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May 14, 1971.

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAY 18 1971
JAMES R. COONEY, CLERK
BY MARGARET DRIVER
DEPUTY

George A. Weller, Esq.,
Weller, Wheelus & Green,
P.O. Box 350,
Beaumont, Texas 77704.

Re: Civil No. 6449
Borel v. Fibreboard

Dear George:

It is unquestionably the law in California that the (one year) Statute of Limitations against a third party is not tolled while an injured employee pursues his compensation remedy. This is such a truism that apparently there are no cases which expressly state the rule. However, the conclusion can be derived from the authorities noted below, as well as from the general rule that, absent fraud or the like, a tolling provision must be found in a statute, and none exists covering the instant situation:

1. Hanna, California Law of Employee Injuries and Workmen's Compensation, 2d Ed., Vol. 2, Ch. 23, sec. 23.04(5): States that the statutory period of limitations against third-parties is one year except for certain situations (incompetency, fraudulent concealment or action filed by employer against third-party within one year) none of which are applicable to the instant question.

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2. State Comp. Ins. Fund v. Matulich, 55 Cal. App. 2d 528, 131 P. 2d 21 (1942): The decision of the court upholding the right of an employee to intervene, more than a year after his injury, in a suit filed by his employer against the third-party within a year of the injury, was based upon the assumption that a separate action filed by the employee himself against the third-party more than a year after his injury would have been barred by the statute of limitations. Harrison v. Englebrick, 254 Cal. App. 2d 871, 62 Cal. Rptr. 831 (1967) may, by dicta and implication, say the same thing.

I am enclosing herewith a true copy of Section 335 of the California Code of Civil Procedure along with a true copy of an excerpt of Section 340 of the California Code of Civil Procedure, both of which outline the appropriate statute of limitations for actions for injury to or for the death of one caused by the wrongful act or neglect of another in the State of California.

Sincerely yours,

E. Judge Elderkin

EJE/mrr
Enc.
cc: Mr. R.A. Beck, w/ enc.

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California Code of Civil Procedure

§335. Periods of limitation prescribed. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:

§340. [Within one year.]

Within one year: . . .

3. An action for libel, slander, assault, battery, false imprisonment, seduction of a person below the age of legal consent, or for injury to or for the death of one caused by the wrongful act or neglect of another . . .

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