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January 19, 1953

Johns-Manville Products Corporation
Lompoc
California

Attention: O. B. Westmont, Plant Manager

RE: Howard Winn
Claim No. LA 120-530

COPY

Dear Sirs:

Under date January 9, 1953 Referee George A. Martinelli made his Findings and Award in re the above captioned claim, wherein he made the following findings:

Howard Winn while employed by Johns-Manville Products Corporation for the period commencing September 7, 1933 through May 7, 1942, sustained an injury arising out of and occurring in the course of the employment consisting of diatomaceous earth pneumoconiosis with superimposed, far advanced pulmonary tuberculosis resulting in permanent disability. He further found that the insurance carriers for the employer for the period involved were as follows:

(1) The insurance carrier for the employer for the period commencing September 7, 1933 through December 30, 1934, was Pacific Indemnity Company;

(2) The insurance carrier for the employer under a medically excluded policy for the period commencing December 31, 1934 through December 31, 1937, was Employers Liability Assurance Corporation, Ltd., of London, England, a corporation;

(3) During the period January 1, 1938 through May 27, 1942, the employer was permissibly self-insured.

The total period of exposure was ascertained by Referee Martinelli as 3,185 days, and he prepared a formula which is contained in the Decision, indicating the number of days of exposure under each period of coverage, the percentage of coverage for each day's exposure, and the weekly amount chargeable to each carrier and the self-insured employer.

It was found that the injury resulted in permanent disability rated at 100%, entitling Mr. Winn to $24.96 per week for 240 weeks and thereafter, a pension at the rate of $15.35 for the balance of his life,

Herlihy & Herlihy to Johns-Manville at Lompoc on Howard Winn's Compensation Trial (1952), Letter to O. B. Westm...
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based upon average earnings of $40.40 per week. The Decision also contains a formula, under Finding #3, indicating the amount payable by each of the co-defendants in connection with the life pension. The Referee found that Mr. Winn was not aware of the fact that his condition was due to his employment until the latter part of August, 1950, or early part of September, and since his Application for Adjustment of Claim was filed on August 4, 1951, the claim was not barred by the Statute of Limitations. This is the only finding in which we disagree with Referee Martinelli. We are satisfied that enough evidence was adduced to demonstrate that Mr. Winn knew as early as 1942 that he was suffering from lung pathology due to dust exposure. However, there was conflicting evidence on this question, and therefore the Referee's finding in favor of Mr. Winn is not subject to appeal.

The Award also entitles Mr. Winn to reimbursement for the reasonable value of medical treatment procured by him after September 12, 1951. This finding only applies to defendants Pacific Indemnity Company and Johns-Manville Products Corporation due to the fact that the insurance policy of the Employers Liability Assurance Corporation excluded medical liability.

The Award also entitles the applicant to further medical and surgical treatment for the remainder of his life and charges the cost of such further treatment as follows: 15% by Pacific Indemnity Company and 85% by Johns-Manville Products Corporation. The applicant's attorney, Lawrence Grossman, was granted a fee of $400.00 which is to be paid out of the share payable by Johns-Manville Products Corporation.

The foregoing is to give you a quick indication of the scope of the Decision. The Industrial Accident Commission should have served each of the defendants with a copy of the Findings and Award as well as their attorneys. However, in case you did not receive a copy and in order to facilitate matters, we have had photostatic copies made and are enclosing a copy for your file.

It is our opinion that the Decision does not present a basis for further litigation. Dr. Arnold L. Freed, the Independent Medical Examiner appointed by the Industrial Accident Commission, in his report dated November 21, 1952, definitely connected Mr. Winn's present disabling tuberculosis to diatomaceous earth dust exposure, while employed by Johns-Manville Products Corporation. We were unable to offer any rebuttal medical evidence; consequently our only hope of defending this claim was by establishing that the claim was barred by the Statute of Limitations. As stated above, the Referee disagreed with our views on that issue.

The parties have twenty days from the date of the Decision in which to Petition for Reconsideration. Unless we are advised by you to the contrary, we shall undertake no further legal proceedings in the matter, and assume that you have accepted the Commission's Findings and Award.

Yours very truly,

HERLIHY & HERLIHY

By E. H. Herlihy

EHH:ag

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