FILE NAME: Contract Unit Workers Comp Claims (WCC)

DATE: 1956

DOC#: WCC051

DOCUMENT DESCRIPTION: Workers Comp File - McCarrell, Ervey

File Name	Contract Unit Claim File: Ervey McCarrell Dec.14/56
Scanned ?	yes
Source	JMA: NS-JM
Start Year	1956
Stop Year	1956
Contents	claim
Notes	

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

APPLICANT ERVEY Mc CARRELL CASE #LA 176684

Insulation Worker

DATE CLAIM FILED Dec. 14, 1956

INJURY ALLEGED Injury to throat & lungs

ALLEGED DATE OF INJURY Nov. 14, 1956

EMPLOYER/INSURER Armstrong Cork Co./Travelers et. al.
including J-M Corp.

No apparent Canadian carrier

OTHER NOTES

DATE OF RESOLUTION Dec. 14, 1959

RESOLUTION Compromise & Release $13,500 settlement
among 6 employers/carriers

DOCUMENTS COPIED # OF PAGI

1) Compromise & Release 6
2) Med Rpt of Urabec to Travelers of Oct. 12, 1959 2

CLAIMANT Ervey McCarrell 24

California Workers' Compensation Appeals Board

CARRIERS INVOLVED:

oThe AETNA Casualty & Surety Co.
oAmerican Automobile Ins. Co.
oAmerican Employers Ins. Co.
oAmerican Motorists Ins. Co.
oArgonaut 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
●Fireman'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.)
oIndustrial Indemnity Co.
oIndustrial Indemnity Exchange
oInsurance Co. of North America
●Liberty Mutual Ins. Co.
oLumberman's Mutual Casualty Co.
oMaryland Casualty Co.
oMichigan Mutual Liability Co.
oMission Insurance Co.
oNational Automobile & Casualty Ins. Co.
oNew Amsterdam Casualty Co.
oOcean Accident & Guarantee Corp.Ltd.
●Pacific Employers Ins. Co.
oPacific Indemnity Co.
●Reliance Ins. Co. (Standard Accident Ins. Co.)
oRoyal Indemnity
oSecurity Ins. Co. of Hartford (U.S. Casualty Ins. Co.)
oState Compensation Insurance Fund
oTransport Indemnity Co.
●The Travelers Ins. Co.
oThe United Pacific Ins. Co.
oU.S. Fidelity & Guaranty Co.
oZenith National Ins. Co.
oZurich Ins. Co.
o_____
o_____
o_____
o_____
o_____

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ERVEY O. McCARRELL,

Applicant

vs.

ARMSTRONG CORK COMPAMY, et al, THE TRAVELERS INSURANCE COMPANY, et al.

Defendant

CASE No. 56 LA 176-684

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 6 day of April, 1981

DIA WCAB FORM 115 (NEW 1-79)

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS

RECEIVED
INDUSTRIAL ACCIDENT
LOS ANGELES

'50 JAN 14 PM 3 07

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORN

CASE NO. 56 LA 176-684

REFEREE
INDUSTRIAL ACCIDENT COMMISSION
STATE OF CALIFORNIA
FILED JAN 14 1950
WILLIAM KAPLAN
ASST. SECRETARY

ERVEY O. McCARRELL,

Applicant

-vs-

ARMSTRONG CORK COMPANY, a corporation; THORPE INSULATION COMPANY, formerly known as PLANT RUBBER & ASBESTOS COMPANY; UNITED CORK COMPANY, a corporation; PLANT RUBBER & ASBESTOS WORKS; FIBREBOARD PAPER PRODUCTS CORPORATION; MARINE ENGINEERING & SUPPLY COMPANY; LARRY CARR, doing business as LOS ANGELES MARKET REFRIGERATION & ENGINEERING COMPANY; PARAFFINE COMPANY, INCORPORATED; J. T. THORPE, INCORPORATED; JOHNS-MANVILLE SALES CORPORATION; PLANT INSULATION COMPANY; THE TRAVELERS INSURANCE COMPANY, a corporation; LIBERTY MUTUAL INSURANCE COMPANY, a corporation; PACIFIC EMPLOYERS INSURANCE COMPANY, a corporation; STANDARD ACCIDENT INSURANCE COMPANY, a corporation; FIREMAN'S FUND INSURANCE COMPANY, a corporation; OWENS-CORNING GLASS COMPANY; THE AETNA CASUALTY & SURETY COMPANY, a corporation,

Defendants

COMPROMISE AND RELEASE AGREEMENT

The parties hereto, for the purpose of compromise only, hereby submit the following agreed statements of fact:

1. Ervey O. McCarrell, the applicant herein, born March 3, 1903, claims that while employed during the period of 1942 to date, as an insulation worker at maximum earnings for Armstrong Co: Company, a corporation, whose compensation carriers were The Travelers Insurance Company, a corporation, and The Standard Accident Insurance Company, a corporation; The Thorpe Insulation Company, formerly known as Plant Rubber & Asbestos Company, whose compensation carriers were Pacific Employers Insurance Company; the United Cork Company, a corporation, whose compensation carrier was the Liberty Mutual Insurance Company, a corporation; the Fibre board Paper Products Corporation, formerly known as the Paraffine Company, Inc., sued herein as Paraffine Company, Inc., and by Plan

Rubber & Asbestos Works, formerly a wholly owned subsidiary of Fibreboard Paper Products Corporation, under its then name of the Paraffine Company, Inc., which was permissably self-insured; the Marine Engineering and Supply Company whose compensation carrier was Pacific Employers Insurance Company; Larry Carr, d/b/a Los Angeles Market Refrigeration and Engineering Company, whose compensation carrier is unknown; J. T. Thorpe Incorporated, whose compensation carrier was Pacific Employers Insurance Company; Johns-Manville Sales Corporation, whose compensation carrier was The Travelers Insurance Company; Plant Insulation Company whose compensation carrier was the Pacific Employers Insurance Company and Fireman's Fund Insurance Company; and the Owens-Corning Glass Company whose compensation carrier was The Aetna Casualty & Surety Company, a corporation; all of which above alleged employments being at various locations throughout the State of California, sustained an injury arising out of and occurring in the course of his employment, allegedly consisting of occupational exposure to asbestos, resulting in the claimed injuries and disabilities to the che claimed herein.

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

3. The nature of the employee's present disability is in dispute, and the employee has returned to work irregularly since the cessation of payments of temporary disability.

4. Disability indemnity has been paid to the applicant herein in the sum of $4,160.00 at $40.00 per week for the period of December 5, 1956 through December 4, 1958. The amount due and unpaid to the employee is in dispute.

5. The parties hereby agree to settle any and all claim on account of said injury by the payment of the sum of $13,500.00 over and above all monies paid heretofore, which sum is to be contributed as follows:

1. Fibreboard Paper Products Corporation, formerly known as The Paraffine Company, Inc., sued herein as Paraffine Company, Inc., and by Plant Rubber & Asbestos Works, formerly a wholly owned subsidiary of Fibreboard Paper Products Corporation under its then name of the Paraffine Company, Inc. $ 3,295

2. Standard Accident Insurance Company, a corporation 5,700

3. Travelers Insurance Company, a corporation 2,940

4. Fireman's Fund Insurance Company, a corporation 5.

5. Liberty Mutual Insurance Company, a corporation 185.

6. Pacific Employers Insurance Company, a corporation 1,350.

7. TOTAL $13,500.

From said sum shall be deducted the sum of for attorneys' fees payable to William T. Hays, attorney for applicant, as well as the deduction of any and all valid liens of record from said sum.

6. It is agreed by and between the parties hereto that any and all medical treatment not already furnished by the defendants herein is to be borne by the applicant only, and not by any of the defendants herein.

7. That applicant's attorney, William T. Hays, requests an attorney's fee of , and has received the previous attorney's fee in the amount of , if any.

8. The name and address of applicant's attorney is: William T. Hays, 6331 Hollywood Boulevard, Los Angeles, California.

9. REASONS FOR COMPROMISE:

A bona fide dispute exists between the parties as to whether or not the applicant in fact sustained an industrial injury

as alleged, It is further contended that the disability payments to date in fact should be acredited to any claim for permanent dis ability, assuming an industrial injury to have occurred, rather th as temporary disability inasmuch as the condition was permanent al initio. It is further denied that the applicant is in need of or entitled to further medical treatment, assuming that he sustained an industrial injury.

It is further agreed by and between the parties hereto that in the event said Compromise and Release is approved, a dismissal with prejudice may issue in favor of Larry Carr, d/b/a Los Angeles Market Refrigeration & Engineering Company, Owens'-Corning Glass Company, and the Aetna Casualty & Surety Company, a corporation. Further, the parties desire to avoid the hazards, delays ar costs of further litigation, and buy their peace. All medical reports now of record are, by reference, made a part of this agreeme as though written herein.

10. The undersigned respectfully request that this Compromise and Release agreement be approved.

11. Upon approval of this Compromise and Release agreer by the Industrial Accident Commission, and payment in accordance with the provisions hereof, said applicant releases and forever di charges said employers and insurance carriers, and each of them, a their officers, agents, servants, employees and assigns of them, a each of them, and the nurses, physicians and surgeons of them, and each of them, whether acting individually or on behalf of them, or any of them, from all claims and causes of action, whether now kno or ascertained, or which may hereafter arise or develop as a resul of said injury and/or employments, including any and all liability of said employers and said insurance carriers, and each of them, t the dependents, heirs, executors, representatives, administrators or assigns of said applicant, and in further consideration of payment in accordance herewith, applicant agrees that this release wi

apply to all unknown and unanticipated injuries and damages resul from such accident, casualty, event, employment and/or employment as well as all those now disclosed and all rights under Section 1 of the Civil Code of California are hereby waived.

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

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

12. It is understood and agreed by all of the parties hereto that the applicant herein has not received unemployment compensation disability benefits from any source.

WITNESS THE EXECUTION HEREOF this day of , 1959, at Los Angeles, and San Francisco, California

Ervey O McCarrell
ERVEY O. McCARRELL, Applicant

HAYS & MC LAUGHLIN

By
Attorneys for Applicant

ARMSTONG CORK COMPANY, A CORPORATION; TRAVELERS INSURANCE COMPANY, a corporation,

By: HERLIHY & HERLIHY

Per
Attorneys for above defendants

ARMSTRONG CORK COMPANY, a corporation; STANDARD ACCIDENT INSURANCE COMPANY, a corporation,

By
Ray J. Cusick, Attorney for above defendants

FIBREBOARD PAPER PRODUCTS CORPORATION, formerly known as The Paraffine Company Inc., sued herein as Paraffine Company, Inc., and by PLANT RUBBER & ASBESTOS WORKS, formerly a wholly owned subsidia

of Fibreboard Paper Products Corpora
under its then name of The Paraffine
Company, Inc.

By: BROBECK, PHLEGER & HARRISON

Per _____
Renaldo Sclaroni, Jr., Attorneys for
above defendants

UNITED CORK COMPANY, a corporation;
LIBERTY MUTUAL INSURANCE COMPANY, a
corporation,

_____
George R. Haswell, Attorney for above
defendants

By _____
B. Lou Lamoreaux, Attorney

JOHNS-MANVILLE SALES CORPORATION, a
corporation; THE TRAVELERS INSURANCE
COMPANY, a corporation,

By _____
Joseph Bilchak, Attorney for above
defendants

PLANT INSULATION COMPANY, a corporati
FIREMAN'S FUND INSURANCE COMPANY, a
corporation,

By _____
Harold Shoop, Representative

MARINE ENGINEERING & SUPPLY COMPANY;
J. T. THORPE, INCORPORATED; PLANT
INSULATION COMPANY; PACIFIC EMPLOYERS
INSURANCE COMPANY, a corporation,

By: CLOPTON & PENNY

Per _____
Robert C. Kunz, Attorney for above
defendants

STATE OF CALIFORNIA)
COUNTY OF ~~LOS ANGELES~~) ss

On this [illegible] day of [illegible], 19[illegible], before me, the undersigned, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared ERVEY O. McCARRELL, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affix my official seal the day and year in this Certificate first above written.

_____
Notary Public in and for said County
and State of California

[redacted]

JOHN H URABEC, M D
SUITE 301 MEDICAL OFFICE BUILDING
1136 WEST SIXTH STREET
LOS ANGELES 17, CALIFORNIA

12 October 1959

The Travelers Insurance Company,
510 West Sixth Street,
Los Angeles 14, California.

Re: McCARRELL, ERVEY O.,
56 LA 176-684
Armstrong Cork Co. & Johns-Manville Corporation,
B 8289902 & 8789244

Gentlemen:

Mr. Every O. McCarrell came to my office on September 4, 1959 for an examination and an evaluation of his present pulmonary condition. At the time of his visit the following medical history and physical examination were obtained.

Age: 56; Occupation: Asbestos worker; Marital Status: Married; Birthplace: Texas, March 3, 1903; In California since 1922.

Family History: Father: Age 84, living and well; Mother: Deceased at the age of 41, cause unknown; Brothers: Three, living and well; Sisters: Three, living and well; Children: None.

Present Illness: The patient stated that he was in apparently good health until the latter part of 1956. At that time while at work at the Valley Steam Plant he had an episode of strangling allegedly due to the inhalation of dust in his working environment. He subsequently developed a severe cough and was seen by Dr. Robert Kennicott of Los Angeles. He was examined and had a chest x-ray taken. Because of the nature of the findings he was referred to Dr. Reginald Smart who at the present time is still his attending physician. He was advised to stop his work immediately. His cough continued and has been present ever since. It has however slightly diminished since he is not exposed to irritants. He has a slight hurting in his chest in the substernal area. He is short of breath with slight exertion. As part of the study he was referred to the laboratory of Dr. H. Motley where exercise tests were performed. He stated that the diagnosis of his case in part was based on Dr. Motley's report. Sputum studies were also performed but no definite diagnosis was made from the study, at least if any diagnosis was made, he was not told anything about it. For some time now he has been seeing Dr. Smart at intervals of every six to eight weeks and Dr. Motley at intervals of about every six months.

[redacted]

[redacted]

Re: Ervey O. McCarrell
2

At the present time he stated that he has a hurting in his chest and the ends of his fingers and toes become sore. He is not particularly aware of these unless he exercises. His principal complaint at this time is his cough which he stated was very embarassing and which makes him very nervous and shaky. He has been receiving cold shots to keep from getting colds. Previously, he stated that he had only mild colds but seemed to catch them easily. His throat at this time seems to be irritated all of the time. He has had no nasal stuffiness and he is not a mouth breather. He wears glasses for reading only. He has had no headaches or symptoms relative to his ears. He has had no night sweats or fever. He has had no orthopnea, nocturnal dyspnea or ankle edema. His digestion is good. His bowel movements are regular. He denied any nausea, vomiting, diarrhea, constipation, jaundice, rectal bleeding, souring or gas. For a time some pills that were prescribed tended to upset his stomach but he is now receiving another pill to combat this. He stated that he has had no recent bleeding from hemorrhoids. He denied any symptoms relative to the genito-urinary system. He stated that his energy was poor. He lacked ambition and drive. He was moderately tired at the end of the day. He slept well and felt fairly rested after a night's sleep. If he exerted himself he tired very easily but he admitted that he recuperated very easily as he could relax easily. He also stated that if he exerted himself in any way he became breathless more easily as he did not seem to have the "respiratory reserve". At the onset of his illness he weighed about 185 lbs. He now weighs about 196 lbs. On his forearms he has had intermittent episodes of small capillary hemorrhages.

Habits: He denied using tobacco and alcohol. He drinks about three to four cups of coffee a day.

Past Medical History: He denied any previous serious illness. He has had slight attacks of tonsillitis in the past but he has not had his tonsils removed. He had a left herniorraphy in 1947. He had a hemorrhoidectomy in 1954.

Occupational History: He stated that he started to work with asbestos materials about 1939. For about five years he stated he worked with the Plant Rubber and Asbestos works doing marine insulation work. For about ten years he worked for the Armstrong Cork Company insulating steam pipes and boilers. He worked in the field at boiler houses and steam plants. He stated that this was moderately dusty work most of the time. No masks were worn in this type of work. In addition to the above occupations for several years he drove a lunch wagon and did various types of work in different restaurants.

Physical examination revealed a well developed, well nourished, adult white male who did not appear acutely or chronically ill. The skin of his face had a ruddy complexion and his lips were of a slightly dusky color. He had an intermittent dry unproductive cough.

Temperature: 97.6; Pulse: 72, regular; Blood Pressure: 106/72;
Weight: 200 lbs.

[redacted]

[redacted]

Re: Ervey O. M Carrell
3

Head and Neck:

Eyes: reactions and movement s normal.
Ears: moderate amount of soft wax in both canals, drums grossly normal.
Nose: mucous membranes moist, slightly swollen, passages ample.
Mouth: oral hygiene fair.
Dentition: moderate number of molars extracted, moderate number of fillings, remaining teeth slightly tarnished.
Pharynx: mucosa diffusely reddened.
Tonsils: moderate size, smooth.
Neck: no adenopathy, stiffness or abnormal pulsations.

Chest: symmetrical, slight increase in the a-p diameter.

Lungs: breath sounds slightly diminished bilaterally, scattered fine moist rales in both lower lobes, at the bases posteriorly and laterally.

Heart: regular rhythm, no murmurs.

Abdomen: no masses or tenderness, well healed left herniorraphy scar.
Genitalia: normal.
Rectum: small external tags present.

Extremities: finger nail beds were dusky in color, the nails were widened and slightly curved and slight clubbing of the fingers was present. The toes were essentially the same.

Fluoroscopic examination of the chest showed an accentuation of the markings of a fine linear character localized principally to the lower halves of each lung field. The cardiac silhouette was not significantly enlarged. The diaphragms were round and smooth and moved about three centimeters with respiration.

A large series of chest films taken at the office of Dr. Smart as well as several films taken at the Hospital of the Good Samaritan X-ray Department as well as a few taken by Dr. Paul Quaintance were available for review.

The earliest films were those taken at the Hospital of the Good Samaritan and were dated 11-20-56. These films showed a scattered fine basilar infiltration in the lower halves of both lung fields. The minor interlobar fissure on the right appeared to be slightly depressed. Adhesions were present to the domes of both diaphragms more on the left than the right and some adhesions were also present at the heart border on the left. The apices and the costophrenic angles appeared to be relatively clear.

[redacted]

[redacted]

Re: Ervey O. McCarrell
4

The films taken at the office of Dr. Smart begin with a group taken on 12-10-56. In this group some of the overshot films show a fine infiltrative process in the lower lung fields bilaterally below the levels of the second interspaces. Films taken on 8-27-57 show no essential change. The films taken on 12-9-57 are also slightly overshot and show no significant change. The 2-5-58 and 4-4-58 films show no change. A Bucky film taken on 7-30-58 shows the infiltration to appear to be slightly more discrete but this might be due to radiologic technique. Subsequent films are dated 8-27-58, 10-10-58, 12-19-58, 1-27-59, 3-18-59, 5-14-59, 7-16-59 show no additional significant change. A Bucky film taken on the latter date shows the fine discrete infiltration to be in extent and in the areas noted in the original film of 11-20-56. There were 33 films in this series. In five of these films the dates were not discernible.

Six films from the office of Dr. Paul Quaintance were also available for review. These were dated 1-18-57 and 12-5-58. They were of rather poor quality and grossly did not show any changes from the films taken above.

There is no question about the appearance of this patient's lung fields which suggest the presence of a diffuse pulmonary fibrosis, which historically was not present in films taken by Dr. Rolla G. Karshner in November 1944. On the basis of this patient's occupation a diagnosis of an occupational pneumoconiosis has been made by several of his attending physicians. Although the x-ray appearance of the chest is compatible with such a diagnosis such an x-ray appearance could be simulated by other conditions. In this instance the diagnosis of an asbestosis and/or an occupational pneumoconiosis has not been confirmed with absolute certainty from the histo-pathological study of a lung biopsy.

From the review of the films it is my impression that no significant change has occurred in the appearance of the abnormal markings since the original film of December 1956. It must be remembered that with changes in radiologic technique slight differences in the appearance of the lung fields occur and such changes cannot always be attributed to actual pathological changes. In Dr. Smart's report of August 26, 1959 he speaks of changes due to a subacute bronchitis. I wonder if these changes are not due to x-ray technique rather than to changes in the underlying pulmonary pathology.

Some emphasis is placed on this patient's increased susceptibility to colds. No definite reason is given for this except that it is contented that immunizations with cold and flu vaccines will confer an immunity. This contention is based in part on the fact that this patient had allegedly freedom from colds the previous winter when he had received the above vaccines. If such were true the treatment of colds would be a relatively simple matter.

[redacted]

[redacted]

Re: Ervey O. McCarrell
5

With this extent of pulmonary asbestosis or pneumoconiosis I would expect a considerably greater degree of pulmonary function impairment. Certainly the pulmonary function studies done on February 10, 1959 do not indicate a disabling degree of pulmonary function considering the extensive pulmonary markings in both lung fields. His present physician intimates that his apparent present improvement is on the basis of his steroid and IPPB treatments. I do not know of any reference in the literature in which it has been demonstrated that the use of steroids has altered or improved a true parenchymal fibrosis. As regards the use of IPPB treatments this does improve pulmonary ventilation but in this instance if one accepts Dr. Motley's findings this has not been a particular problem during the period of observation.

Thank you for the privilege of being permitted to see Mr. McCarrell.

Very truly yours,

John H. Urabec, M. D.

[redacted]