FILE NAME: Johns-Manville (JMA)

DATE: 1967-1968

DOC#: JMA157

DOCUMENT DESCRIPTION: Contract Unit Claim File: William McCormick

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

APPLICANT WILLIAM McCORMICK CASE # LA 317548

Asbestos Worker - Insulator

DATE CLAIM FILED Nov. 17, 1967 Amended July 29, 1968

INJURY ALLEGED Injury to respiratory system due to asbestos exposur

ALLEGED DATE OF INJURY 1942-Nov. 1967

EMPLOYER/INSURER Philip Carey, Co. et. al.
including J-M Sales

No apparent Canadian insurer

OTHER NOTES

DATE OF RESOLUTION May 6, 1969

RESOLUTION Compromise & Release $13,038 settlement
Among 15 employers/carriers

DOCUMENTS COPIED

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CLAIMANT William McCormick 25

California Workers' Compensation Appeals Board

CARRIERS INVOLVED:

●The AETNA Casualty & Surety Co.
oAmerican Automobile Ins. Co.
oAmerican Employers Ins. Co.
●American Motorists Ins. Co.
●Argonaut Ins. Co.
oAssociated Indemnity Corp.
●California Casualty Indemnity Exchange
oCalifornia Compensation & Fire Co.
oCasualty Ins. Co. of California
oEmployers Liability Assurance Corp.Ltd.
●Employers Mutual Liability Ins. Co. of Wisconsin
oFidelity & Casualty Co. of New York
●Fireman's Fund Ins. Co.
●General 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
●Insurance Co. of North America
oLiberty Mutual Ins. Co.
oLumberman's Mutual Casualty Co.
oMaryland Casualty Co.
●Michigan Mutual Liability Co.
oMission Insurance Co.
●National Automobile & Casualty Ins. Co.
oNew Amsterdam Casualty Co.
oOcean Accident & Guarantee Corp.Ltd.
●Pacific Employers Ins. Co.
●Pacific Indemnity Co.
oReliance 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_____

5/81
mmf

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

WILLIAM C. McCORMICK,

Applicant

vs.

THE PHILIP CAREY COMPANY, et al.,

Defendant

CASE No. 67 LA 317-548

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 1-75)

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS

HERLIHY, HERLIHY, JONES & NELSON
Attorneys at Law
727 West Seventh Street
Los Angeles, California 90017

Telephone No. 627-4911

Attorneys for Defendants

WORKMEN'S COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

WILLIAM C. McCORMICK, Applicant, vs. THE PHILIP CAREY COMPANY, et al. Defendants.	CASE NO. 67 LA 317 548 COMPROMISE AND RELEASE AGREEMENT

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

1. William C. McCormick, Social Security No. 441-09-3140, born on April 6, 1911, claims that he was employed from 1942 through November 1967, at various locations in the State of California; that he alleges an injury to his respiratory system, circulatory system, and various other parts of his body by such employment; and that the alleged employers, together with their insurance carriers are as listed below:

(a)	Armstrong Contracting & Supply; Fibreglass Engineering; Metal Clad Company; Mundt Company	insured by: Aetna Casualty & Surety Company
(b)	Armstrong Contracting & Supply; Armstrong Cork Company; Johns Manville Sales Company	insured by: The Travelers Insurance Company
(c)	Los Angeles Cork Company	insured by: National Automobile & Casualty Company

(d)	Philip Carey	Insured by: General Accident Company
(e)	Plant Rubber/Fiberboard Inc.	permissibly self-insured
(f)	Insulations, Inc.; Marine Engineering, a corp. J.T. Thorpe & Sons, Inc. Thorpe Insulation	insured by: Pacific Employers Group
(g)	Modesto Refrigeration	Insured by: California Casualty Insurance Company
(h)	Consolidated Western Steel	insured by: Pacific Indemnity Company
(i)	Pabco	insured by: Employers Mutual Liabilit Insurance Company of Wisconsin
(j)	C.F. Braun Company	insured by: American Motorists Insurance Company
(k)	Coast Insulation	insured by: Argonaut Insurance Compan
(l)	Baker-Perkins, Inc.	insured by: Michigan Mutual Liability Company
(m)	Thorpe Insulation Company	insured by: The Fireman's Fund Insurance Company
(n)	Plant Asbestos; Industrial Supply; Metal Clad Company;	insured by: Industrial Indemnity Company
(o)	Armstrong Cork	insured by: Employers Mutual Insurance Company of Wisconsin
(p)	Baldwin-Ehret Hill Company	insured by: Insurance Company of North America

The insurance carriers party hereto wish it understood that this settlement relieves them of all responsibility for the above-named insureds, whether or not the period of insurance coverage is correct, as alleged, and whether or not the employers that they may have insured during this claimed period of exposure from 1942 to 1967 are mentioned specifically hereinabove or otherwise.

2. The actual weekly wages of the employee are believed

The parties wish to avoid the expense, delays and frustrations of further litigation in this matter. The employee wishes to provide his own medical treatment, if any should be needed without the inconvenience of defendant control. The defendants contend that applicant's disability, if any, is constitutional in nature rather than being related to his work; that the extent of impairment, if any, is difficult to ascertain, and the defendants contend that his present condition is approximately the same as it would have been in the normal course of events without any occupational exposure whatever.

In further consideration of the payment in accordance herewith, applicant agrees that this release will apply to all unknown and unanticipated injuries and damages resulting from such accident, casualty, event, and/or employment, as well as all those now disclosed, and all rights under Section 1542 of the Civil Code of California are hereby expressly 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 or 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."

In further consideration of the payment of the aforesaid sum, applicant agrees that this release extends to and covers the executors, administrators, heirs, representatives, successors, assigns, officers, directors, agents, servants, and employees of the defendants, and each of them, and the physicians, surgeons, and nurses of the defendants, and each of them, whether acting individually or on behalf of them, or either of them.

Attorney for Applicant

Applicant

DWC C&R
Rev 2-64
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to have been above maximum throughout the period alleged.

3. The employee's present disability is in dispute, and the employee has returned to work sometime in 1968.

4. No temporary total disability has been paid by any of the defendants herein. The amount due, if any, is in dispute.

5. The parties agree to settle any and all claims on account of the alleged injury and exposure by payment of the sum of ~~$12,000.00~~ /3038.00, said sum to be payable as follows: Lump sum to employee, less attorneys' fees; and less liens as may be allowed. (SEE APPENDIX "A" FOR LIENS)

The contributions by the defendants herein are as set forth below:

(a)	Travelers Insurance Company	$4,186.00
(b)	Aetna Casualty & Surety Company	$2,900.00
(c)	Fireman's Fund Insurance Company	$2,772.00
(d)	National Automobile & Casualty Company	$217.00
(e)	California Casualty Insurance Company	$154.00
(f)	American Motorists Insurance Company	$574.00
(g)	General Accident Fire & Liability Assurance Company	$105.00
(h)	Argonaut Insurance Company	$562.00
(i)	Industrial Indemnity Insurance Company	$420.00
(j)	Pacific Indemnity Company	$10.00
(k)	Fibreboard & Plant Rubber	$224.00
(l)	Pacific Employers Insurance Company	$432.00
(m)	Insurance Company of North America	$378.00
(n)	Employers Mutual Liability Insurance Company of Wisconsin	$75.00
(o)	Michigan Mutual Liability Company	$29.00

6. No medical expenses have been paid by the employers or by the insurance carriers; all has been provided by applicant through private sources. Future medical and hospital expenses estimated at minimal. All unpaid and future is to be assumed by the employee.

7. The applicant's attorneys are Rose, Klein & Marias,

727 West Seventh Street, Los Angeles, California 90017.

8. Said attorneys request a fee of $ 1,500.00

9. The parties attach hereto a separate statement of reasons for the compromise and release agreement.

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

11. Upon approval of this Compromise Agreement by the Workmen's Compensation Appeals Board or a Referee, and payment in accordance with the provisions hereof, said employee releases and forever discharges said employer and insurance carrier from all claims and causes of action, whether now known or ascertained, or which may hereafter arise or develop as a result of said injury, including any and all liability of said employer and said insurance carrier and each of them to the dependents, heirs, executors, representatives, administrators or assigns of said employee.

12. It is agreed by all parties hereto that the filing of this document is the filing of an application on behalf of the employee, and that the W.C.A.B. may in its discretion set the matter 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 the W.C.A.B. may thereafter either approve said Compromise Agreement and Release or disapprove the same and issue Findings and Award after hearing has been held and the matter regularly submitted for decision.

WITNESS the signature hereof this 6th day of May, 19[illegible] at [illegible]

[illegible]

WILLIAM C. McCORMICK, Applicant

ROSE, KLEIN & MARIAS
By:
Attorneys for Applicant

MARTIN S. GOLDFARB, M. D.
9735 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90212
TELEPHONE 274-8177
INTERNAL MEDICINE AND CARDIOLOGY
DIPLOMATE OF THE AMERICAN BOARD OF INTERNAL MEDICINE

January 2, 1969

Fireman's Fund American Insurance Companies
3223 West Sixth Street
Los Angeles, California 90005

RE: Assured: Thorpe Insulation Company
Claimant: William C. McCormick
Claim No: B530C 950 222
D/L: 10-30-67

Gentlemen:

At your request I examined Mr. William C. McCormick at my offices on Dec. 30, 1968. In addition I reviewed the available medical file. My history, physical findings and laboratory studies are as follows:

I CHIEF COMPLAINT:

Shortness of breath and easy fatigability.

II PRESENT ILLNESS:

Mr. McCormick had been working in the insulating field since 1943 for a number of different companies. He had carried out the same type of work activity for these different companies.

He felt well until Oct. of 1966. He began to have complaints of shortness of breath and easy fatigability. He would have occasion episodes of dizziness while climbing.

He also indicates that he had periodic episodes of coughing in the past 5-6 years. He would cough when he would first get to work in the morning and would have a cigarette. He would throw the cigarette away and start working. He would have an occasional cough during the day.

He continued to have complaints of shortness of breath and easy fatigability from Oct. 1966 until Oct. 1967. Because of these increasing complaints, he was seen by Carlos Prietto, M. D., a thoracic surgeon.

Dr. Prietto hospitalized him at the St. Francis Hospital in Oct. 1967. He complained of tiring easily together with shortness of breath and also a severe cough occurring both day and night. He had also tightness and burning in the chest with wheezing.

Staff J. CHANDLER
JAN 8 1969

Chest X-rays showed bilateral emphysematous bullae and he had a left thoracotomy carried out.

The surgery was performed on Nov. 2, 1967. This consisted of resection of the emphysematous bullae of the left upper lobe. At the time of the surgery, it was noted that one of the bulla was the size of a grapefruit and the other was about the size of an orange.

X-rays also indicated that underlying bronchiectasis at the bases was not excluded.

He had an electrocardiogram on Nov. 1, 1967, which was within normal limits, and he had an eventful clinical course after the surgery.

He had a second surgical procedure during a hospitalization in Feb. 1968. The left lung was operated on at that time with the removal of emphysematous bullae.

A report by Dr. Prietto dated May 22, 1968, was reviewed. He indicated that Mr. McCormick was discharged to return to work on May 9, 1968.

He felt it was acceptable to believe that his occupation and using asbestos for many years may be the cause of the fibrogenic disease with emphysema and bullae resulting. He felt the scarring in the lungs would continue to progress. He felt there was a 25-30 perce loss in each lung as that was the size of the bullae removed.

Mr. McCormick returned to work about 6 months prior to my examination. He worked in a shipyard doing insulating work for a period of about 5 weeks. He was laid off but he does not know the reason.

He was evaluated by Morton Kritzer, M. D. on July 2, 1968. Dr. Kritzer had pulmonary function studies carried out by Herbert Shubin, M. D. These showed an increase in residual air volume compatible with the presence of either pulmonary cysts or pulmonar emphysema. However, the increase in the residual air volume was only of slight degree. There was no delay in the helium equilibration time.

The findings were compatible with a history of resection of pulmonary cysts.

Chest X-rays were taken by Charles Weinstein at the request of Dr. Kritzer on July 3. These showed elongation and dilatation of the thoracic aorta; also linear stranding in both upper lobes representing the residue of previous inflammatory disease. The impression was that of mild pulmonary emphysema.

Dr. Kritzer felt he had a pulmonary ventilatory deficit of moderate degree, probably due to pulmonary emphysema and fibrosis. He was also of the opinion that he had gastrointestinal problems possibly secondary to gastritis.

He advised that he find some form of sedentary or semi-sedentary work where he was not asked to climb stairs or lift anything over 10 pounds; also where he was not asked to walk long distances or do excessive physical activity.

He felt that working with asbestos over a period of 30 years in a dusty atmosphere contributed to his present condition. He also indicated that smoking a pack of cigarettes per day over 25 years together with an inherent disposition to develop a type of emphysematous lung, contributed to the condition. He apportioned 75% to his occupation and 25% to underlying causes.

Mr. McCormick worked at another insulating job for Standard Oil for a period of about 2 weeks and then was laid off. He worked a third time for a small insulating company in San Diego. He worked there for only 1 week and was laid off about 3 weeks ago.

Mr. McCormick continues to complain of shortness of breath and easy fatigability and he feels that his general complaints are remaining about the same.

He has occasional complaints of "a dizzy spell when I climb." When he sits down this will subside.

III PAST MEDICAL HISTORY:

A. Illnesses - see the present illness.
B. Injuries - none.
C. Operations - see the present illness.

IV SOCIAL HISTORY:

A. Alcohol - social drinker.
B. Tobacco - averaged 1 pack per day throughout his adult life until the present illness. Does not smoke at all at present.
C. Medication s - none.

V MARITAL HISTORY:

A. Wife - age 54, has a history of "an enlarged heart."
B. 3 children - alive and well.

VI FAMILY HISTORY:

A. Mother - age 87, alive and well.
B. Father - died of some type of heart trouble at the age of 89.
C. 4 brothers and 3 sisters - alive and well.

VII OCCUPATIONAL:

Mr. McCormick has worked as an insulator and has done asb work for the past 25 years. He has worked for many compa during this period of time. He indicates that the workin conditions and the type of work he has done have been re similar for all these companies.

He indicates that he was also exposed to magnesium and K while working for the various companies.

He has not returned to work since the surgical procedure

He indicates that he worked for the Thorpe Insulation Co a number of times over the past 20 years. He worked for for a period of 11 months shortly before being hospitali Oct. of 1967.

He indicates that his work activities with Thorpe Insula Company were about the same as they were with the other

He indicates that he would usually use a mask when they furnished but on other jobs they would not be furnished

VIII PHYSICAL EXAMINATION: Ht 5'9" Wt 190 BP 114/78 P 86

The patient is a well-developed, well-nourished white m appearing his stated age of 57. He is alert, cooperati no acute distress.

A. HEENT - the fundi are negative; the pupils react to accommodation; there is no nystagmus.
B. Chest and lungs - clear to percussion and auscultat are healed surgical scars noted in the posterior ch areas extending around to both sides.
C. Heart - regular sinus rhythm; no murmurs or thrills
D. Abdomen - kidney, liver, spleen not palpable; no ma or tenderness.
E. Back and extremities - good peripheral pulsations;
F. Neurological - reflexes physiological; no pathologi are noted.

The remainder of the physical examination is essentia contributory.

IX LABORATORY:

A. Complete blood count - within normal limits.
B. Sedimentation rate - 6 millimeters per hour.
C. Latex-fixation - non-reactive.

D. Uric acid - 3.6 milligrams percent.
E. Thymol turbidity - 3.6 units.
F. Cephalin flocculation - 0 at 24 and 48 hours.
G. C-reactive protein - negative.
H. Blood sugar - non-fasting, 104 milligrams percent.
I. Blood urea nitrogen - 17.2 milligrams percent.
J. Vital capacity - 94% of normal.
K. Urinalysis - essentially negative.
L. Posterior-anterior of chest - shows mild emphysematous changes together with residuals of bilateral thoracotomy.
M. Electrocardiogram - within normal limits.

X DIAGNOSES:

A. Chronic bronchitis.
B. Pulmonary emphysema, mild, chronic.
C. Post-operative thoracotomy for emphysematous bullae.

XI DISCUSSION & CONCLUSIONS:

Mr. McCormick has the history of working in the insulating field for a period of 25 years. His X-ray does not show the characteris findings of asbestosis. I can see nothing in the available record to indicate that asbestosis was diagnosed by any of the attending physicians. It was not read into any of the X-rays taken at the St. Francis Hospital.

Asbestosis gives the characteristic picture of a ground-glass appearance and irregular thickening of the pleura with a shaggy appearance; also diffuse fibrotic changes. None of these is seen in the case of Mr. McCormick.

He has some findings of pulmonary emphysema. The pulmonary functi studies run at the request of Dr. Kritzer showed the increase in residual volume as only of slight degree.

The chest X-ray taken by Charles Weinstein, M. D., a diagnostic radiologist, shows only changes of mild pulmonary emphysema. A combination of these two findings would indicate to me that his pulmonary emphysema is mild in degree.

There is a number of factors contributing to his chronic bronchiti and bronchiectasis as well as mild pulmonary emphysema. His cigarette smoking throughout his adult life is the most significar factor. There is a hereditary tendency to develop this condition as well as pollutants in the general atmosphere. All of these factor have combined to contribute to the causation, aggravation and acceleration of his pulmonary condition.

His work activities over a period of 25 years and exposure to dust and fumes have probably also been a contributing factor.

Each of these years would probably have a similar effect on his lungs as far as aggravation and acceleration of his pulmonary process is concerned.

I would apportion 60% of the causation of his pulmonary condition to a combination of cigarette smoking together with pollutants in the atmosphere outside of his work and hereditary factors. I would apportion 40% to work factors over a period of 25 years in which he was exposed to dust and fumes.

His condition is permanent and stationary. He is capable of carrying out light work activities on a full time basis. He should only work in the insulating field, if he has an adequate respirator or protective device. He should avoid further dust or fume exposure without adequate protection.

There is no specific treatment indicated for his condition at the present time. He may have superimposed infections from time to time which will require treatment. However, there is no indication for any type of treatment at the time of my examination.

If I may be of any further service or answer any further questions, please do not hesitate to call on me.

Very truly yours,

Martin S. Goldfarb M.D.

MARTIN S. GOLDFARB, M. D.

MSG:tap
encl.