

FILE NAME: Insulators Workers' Comp Claims (IWC)

DATE: 1958

DOC#: IWC017

DOCUMENT DESCRIPTION: Claimant - Streithorst, L. J.

Contains all documents found in the claimant's file,
with 1 blank page between each separate document.

Case File Inspections at the California Workmen's

Comp Appeals Board, San Francisco Office

Despite my urgent expressions on the phone and in writing to Judge Gately, the request was needlessly delayed sitting on someone's desk for a week before it was approved. They have asked that the various field offices involved request that Archives (Sacramento) send the old case files all to SF Office. However, the only files that have come in were 2 handled by SF originally. These are cases off the Armstrong list, and they were both pipe coverers.

Streithorst was disabled with asbestosis, though since he was 70 it was in dispute whether he was so much worse off than most men that age. He died of stomach cancer. Defendants included Armstrong and Phillip Carey. Relevant parts of the claim file were copied by a copying service and are being sent to my place: claim form, notices of hearings, correspondence involving defendants Carey and Armstrong.

Swartout was totally disabled with asbestosis and died from cor pulmonale. Defendants included Armstrong, J-M, and Mundet Cork. An award was declared in March of 1958, which appears to have been assessed to Western Asbestos Co. in California. The award was upheld after "Reconsideration", whereupon Western petitioned for reapportionment of costs among the other defendants. Among other things, this brought forth a letter of objection from the law firm representing the insurance carriers for J-M and Armstrong Cork. These firms' defense was that their employment of Mr. Swartout "was either outside the State of California, under contracts of hire not made in California, or involved the use of insulation materials other than asbestos." They go on to recount that the man was employed in PA, GA (under a contract made in SC), and Indiana -- but not CA -- by J-M. They note that Swartout was employed by Armstrong in CA on a refrigeration job involving cork insulation, and worked for Armstrong on another job in Alaska under contract through the Asbestos workers union. Several other defendants also objected to reapportionment of expenses, and the matter was dropped. The objection from J-M and Armstrong's lawyers seems to admit that asbestos insulation work killed Mr. Swartout.

Judge Gately was kind enough to let me make a few copies from the Swartout file, though the usual charge is 50¢ per copy. The copying service charges about 20¢ per copy. Gately is retiring to get work with an insurance firm in May, and the best person to contact there is Evelyn Kanada. She understands why we are doing this research, and is knowledgable about how the records are kept.

My Bay Area contact on this is an investigative reporter named David Weir. He was with me for 2 hours at the comp board office and we went through the case files together, so he could see what to take note of. Dave will receive notice when the other files arrive, and he will go through them and arrange to have relevant parts copied and sent to me. The case files are typically an inch thick, sometimes more, so this is a time-consuming assay. I agreed to pay \$10/hr for this work. (4/5 835 832)

17-UNSAFE ACT		18-UNSAFE PRES. FACTOR		19		1-COMPANY		2-DIVISION		3-EMPLOYEE		CLAIM NO.	
						FPPC		Head Office				20G-5067	
1-COMPANY		3-EMPLOYEE		4-AGE		5-SEX		6-DEPT.		7-LENGTH OF TIME ON THIS JOB		YEARS EMPLOYED	
FPPC		STREITHORST, L. J.				☒ M ☐ FM				YRS		MOS	
6-OCCUPATION		11-DATE OF ACCIDENT		12-AGENCY		13-AGENCY PART		14-UNSAFE MECHANICAL CONDITION		15-TYPE OF ACCIDENT		16-UNSAFE PERSONAL FACTOR	
Insulation installer		6-21-59		Chest									
9-INJURY SUSTAINED		10-PART OF BODY INJURED		11-DATE OF INJURY		12-AGENCY		13-AGENCY PART		14-UNSAFE MECHANICAL CONDITION		15-TYPE OF ACCIDENT	
Asbestosis		Chest											
17-UNSAFE ACT		18-UNSAFE PRES. FACTOR		19		20		21		22		23	
FPPC dismissed		60CFR2-145											
FIBREBOARD PRODUCTS, INC.-COMPENSATION CLAIMS MEDIA-FORM 373		E-Z SORT SYSTEMS-U.S. PATS. 2,106,127-2-39,513-OTHERS PENDING		A.A. REMPOLD & CO-INDUSTRIAL ENGINEERS SYSTEMS-SAN FRANCISCO, CALIF									

1 WORKERS' COMPENSATION APPEALS BOARD

2 STATE OF CALIFORNIA

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

Applicant

CASE No. 60 SF 192-145

8 vs.

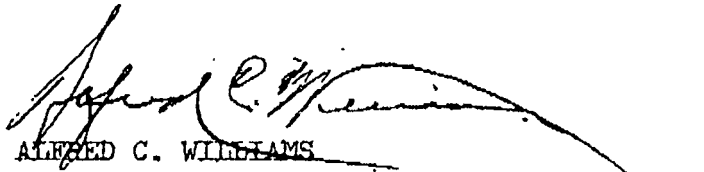
9 WESTERN ASBESTOS COMPANY, et al,
10 and STATE COMPENSATION INSURANCE
11 FUND, et al,

Defendant

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

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

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

17 
18 ALFRED C. WILLIAMS

19 Workers' Compensation Judge
20 Workers' Compensation Appeals Board

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



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, RP 192-14

OFFICIAL ADDRESS RECORD

SEARCHED AND DA

LIEN CLAIMANT		SEARCHED	INDEXED	SERIALIZED	FILED	DA
Department of Employment	P. O. Box 1857, Oakland	✓	✓	✓	✓	✓
APPLICANT		✓	✓	✓	✓	✓
Jacqueline Clancy L. J. Streithorst		✓	✓	✓	✓	✓
ATTORNEYS FOR APPLICANT		✓	✓	✓	✓	✓
Smith, Parrish, Paduck & Clancy		✓	✓	✓	✓	✓
EMPLOYERS		✓	✓	✓	✓	✓
Western Asbestos Co.		✓	✓	✓	✓	✓
Plant Asbestos Co.		✓	✓	✓	✓	✓
Fluor Maintenance Co.		✓	✓	✓	✓	✓
Fluor Maintenance Co.		✓	✓	✓	✓	✓
C. F. Braun & Co.		✓	✓	✓	✓	✓
Armstrong Cork Co.		✓	✓	✓	✓	✓
Owen Leinio, dba San Jose Asbestos Co.		✓	✓	✓	✓	✓
San Jose Asbestos Co.		✓	✓	✓	✓	✓
Coas. Ayers Co.		✓	✓	✓	✓	✓
Fiberglas Eng. & Supply Div.		✓	✓	✓	✓	✓
J. T. Thorpe Co.		✓	✓	✓	✓	✓
Mundet Cork Corp.		✓	✓	✓	✓	✓
Metal Clad Insulation Co.		✓	✓	✓	✓	✓
Aetna Steel Products Corp.		✓	✓	✓	✓	✓
Van Arsdale & Harris Co.		✓	✓	✓	✓	✓
Bay Cities Asbestos Co.		✓	✓	✓	✓	✓
Atlas Heating & Ventilating		✓	✓	✓	✓	✓
M. W. Kellogg Co.		✓	✓	✓	✓	✓

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

OFFICIAL ADDRESS RECORD

SERVICE AND DATE

INSURANCE CARRIERS

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

ATTORNEYS FOR INSURANCE CARRIERS

(1) Hanna & Brophy	1540 San Pablo Ave, Oakland 12	✓	✓	✓	✓
(2) Sedgwick, Detert, Moran & Arnold, By T.P. Niedermuller	100 Bush St., S.F. 4	✓	✓	✓	✓
(3) James J. Vonk		✓	✓	✓	✓
(4) J. Howard Cliff		✓	✓	✓	✓
(5) Mullen & Filippi	315 Montgomery St., S.F. 4	✓	✓	✓	✓
(6) John X. Wilkes		✓	✓	✓	✓
(7) Brobeck, Phleger & Harrison By Arnaldo Sciaroni, Jr.	111 Battery St., S.F. 4	✓	✓	✓	✓

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

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 Center Bldg
Oakland 12, Calif.

EMPLOYERS

Western Asbestos Co.

675 Townsend St., S.F. 3

Plant Asbestos Co.

1300 - 64th St., Emeryville

Flour Maintenance Co., aka
Flour Maintenance Co.

406 Ward St., Martinez, Calif.
Mail Ref. 5-9-60

Flour Maintenance Co., aka
Flour 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 Leorio, dba San Jose
Asbestos Co.

1140 Lannon Way, San Jose

San Jose Asbestos Co.

1140 Lannon Way, San Jose

Chas. Ayers Co.

698 Minnesota St., S.F.

Fiber-las Eng. & Supply Div.

1200 - 17th St., S.F.

J. T. Thorpe Co.

1351 Ocean Ave., Emeryville

Lorentzen Co.

2267 Market St., Oakland

J. T. Thorpe & Son

1351 Ocean Ave., Emeryville

Kundt Cork Corp.

440 Brennan St., S.F.

Metal Clad Insulation Co.

21759 Wilshire, Torrance, 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.

Mail Ref. 5-1-60
Fifth Ave & E. 12th St. Oakland

SERVICE AND DATE:

3-4-60			
5-5-60			
11-30-60			

43

[illegible]

OFFICIAL ADDRESS RECORD

SERVICE AND DATE

	Lien Claimant	
	Applicants	
	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	

1 BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

2
3 PANEL ONE

4 JACQUELINE CLANCY, as party
5 applicant in her individual
6 capacity and as personal
representative and next of kin
of Leo J. Breithorst, decedent

7 Applicant

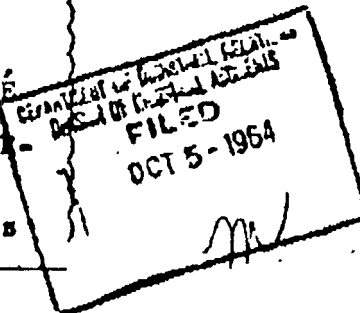
CASE NO. 60 SP 192-145

ORDER OF DISMISSAL

8 vs

9 WESTERN ASBESTOS COMPANY, et al,
10 and STATE COMPENSATION INSURANCE
FUND, AETNA CASUALTY & SURETY
11 COMPANY, PACIFIC EMPLOYERS INSUR-
ANCE COMPANY, et al

12 Defendants



13
14
15 This case was returned to the calendar for further
16 hearing by Order of the Commission filed May 19, 1964. On July 30,
17 1964, an Order was made taking said case off calendar. On Septem-
18 ber 1, 1964 applicant's attorney addressed a letter to the Commis-
19 sion requesting that the application filed by applicant be dis-
20 missed.

21 GOOD CAUSE APPEARING THEREFOR:

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

24 INDUSTRIAL ACCIDENT COMMISSION
25 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
Late J. Sweithorst decedent, Applicant

vs.

NORTHERN AMERICAN COMPANY, et al, and
STATE COMPENSATION INSURANCE FUND,
KELNA CASUALTY & SURETY COMPANY,
PACIFIC EMPLOYERS INSURANCE COMPANY,
et al, Defendants

No. 60 SF 192-145

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: PATTERSON

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

Defendant State Compensation Insurance Fund represented by Sanford Kilip, Attorney.

Defendant Kelna Casualty & Surety Company represented by Andrew C. Dehart, Vernon E. Arns, & Arthur D. Attorneys, (Inspector P. Niedermiller, 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. Gochkin, 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 suspended, 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

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

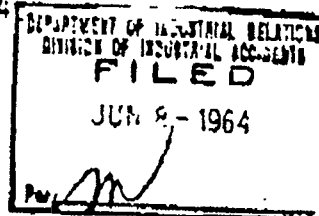
EXHIBITS: Exhibits are to be filed with the minutes and

RECEIVED

1 JUN 8 - 1964
2 INDUSTRIAL ACCIDENT
3 COMMISSION
4 SAN FRANCISCO OFFICE

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA

CASE NO. 60 SF 192-14



5 L.J. STREITHORST,

6 Applicant,

7 vs.

8 WESTERN ASBESTOS COMPANY, et al,
9 and STATE COMPENSATION INSURANCE
10 FUND, AETNA CASUALTY & SURETY
11 COMPANY, PACIFIC EMPLOYERS
12 INSURANCE COMPANY, et al,

13 Defendants.

PETITION FOR RECONSIDERATION

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

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

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

22 STATEMENT OF THE CASE

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

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

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

4 "IT IS THE DUTY OF THE PERSONAL REPRESENTA-
5 TIVE OF A DECEASED PLAINTIFF TO HAVE PEND-
6 ING LITIGATION BROUGHT TO TRIAL WITHIN THE
7 STATUTORY PERIOD."

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

21 In passing, two items are worth mentioning:

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

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

1 action and concludes the rights of the parties in that
2 particular action; Dowling vs. Polack, 18 Cal. 626. A dis-
3 missal for delay in or want of prosecution is not a judgment
4 on the merits but rather a refusal to hear and determine on
5 the merits; Bell vs. Solomons, 162 Cal. 105. But, such a dis-
6 missal deprives the court of jurisdiction to hear or determine
7 any motion unrelated to the dismissal; Lord vs. Garland (1946)
8 27 Cal.2d 840.

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

12 Aside from the power conferred by Section 473 of the Code
13 of Civil Procedure, the trial court cannot vacate its decision,
14 once it is made, on grounds of judicial error. Thus, where the
15 record shows that there is no mere mistake or inadvertence on
16 the part of the trial court, and that an order of dismissal
17 was the order intended to be made, an appellate court will not
18 vacate that order; Hunt vs. United Artists (1947) 79 Cal.App.2d
19 619, 625.

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

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

4 The trial tribunal having made its judicial determination
5 to dismiss the case lost jurisdiction (save as otherwise pro-
6 vided for good cause) to reopen the matter.

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

9 There is no equity in vacating a dismissal as to some de-
10 fendants and not vacating dismissals of other defendants.

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

13 WHEREFORE, defendant prays that the ORDERS made May 12,
14 1964, be vacated and nullified and that the Order of Dismissal,
15 dated March 31, 1964 be affirmed, ratified and reinstated.

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

18
19 Respectfully submitted,

20
21 David Freeman
Attorney for Defendants

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

24
25 cc - Smith, Parrish, Paduck & Clancy
26 315 Financial Center Building
Oakland, California

1 cc - Department of Employment
P.O. Box 1857
2 Oakland, California
cc - Pacific Employers Insurance Company
3 244 Pine Street
San Francisco, California
4 cc - Western Asbestos Co.
675 Townsend Street
5 San Francisco, California
cc - Mundet Cork Corp.
6 550 Brannan Street
San Francisco, California
7 cc - Fiberglass Engineering & Supply Co.
1200 - 17th Street
8 San Francisco, California
cc - Van Arsdale & Harris Co.
9 595 Tunnel Avenue
San Francisco, California
10 cc - Aetna Casualty & Surety Co.
220 Montgomery Street
11 San Francisco, California
cc - Claims Department

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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 J. Green
Attorney for Defendant

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

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RECEIVED
MAY 20 1964
INDUSTRIAL ACCIDENT
COMMISSION
SAN FRANCISCO OFFICE

THE INDUSTRIAL ACCIDENT COMMISSION OF THE
STATE OF CALIFORNIA
CLAIM NO. 60 SF-192-145

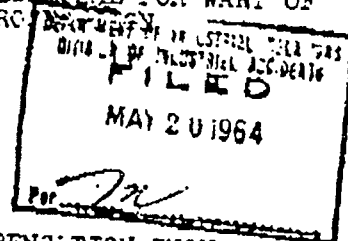
L. J. STREITHORST,
Applicant,

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



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 grant-
ing 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

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

3 Applicant took no steps to bring the case to hearing
4 and on or about September 29, 1961, certain defendants filed a
5 Petition to Dismiss for Want of Prosecution. On November 29,
6 1961, Dismissal for Want of Prosecution was issued as to those
7 certain defendants. On December 1, 1961, State Compensation
8 Insurance Fund filed a Petition to Dismiss for Want of
9 Prosecution. A Notice of Intention to Dismiss for Want of
10 Prosecution dated December 8, 1961 was issued by the Industrial
11 Accident Commission, George W. Lane, Referee. Written objection
12 was to be made within 15 days from date of service. On December
13 27, 1961, (19 days later) applicant's attorney filed an objection
14 to Notice of Intention to Dismiss for Want of Prosecution. On
15 June 20, 1962, another Notice of Intention to Dismiss for Want
16 of Prosecution was served by the Industrial Accident Commission.
17 On July 3, 1962, the State Compensation Insurance Fund renewed
18 its request for a Petition to Dismiss for Want of Prosecution.
19 On July 11, 1962, the applicant's attorney filed an objection to
20 Notice of Intention to Dismiss for Want of Prosecution. On
21 August 3, 1962, the case was set for hearing on October 11, 1962.
22 By letter of October 8, 1962, the applicant's attorney informed
23 the Industrial Accident Commission that Mr. Streithorst had been
24 confined to Brookside Hospital seriously ill. On October 11,
25 1962, applicant's attorney appeared and stated that the applicant
26 was then hospitalized in what appeared to be a terminal condition.

1 the case was ordered dismissed for failure of prosecution.

2
3 CONTENTIONS

4 1. The claim of Jacqueline Claney is barred by the
5 Statute of Limitations as provided by Labor Code Sections 5400
6 to 5412, inclusive, and particularly by Labor Code Section
7 5406, which provides:

8 "5406. The period within which may be
9 commenced proceedings for the collection
10 of the benefits provided by Article 4 or
Chapter 2 of Part 2 of this division is one
year from:

- 11 (a) The date of death where death occurs
within one year from date of injury; or
12 (b) The date of last furnishing of any bene-
fits under Chapter 2 of Part 2 of this
13 division, where death occurs more than
one year from the date of injury; or,
14 (c) The date of death, where death occurs
more than one year after the date of
15 injury and compensation benefits have
been furnished.

16 No such proceedings may be commenced more
than one year after the date of death, nor
17 more than 240 weeks from the date of injury."

18 Leo J. Streithorst died on October 15, 1962. No compensation
19 benefits have been furnished. No award has been made. More
20 than 240 weeks have passed since the date of injury alleged
21 to be July 21, 1959 (See petitioners' Application, Case
22 60 CP-192-145) Ruiz v. I.A.C. (1955) 45 Cal. 2d 409, 289 P. 2d
23 229, 20 CCC 265. State Compensation Insurance Fund v. I.A.C.
24 (1958) 23 CCC 177.

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

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

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

14 "5903. At any time within twenty days after
15 the service of any final order, decision or
16 award made and filed by a commissioner or a
17 referee granting or denying compensation, or
18 arising out of or incidental thereto, any
19 person aggrieved thereby may petition for
20 reconsideration upon one or more of the
21 following grounds and no other:
22 (a) That by such order, decision, or award
23 made and filed by a commissioner or a
24 referee, the commission acted without
25 or in excess of its powers.
26 (b) That the order, decision, or award was
27 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."

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

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

17 (b) As long ago as July 11, 1962, applicant's
18 attorney claimed to have the alleged
19 medical evidence needed to prosecute his
20 case. (See Objection to Notice of In-
21 tention to Dismiss for Want of Prosecution,
22 dated July 11, 1962)

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

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

4 (d) Applicant's attorney actually knew the
5 location (Brookside Hospital) of Mr.
6 Streithorst during Mr. Streithorst's
7 terminal illness. It seems inconceivable
8 that applicant's attorney would not in-
9 quire as to his aged client's health.
10 (See petitioner's attorney's letter to
11 the Industrial Accident Commission dated
12 October 3, 1962.)

13 (e) At the hearing of October 11, 1962 ap-
14 plicant's attorney knew the applicant
15 was seriously ill and at the time had
16 actual or constructive knowledge that
17 the applicant's condition was terminal.
18 Applicant, L. J. Streithorst, died on
19 October 15, 1962 at age 72. Notwith-
20 standing, over one and one-half years
21 have elapsed before applicant's attorney
22 attempted to bring this case to termination.

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

1 that autopsy findings confirm applicant's original claim that
2 he was disabled because of asbestosis, (but this man died of
3 carcinoma). The alleged autopsy findings would not constitute
4 the discovery "new evidence" upon which reconsideration will
5 lie even if the same were timely. Labor Code Section 5903.
6 (d) "Tender of merely new cumulative evidence does not
7 constitute valid ground for reconsideration." I.A.C. Rule
8 10870 (f) See Clendaniel v. I.A.C. (1941) 17 Cal. 2d 659, 111
9 P. 2d 314, 6 CCC 25.

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

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

16 Respectfully submitted,
17

18

19

20 Attorneys for Defendant
21 State Compensation Insurance Fund

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

24 cc-
25 Smith, Parrish, Paduck & Clancy, Attorneys at Law
26 315 Financial Center Building, Oakland, California
27 Mullen & Filippi, Attorneys at Law
315 Montgomery Street, San Francisco, California
Hanna & Brophy, Attorneys at Law
2540 San Pablo Avenue, Oakland, California

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Frank A. Parker

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

CALIFORNIA INSPECTION RATING BUREAU

1453 MISSION STREET
SAN FRANCISCO 3, CALIFORNIA

R. G. O'BRIEN
GENERAL MANAGER
P. L. DAVEY
ASST. GENERAL MANAGER
J. W. HOYAJIAN
CLERK

RECEIVED

March 31, 1960

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS

PLEASE ADVISE DEPT. FILE
ATTENTION R. T. Read
FILE General File

APR 4 - 1960

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. SP 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 Compensation 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. C: 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 Gas. 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 420040-1-1-52-53
and Policy No. CM 426012, 1-1-53-54.

Lumbermens' Mutual Casualty Co., Policy No. C 424654, 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.

✓

RECEIVED

APR 4 - 1960

Department of Industrial Relations
Industrial Accident Commission

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS

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. 2673204,
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., 696 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 65069, 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. 6-7-01168.

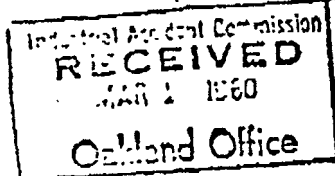
Very truly yours,

R. T. Read, Superintendent
Underwriting Department

By

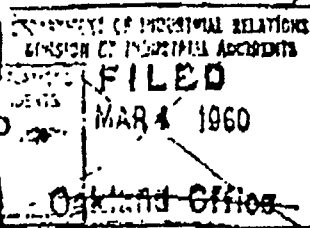
R. T. Read
Rex Oja

RO:gr



STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL ACCIDENT COMMISSION

APPLICATION



60 SF

CASE NO. 192145

L. J. STREITHORST

2637 LINCOLN AVE, RICHMOND

SEE ATTACHED SHEET

SEE ATTACHED SHEET

L. J. STREITHORST

Insulation installer

July 21, 1959

DATE OF INJURY

19

AT

CITY, TOWN OR PLACE WHERE INJURY OCCURRED

California, by

he sustained injury arising out of and in the course of the employment, as follows:

work as insulation installer from 1944 to July 1959

Chest disability namely pneumoconiosis, probably asbestosis.

2. Was the employer's insurance carrier on date of injury.

July 21, 1959

4. Was compensation paid? No

Maximum

5. Earnings at time of injury \$

The basis of pay was

Was there any overtime?

Were lodging, board, or other advantages given?

6. Was medical treatment needed?

Who furnished treatment?

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

8. This application is filed to determine liability for:

a. Temporary disability Yes b. Permanent disability Yes c. Medical treatment Yes d. Medical costs

e. Litigation expense f. Death benefit g. Burial expense h.

9.

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. STREITHORST
2637 LINCOLN AVE.
RICHMOND, CALIF.

ASBESTOS EMPLOYERS - 1944 to 1959

1959	WESTERN ASBESTOS CO. PLANT ASBESTOS CO.	675 TOWNSEND ST., S.F. 3 (SIXTY- 1300 FOURTH ST., EMERYVILLE 6
1958	WESTERN ASBESTOS CO. FLOUR MAINTENANCE CO. C. F. BRANT & CO. ARMSTRONG CORR CO.	675 TOWNSEND ST., S.F. 3 406 WARD ST., MARTINEZ P.O. BOX 22, L.A. 1000 SO. FREMONT AVE., ALHAMBRA, CAL. 304 SHAW RD., SO. S.F.
1957	SAN JOSE ASBESTOS CO. WESTERN ASBESTOS CO. ARMSTRONG CORR CO. FLOUR MAINTENANCE CO. PLANT ASBESTOS CO. CHAS. ALBERS CO.	SAN JOSE, CALIF. 675 TOWNSEND ST., S.F. 304 SHAW RD., SO. S.F. 406 WARD ST., MARTINEZ (SIXTY- 1300 FOURTH ST., EMERYVILLE 6 690 MINNESOTA ST., S.F.
1956	FIBERGLAS LMG. & SUPPLY DIV. (Bal rest of 1956)	1200 - 17th ST., S.F.
1955	FIBERGLAS LMG. & SUPPLY CO. J. C. MCNEIL CO. CHAS. ALBERS CO. LONSTON CO. FLOUR MAINTENANCE CO.	1200 - 17th St., S.F. 1351 COMSTOCK AVE., EMERYVILLE 1000 WARD ST., S.F. 2007 WARD ST., MARTINEZ 1000 WARD ST., MARTINEZ
1954	J. C. MCNEIL CO.	1351 COMSTOCK AVE., EMERYVILLE

(Don.)

1953 WESTERN ASBESTOS CO.

J. T. THORPE & SON

REX REGUILL

675 TOWNSEND ST., S.F. 3

1351 OCEAN AVE., ALBANYVILLE

1421 LAIDLAY ST., RENO, NEVADA

1952 WESTERN ASBESTOS CO.

INDEPENDENT CORP. COMP.

675 TOWNSEND ST., S.F.

440 DRAKEMAN ST., S.F.

1951 CHAS. AYERS CO.
INDEPENDENT CORP. COMP.
MEGAL CLAD INSULATION CO.
WESTERN ASBESTOS CO.

698 MINNESOTA ST., S.F.

440 DRAKEMAN ST., S.F.

105 HOLLIS, CALIF.

675 TOWNSEND ST., S.F. 3

1950 ARMSTRONG CORP. CO.

J. T. THORPE & SON

304 SHAW ROAD., SO. S.F.

1351 OCEAN AVE., ALBANYVILLE

1949 WESTERN ASBESTOS CO.

J. T. THORPE CO.

675 TOWNSEND ST., S.F.

1351 OCEAN AVE., ALBANYVILLE

1948 ALMA STEEL PRODUCTS CORP.

WESTERN ASBESTOS CO.

61 BROADWAY, NEW YORK

675 TOWNSEND ST., S.F.

1947 ALMA STEEL PRODUCTS CORP.
(All of 1947)

61 BROADWAY, NEW YORK

1946 ALMA STEEL PRODUCTS CORP.

INDEPENDENT CORP. COMP.

61 BROADWAY, NEW YORK

440 DRAKEMAN ST., S.F.

1945 VAN ARSDALL & HARRIS INC. CO.

DAY CITIES ASBESTOS CO.

(Taken over by Western Asbestos Co.)

595 FIFTH ST., S.F.

FIFTH AVE. & E. 12th St., NEW YORK

1944 VAN ARSDALL & HARRIS - Division of
(Not out of business)

DAY CITIES ASBESTOS CO., LTD.

(Referred to Western Asbestos Co.)

Van Arsdall & Harris Inc. Co.

595 FIFTH AVE., S.F.

FIFTH AVE. & E. 12th St., NEW YORK