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BEFORE THE INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA

CASE NO. [illegible]

BERGIT A. SWARTOUT,

Applicant

v.

MUNDET CORK CORP., HARRY A. DUTTON, INC., DUTTON ASBESTOS CO., DUTTON ASBESTOS & SUPPLY CO., WESTERN ASBESTOS CO., BAY CITY ASBESTOS CO., LTD., CORK INSULATION CO., INC., WESTERN FIBER GLASS COMPANY, GENERAL INSULATION & RUBBER CORPORATION, ARMSTRONG CORK CO., JOHNS MANVILLE SALES CORPORATION, C. C. MOORE & CO., J. T. THORPE & SON, INC., R. R. CARPENTER, AETNA INSURANCE COMPANY, STATE COMPENSATION INSURANCE FUND, INDUSTRIAL INDEMNITY EXCHANGE, INDUSTRIAL INDEMNITY COMPANY, LIBERTY MUTUAL INSURANCE COMPANY, TRAVELERS INSURANCE COMPANY, STANDARD ACCIDENT INSURANCE COMPANY and PACIFIC EMPLOYERS INSURANCE COMPANY,

Defendants

DECISION AFTER RECONSIDERATION

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS
FILED
JUN 10 1958
Per

Reconsideration having been granted herein and the matter having been carefully considered, including transcriptions of the testimony, as well as the record as a whole, this Commission now concludes that further proceedings are not essential for the disposition of the claim and makes its Decision after Reconsideration as follows:

GOOD CAUSE APPEARING THEREFOR,

IT IS ORDERED that Findings and Award filed March 4, 1958 be, and the same is, vacated, annulled and set aside, and that the following Findings and Award be substituted in lieu thereof and made the Decision after Reconsideration of this Commission.

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FINDINGS OF FACT

1. John E. Swartout, while employed as an asbestos worker in the County of San Francisco, State of California, on January 10, 1955, by Western Asbestos Company, sustained an injury arising out of and occurring in the course of his employment, consisting of substantial and material exposure to asbestosis. At said time, the employee's wages were maximum.

2. There may have been like exposure in other employments both within and without the State of California.

3. Applicant has elected to proceed against the Western Asbestos Company and its insurance carrier, the State Compensation Insurance Fund, pursuant to Labor Code Section 5500.5.

4. Said injury resulted in temporary total disability beginning on January 11, 1955, continuing to and including June 5, 1956, entitling the employee to temporary total disability indemnity at the rate of $35 a week in the total sum of $2,555.

5. The evidence establishes that said employee failed to give defendants notice of his need for medical treatment to cure or relieve him from the effects of said injury.

6. The employee died on June 6, 1956, and the evidence establishes that said death was proximately caused by the injury herein.

7. The application for adjustment of claim was filed herein within one year from the date of said injury.

8. The evidence fails to establish that defendants or any of them have been prejudiced by lack of notice of the claim asserted herein.

9. Said employee left surviving him his widow, Bergit A. Swartout, the applicant herein.

10. Applicant is entitled to the statutory burial expense of $400.

11. The employee incurred expense in the sum of $35 for

Bergit A. Swartout v. Mundet Cork Corp. and Others, California Asbestosis Death Claim (1956–1958)
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examination and report by Dr. Allan E. Moe required to successfully prove his case.

12. Applicant's counsel, Smith & Parrish, have performed services of the reasonable value of $600.

A W A R D

AWARD IS MADE in favor of Bergit A. Swartout and against the State Compensation Insurance Fund of accrued temporary disability indemnity commencing January 11, 1955, to and including June 5, 1956, at the rate of $35 a week in the total sum of $2,555, payable forthwith.

AWARD IS FURTHER MADE in favor of Bergit A. Swartout and against the State Compensation Insurance Fund of a death benefit in the amount of $7,000, payable at the rate of $35 a week beginning June 6, 1956, less $600 payable to Smith & Parrish as attorneys' fee.

AWARD IS FURTHER MADE in favor of Bergit A. Swartout and against the State Compensation Insurance Fund for burial expense in the amount of $400.

AWARD IS FURTHER MADE in favor of Bergit A. Swartout and against the State Compensation Insurance Fund of the sum of $35 for medical litigation costs, payable to Dr. Allan E. Moe.

IT IS ORDERED that all payments herein shall bear interest as provided by Labor Code Section 5800.

INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA

F A Laurence

Deputy Commissioner

Commissioners

JUN 9 - 1958

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BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

CLAIM NO. 55 SF 169-171

JOHN E. SWARTOUT,

Applicant,

vs.

MUNDET CORK CORP.; HARRY A. DUTTON, INC.; DUTTON ASBESTOS CO.; DUTTON ASBESTOS & SUPPLY CO.; WESTERN ASBESTOS CO.; BAY CITY ASBESTOS CO., Ltd.; CORK INSULATION CO., Inc.; WESTERN FIBROUS GLASS PRODUCTS CO.; GENERAL INSULATION & RUBBER CORPORATION; ARMSTRONG CORK CO.; JOHNS MANVILLE SALES CORPORATION; C. C. MOORE & CO.; J. T. THORPE & SON, INC.; M. R. CARPENTER, AETNA INSURANCE COMPANY; STATE COMPENSATION INSURANCE FUND; INDUSTRIAL INDEMNITY EXCHANGE; INDUSTRIAL INDEMNITY COMPANY; PACIFIC INDEMNITY COMPANY; LIBERTY MUTUAL INSURANCE COMPANY; EMPLOYERS MUTUAL INSURANCE COMPANY; TRAVELERS INSURANCE COMPANY; STANDARD ACCIDENT INSURANCE COMPANY, and PACIFIC EMPLOYERS INSURANCE COMPANY,

Defendants.

ORDER JOINING PARTIES DEFENDANT

Mailed from San Francisco Offic

JUN 22 1956

Industrial Accident Commissio
State of California

GOOD CAUSE APPEARING THEREFOR:

IT IS ORDERED that the Mundet Cork Corp., Harry A. Dutton, Inc.; Dutton Asbestos Co., Dutton Asbestos & Supply Co., Western Asbestos Co., Bay City Asbestos Co., Ltd.; Cork Insulation Co., Inc.; Western Fibrous Glass Products Co., General Insulation & Rubber Corporation, Armstrong Cork Co., Johns Manville Sales Corporation, C. C. Moore and Co, J. T. Thorpe & Son, Inc.; M. R. Carpenter, Aetna Insurance Company, State Compensation Insurance Fund, Industrial Indemnity Exchange, Industrial Indemnity Company, Pacific Indemnity Company, Liberty Mutual Insurance Company, Employers Mutual Insurance Company, Travelers Insurance Company, Standard Accident Insurance Company and Pacific Employers Insurance Company, be and they are hereby joined as parties defendant.

R. O. Purvis, Referee

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DATED AT SAN FRANCISCO
CALIFORNIA

JUN 22 1956

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Sheckler, Clifford - Hicks
USDC/TN 8/24/78
CLS 7804

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

CLAIM NO. 55 SF 169-171

BERGIT A. SWARTOUT,

Applicant,

vs.

MUNDET CORK CORP.; HARRY A. DUTTON, INC.; DUTTON ASBESTOS CO.; DUTTON ASBESTOS & SUPPLY CO.; WESTERN ASBESTOS CO.; BAY CITY ASBESTOS CO., LTD.; CORK INSULATION CO., INC.; WESTERN FIBER GLASS COMPANY; GENERAL INSULATION & RUBBER CORPORATION; ARMSTRONG CORK CO.; JOHNS MANVILLE SALES CORPORATION; C. C. MOORE & CO.; J. T. THORPE & SON, INC.; M. R. CARPENTER; AETNA INSURANCE COMPANY; STATE COMPENSATION INSURANCE FUND; INDUSTRIAL INDEMNITY EXCHANGE; INDUSTRIAL INDEMNITY COMPANY; LIBERTY MUTUAL INSURANCE COMPANY; TRAVELERS INSURANCE COMPANY; STANDARD ACCIDENT INSURANCE COMPANY, and PACIFIC EMPLOYERS INSURANCE COMPANY,

Defendants.

MAR 10 1958 WLF

FINDINGS AND AWARD

D/A - 1/10/58

An application for adjustment of claim for compensation having been filed herein, all parties having appeared, and the matter having been regularly heard and submitted, R. O. Purvis, Referee, now makes his Findings and Award as follows:

FINDINGS OF FACT:

1. John E. Swartout, while employed as an asbestos worker by various employers, including the defendant, Western Asbestos Company, in California and elsewhere, sustained an injury arising out of and in the course of his employment consisting of asbestosis. At said time, the employee's wages were maximum.

2. Applicant has elected to proceed against the Western Asbestos Company and its insurance carrier, the State Compensation Insurance Fund, pursuant to Labor Code Section 5500.5.

3. Said injury resulted in temporary total

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disability beginning January 11, 1955, to and including June 5, 1956.

4. The evidence establishes that said employee failed to give defendants notice of his need for medical treatment to cure or relieve him from the effects of said injury.

5. The employee died on June 6, 1956, and the evidence establishes that said death was proximately caused by the injury herein.

6. The application for adjustment of claim was filed herein within one year from the date of said injury.

7. The evidence fails to establish that defendants or any of them have been prejudiced by lack of notice of the claim asserted herein.

8. Said employee left surviving him, his widow, Bergit A. Swartout, the applicant herein.

9. Applicant is entitled to the statutory burial expense of $400.00.

10. The employee incurred expense in the sum of $35.00 for examination and report by Dr. Allan E. Moe required to successfully prove his case.

11. Applicant's counsel, Smith & Parrish, have performed services of the reasonable value of $590.00.

AWARD:

AWARD IS MADE in favor of Bergit A. Swartout and against the State Compensation Insurance Fund of accrued temporary disability indemnity commencing January 11, 1955, to and including June 5, 1956, at the rate of $35.00 a week in the total sum of $2,555.00 payable forthwith.

AWARD IS FURTHER MADE in favor of Bergit A. Swartout and against the State Compensation Insurance Fund of a death benefit in the amount of $7,000.00 payable at

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the rate of $35.00 a weekbeginning June 6, 1956, less $500.00.

AWARD IS FURTHER MADE in favor of Bergit A. Swartout and against the State Compensation Insurance Fund for burial expense in the amount of $400.00.

AWARD IS FURTHER MADE in favor of Bergit A. Swartout and against the State Compensation Insurance Fund of the sum of $35.00 for medical-litigation costs payable to Dr. Allan E. Moe.

R. O. Purvis, Referee

Filed and Served upon
parties shown on of-
ficial address record: March 4, 1958
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Swartout--#169-171

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