IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
JAN 11 1968
James R. Cooney, Clerk, U. S. Court
By _____ DEPUTY

CLAUDE J. TOMPLAIT

VS.

COMBUSTION ENGINEERING, INC., ET AL

CIVIL ACTION NO. 5402

MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANT, JOHNS-MANVILLE SALES CORPORATION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Johns-Manville Sales Corporation, one of the defendants in the above entitled and numbered cause and moves the Court as follows:

1.

Johns-Manville Sales Corporation moves the Court pursuant to Rule 56, of the Federal Rules of Civil Proceedure to enter judgment for this defendant dismissing the action as to this defendant, on the grounds that there is no genuine issue as to any material fact in this action as to this defendant and this defendant is entitled to a judgment as a matter of law on the following grounds:

(a) On the occasion in question, Johns-Manville Sales Corporation carried workmen's compensation insurance on its employees including Claude J. Tomplait.

(b) Any claim by Claude J. Tomplait against defendant, Johns-Manville Sales Corporation, would be barred by reason of the Texas Workmen's Compensation Act.

(c) That Claude J. Tomplait has heretofore filed suit in the District Court of Orange County, Texas, 128th Judicial District against Texas Employer's Insurance Association, the workmen's compensation carrier for Johns-Manville Sales Corporation

NO. A-13,916-A

CLAUDE J. TOMPLAIT	X	IN THE DISTRICT COURT OF
VS.	X	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY AND TEXAS EMPLOYERS' INSURANCE ASSOCIATION	X	128TH JUDICIAL DISTRICT

AGREED JUDGMENT

BE IT REMEMBERED, that on this, the 16th day of September, 1964, the above entitled and numbered cause wherein Claude J. Tomplait is plaintiff and The Travelers Insurance Company and Texas Employers' Insurance Association are defendants came on to be heard at an agreed setting, this cause having heretofore been severed from Cause No. A-13,916, now pending in this Court, and all parties having appeared in person and through their attorney and announced ready for trial, and a jury having been by all parties expressly waived, the matters of fact, as well as of law, were thereupon submitted to the Court; and the Court, having heard the pleadings and evidence, finds that this suit involves a claim for benefits under the Workmen's Compensation Law of Texas because of occupational disease claimed to have been sustained by said plaintiff at various times while in the employment of Armstrong Contracting & Supply Corporation and also while in the employment of Johns-Manville Corporation and/or Johns-Manville Sales Corporation, the defendant, The Travelers Insurance Company, carrier under said law for said Armstrong Contracting & Supply Corporation at such times, and the defendant, Texas Employers' Insurance Association, being the insurance carrier for said Johns-Manville Corporation and/or Johns-Manville Sales Corporation at such times, it being claimed by

"EXHIBIT A"

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plaintiff that he was injuriously exposed to the hazards of said occupational disease while in the employment of said employers.

The Court finds that plaintiff submitted a claim to the Industrial Accident Board of the State of Texas for such occupational disease, the same being No. W-67299 on the docket of said Board, that the final award of said Industrial Accident Board on said claim was made on the 18th day of December, 1962, that notice of appeal was timely filed by plaintiff and that this suit was duly and timely filed, thereby giving this Court jurisdiction herein;

It is therefore ORDERED by this Court that said award of said Industrial Accident Board, insofar as it applies to any claims against the defendants herein, be and the same is hereby set aside, vacated and held for naught.

Thereafter, it was made known to the Court that, subject to the approval of the Court, the parties had reached a compromise settlement of this suit and of all matters in controversy between them, under the terms of which it was agreed that plaintiff, Claude J. Tomplait, should recover judgment herein against the defendant, The Travelers Insurance Company, for the sum of FIVE THOUSAND ($5000.00) DOLLARS and should recover judgment herein against the defendant, Texas Employers' Insurance Association, for the further sum of [illegible]000.00) DOLLARS in full compromise, settlement and [illegible] claims for workmen's compensation [illegible] plaintiff, Claude J. Tomplait, may have under the Workmen's Compensation Law of Texas for occupational disease and any injurious exposure or exposures to the hazards of such disease at any time while in the employment of said Armstrong Contracting & Supply Corporation, Johns-Manville Corporation and/or Johns-Manville

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Sales Corporation; and the Court having found from the evidence that the liability of the defendants, The Travelers Insurance Company and Texas Employers' Insurance Association, each and both, and the extent of the disease and any injurious exposure or exposures to the hazards of said disease at any time while in the course and scope of plaintiff's employment for said employers are uncertain, indefinite and incapable of being satisfactorily established, and that said proposed compromise settlement of such claims under the Texas Workmen's Compensation Act is reasonable, fair and just, and that the same should in all things be approved and confirmed;

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that the proposed compromise by and between the plaintiff and the defendants, The Travelers Insurance Company and Texas Employers' Insurance Association, whereby the plaintiff is settling all claims for workmen's compensation benefits that he might have under the Texas Workmen's Compensation Act for occupational disease and any injurious exposures to the hazards of said disease at any time while in the course and scope of his employment for the Armstrong Contracting & Supply Company, Johns-Manville Corporation and/or Johns-Manville Sales Corporation, be and the same is hereby in all things approved and confirmed; and when the defendants, The Travelers Insurance Company and Texas Employers' Insurance Association, comply with this

yment of the amounts herein provided, the plaintiff

- of any type whatsoever under the Texas

sease and any injur-

ious exposures to the hazards of said disease as against said defendants or either of them.

And it further appearing to the Court that the said Claude J. Tomplait has been represented by the law firm of Stephenson,

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Stephenson & Thompson, of Orange, Texas, before the Industrial Accident Board of the State of Texas and in this Court under a contract to pay said attorneys thirty (30%) per cent of any amount recovered, and said contract having been presented to the Court, and the Court having heard evidence thereon and having determined that a fee of thirty (30%) per cent out of the recoveries herein would be fair and reasonable and that the services of such attorneys were necessary and the Court having further taken into consideration the benefits accruing to Claude J. Tomplait as a result of said services, and having further found that benefits have accrued thereby and said fee of thirty (30%) per cent of this judgment was just and reasonable based upon said services performed and benefits accruing;

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that said contract for attorneys' fees be, and the same is, hereby approved and confirmed.

It is further ORDERED, ADJUDGED AND DECREED by the Court that Claude J. Tomplait do have and recover of and from The Travelers Insurance Company the sum of FIVE THOUSAND ($5000.00) DOLLARS and that said amount be paid in a lump sum at this time.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Claude J. Tomplait, do have and recover of and from the defendant, Texas Employers' Insurance Association, the sum of ONE THOUSAND ($1000.00) DOLLARS, payable in a lump sum.

It is further ORDERED, ADJUDGED AND DECREED by the Court that said sums herein decreed to plaintiff, Claude J. Tomplait, be [illegible] seventy (70%) per cent to the said Claude J. Tomplait [illegible] Stephenson, Stephenson & Thompson.

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It is further ORDERED, ADJUDGED AND DECREED that the defendants each pay one-half (1/2) of the legally taxable court costs incurred herein up to and including this date, and that said defendants shall not be responsible for any court costs incurred after that date by any party.

It further appearing to the Court, and the Court having found that prior to the signing and entry of this judgment, the full amount herein adjudged against said defendants has been in all things fully paid as provided herein, and that said judgment except as to costs of court has been in all things satisfied;

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that no execution shall issue as to The Travelers Insurance Company or Texas Employers' Insurance Association and that this judgment shall stand fully and finally paid, satisfied, extinguished and released, except as to costs of court incurred in this severed case.

It is further ORDERED, ADJUDGED AND DECREED that nothing herein shall be construed to be any waiver on the part of the plaintiff of any rights, claims, or causes of action that he has or may assert against the defendant Queens Insurance Company.

RENDERED, ENTERED AND SIGNED, this 15th day of September, 1964.

JUDGE PRESIDING

APPROVED:

STEPHENSON, STEPHENSON AND THOMPSON

By _____
ATTORNEYS FOR PLAINTIFF,
CLAUDE J. TOMPLAIT

STRONG, PIRKIN, STRONG AND NELSON

By _____
ATTORNEYS FOR DEFENDANT,
THE TRAVELERS INSURANCE COMPANY

HAROLD AND WELLER

By _____
ATTORNEYS FOR DEFENDANT, TEXAS
EMPLOYERS' INSURANCE ASSOCIATION

We and each of us having requested the Court to render and enter the foregoing judgment, do now each hereby acknowledge full payment of the sum of FIVE THOUSAND ($5000.00) DOLLARS recovered by us from defendant, The Travelers Insurance Company, under the terms of the foregoing judgment, and likewise do hereby acknowledge full payment of the sum of ONE THOUSAND ($1000.00) DOLLARS recovered by us from defendant, Texas Employers' Insurance Association, under the terms of the foregoing judgment, and do each hereby declare said judgment to be in all things fully paid, satisfied and released; and in consideration of the compromise of said suit and the entry of said judgment by agreement and the payment of same, as hereby acknowledged, we and each of us do hereby fully and finally release and discharge the said defendant, The Travelers Insurance Company, and the said defendant, Texas Employers' Insurance Association, each and both, from all claims of any kind or character now accrued or that might accrue in the future by the reason of the occupational disease made the basis of this suit, and do each hereby declare and acknowledge that all claims and benefits accruing or to accrue in the future by reason thereof, including any and all claims for medical expense or related benefits, are in all things fully and finally compromised, [illegible] and satisfied.

[illegible]ber, 1964.

[illegible]

STEPHENSON, STEPHENSON & THOMPSON

BY [illegible]
ATTORNEYS FOR PLAINTIFF

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NO. 13,916-A

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY AND TEXAS EMPLOYERS' INSURANCE ASSOCIATION

AGREED

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THE STATE OF TEXAS ⟩

COUNTY OF ORANGE ⟩

I, ETHEL BURTON, Clerk of the District Court in and for said County and State, do hereby certify that the above and foregoing is a true and correct copy of the AGREED JUDGMENT rendered in Cause No. A-13,916-A, entitled CLAUDE J. TOMPLAIT vs THE TRAVELERS INSURANCE CO., ET AL as the same is recorded in Vol. M-1, page 133, CIVIL MINUTES, Orange County, Texas.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 19th day of April, A. D. 1967.

CLERK, DISTRICT COURT, ORANGE COUNTY, TEXAS

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VS.

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MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT, JOHNS-MANVILLE SALES CORPORATION

IN THE UNITED STATES

DISTRICT COURT FOR THE

EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

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