supply Corp.
4340 District Boulevard
Vernon, California

D/A 1/8/62

Dear Mr. Ross:

Subject: Arthur H. Miller
SS No. 550 05 5031

This man was employed by your company from December 13, 1960 to July 14, 1961, when he was let go because of lack of work. He earned $316.80 in 1960 and $4,910.40 in 1961.

The rest of the information requested by The Travelers is not readily available here. The Travelers would like to know Miller's job description and duties; perhaps you can furnish this when you forward the wage information.

We have no record of this man working for Armstrong Cork Company so we can only assume that his alleged employment with us was an error. Your file is returned herewith.

Very truly yours,

Wallace B. Hofferth
Assistant General Manager
Insurance Department

SLK

Enclosures

Mr. F. L. Gardner, AC&S, Lancaster

P-ARMSTRONG-96

Ex. # PC 27K
Cor Id. K In Evd.
Date: 2/3/82
GERALD DONIS, C.S.R.

INTER/OFFICE COMMUNICATION

Armstrong

To G. R. Helm, Controller's Office

December 19, 1962

From Wallace B. Hofferth, Insurance Department

Subject Arthur H. Miller
SS No. 550 05 5031

Will you please supply to the extent possible the payroll information requested by The Travelers in its letter of December 6, which is enclosed. Our entire file is enclosed. Kindly return it when you submit the payroll information.

SLK

Enclosures

AC&S

	In	Term	
Angelio -	12-13-60	7-14-61	A - No work

Total Earnings 1960 - $316.80 1961 - $4910.48

DEC 20 1962

FORM 1501 2-62

NO ENVELOPE REQUIRED

Ex. # PC-27 k
For Id. ✓ In Evd.
Date: 2/3/82
GERALD DONIS, C.S.R.

INTER/OFFICE COMMUNICATION

Armstrong CONTRACTING

To P. L. Gardner - Lancaster

December 13, 1962

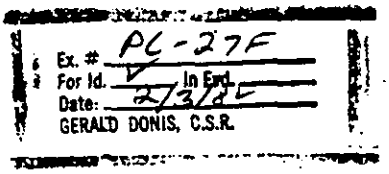
From Robert E. Poss

Subject Arthur H. Miller Claim

The attached letter was received from The Travelers Insurance Company relative to the claim of Mr. Miller. Would you please see that the requested information is prepared for Travelers. Though they list Armstrong Cork Company as an employer of Mr. Miller, I believe this is probably in error, since they refer to December 1960 rather than prior to 1958. A copy of the Industrial Accident Commission Notice is also attached.

bjw

FORM 1301 Printed in U.S.A.



CASE NO. 62 LA 235-371

ARTHUR H. MILLER -vs- PLANT ASBESTOS COMPANY, a corporation; et al.

REFEREE: JOSEPH H. EDGAR
DICTATED: February 4, 1966 INJURY: In Issue

REPORT OF REFEREE ON PETITION FOR RECONSIDERATION

Applicant petitions for reconsideration of the Finding and Orders filed January 13, 1966.

Stripping applicant's petition of its surplusage it appears his contention is the undersigned should not have relied upon the reports and testimony of the Independent Medical Examiner, H. I. Lee, M.D., that the applicant does not have asbestosis in making the aforementioned Finding and Orders.

In making this contention petitioner argues that the undersigned instead should have relied "on the expert evidence of an Independent Medical Examiner in the field of radiology, who testified that your petitioner has fibrosis in the upper and lower portions of both lungs," (emphasis added) referring to the testimony of John D. Camp, Jr., M.D.

In effect petitioner's argument boils down to a question of whether the undersigned after reading the reports and hearing the testimony of both Dr. Lee and Dr. Camp, Jr., should have considered one more credible than the other. In this connection it should be noted that Dr. Camp, Jr., is a young man who appears to be approximately thirty years of age and, frankly, after observing and hearing him testify, the undersigned was of of the opinion that he could not place any reliance upon the opinions expressed by him. Regarding this point it also will be noted that this witness testified that he had been in the private practice of radiology only since July 1, 1962.

P.ARMSTRONG=96

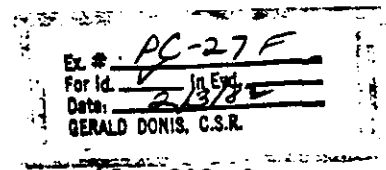
Ex. # PC-27F
For Id. In Evd.
Date: 2/3/81
GERALD DONIS, C.S.R.

On the other hand, Dr. Lee is a man who appears to be approximately 60 years of age and the undersigned was particularly impressed with the opinions expressed by him, for Dr. Lee in his testimony exhibited experience and competence, as well as a desire to be eminently fair and unbiased in the opinions which he expressed in this case. It is, of course, for these very reasons that appellate courts have consistently held that where there is a conflict in the evidence the trier of fact, who has the opportunity to observe and hear the witnesses, is the sole judge of the credibility of the witnesses.

As stated in the Opinion of Referee on Finding and Orders the reports and testimony of Dr. Lee support the finding that applicant did not sustain an injury arising out of and occurring in the course of his employment. In addition, even without the benefit of this evidence, it was my opinion that the evidence of record, prior to the reference of the case to Dr. Lee as an independent medical examiner, showed that applicant's claim of industrial injury was highly questionable. However, in order to be sure that applicant's case was fully and carefully investigated it was decided to refer the case to an independent medical examiner. It is, therefore, submitted that the record clearly establishes applicant's case has been fully and carefully investigated and that despite the arguments to the contrary he was given every opportunity to prove his case.

Petitioner also argues that he should have been referred to an independent medical examiner for a biopsy of his lung. As far as the undersigned is concerned, irrespective of the assurances of petitioner's counsel to the contrary, such a procedure is sufficiently hazardous to petitioner that we do not wish to be a party to the same and the testimony of Dr. Lee that a biopsy is not without hazard to the patient fully suppor this conclusion.

ARTHUR H. MILLER (62 LA 235-371)



By Amendment to his petition, which was subsequently filed, petitioner raises the point that he should be entitled to receive reimbursement for medical-legal costs even if no injury was found. The decision of former Panel Two of the Industrial Accident Commission in the case of Carl E. Van Loon v. Hartford Indemnity Company, 61 LA 222-209 holds to the contrary

Petitioner also argues that because Dr. Lee in his report, dated October 26, 1963, at page 3 (Commission's Exhibit 5) states, "Although some episodes of respiratory complaints followed exposure to dusts of asbestos or fiberglass, these were of temporary nature, with duration of a few hours and no restrictive work ability the following morning" that "from a technic standpoint even on Dr. Lee's conclusions, your applicant sustained an injur It is believed, first, that to so argue is completely unrealistic and indee "grasping at straws" and, also secondly, that the legal maxim stated in Civil Code Section 3533, "The law disregards trifles." fully answers such a claim.

In conclusion it is submitted a review of the medical evidence shows that applicant has a number of physical problems, which is not particularly unusual for a man, born November 3, 1899. However, it is further submitted that the substantial medical evidence shows that what is wrong with him physically is not due to his employment.

RECOMMENDATION:

Petition for Reconsideration be denied.

Joseph H. Edgar

JOSEPH H. EDGAR
Referee

MAR 25 1966

JHE:js JC

P.ARMSTRONG 3/96

Ex. # PG-27B
For Id. ____ In Evd. ____
Date: 2/9/82
GERALD DONIS, C.S.R.

NEW YORK
ATLANTA
BALTIMORE
CHICAGO
CLARKSBURG
LOS ANGELES
MIAMI
MONTREAL
NEWARK
NEW ORLEANS
PHILADELPHIA
PITTSBURGH
SAN FRANCISCO
ST. LOUIS
TORONTO
TULSA

ALEXANDER & ALEXANDER
INCORPORATED
INSURANCE
AVERAGE ADJUSTERS CONSULTING ACTUARIES
2225 NORTH CHARLES STREET, BALTIMORE 18, MD.

TELEPHONE
TUXEDO 9-4304

CABLE ADDRESS
"ALEXBLUE"

November 10th, 1966

Insurance Department
Armstrong Cork Company
Lancaster, Pennsylvania

Travelers' Policy No. RUB 9041863
ARMSTRONG CONTRACTING & SUPPLY CORPORATION

Gentlemen:-

Please note disposition made of the following claim:

Date of Accident: July 14, 1961

Claimant: Arthur H. Miller

Location: Los Angeles, California

Claim No. : B 9565149

Disposition: Expense $20.00

Remarks: C&P

Very truly yours

ALEXANDER & ALEXANDER, INC.

H S Spangler
LOSS DEPARTMENT

Indicate Whether:

Workmen's Compensation X
Auto Liability - B.I. ____
P.D. ____
General Liability-
B. I. ____
P. D. ____

R

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