FILED

6th Day of March 1964

at 2:20, P M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Edna Brown Deputy

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NO. 13,816

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL.

DEFENDANTS' MOTION FOR PHYSICAL EXAMINATION AND ORDER

FILED

2 day of Sept 1966

at 10:45 A.M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Peg Lam Deputy

Vol. 4 Pg 89

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

10TH FLOOR SAN JACINTO BLDG. - P. O. BOX 1932

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	§	IN THE DISTRICT COURT OF
VS.	§	
THE TRAVELERS INSURANCE COMPANY, ET AL	§	ORANGE COUNTY, TEXAS

MOTION FOR PHYSICAL EXAMINATION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME the defendants, Texas Employers Insurance Association, Queen Insurance Company of America, and The Travelers Insurance Company, in the above entitled and numbered cause, and move the Court to enter an order requiring plaintiff to submit to a physical examination by Dr. Thomas A. Lombardo, and as grounds therefor would show the Court the following:

1.

That this is a workmen's compensation suit which has been filed by the plaintiff, Claude J. Tomplait, against the defendants in which the plaintiff is claiming that he has sustained an occupational disease and is entitled to total and permanent workmen's compensation benefits for being totally and permanently disabled.

2.

That this case is currently set for trial for the week of September 14, 1964.

3.

That the Industrial Accident Board of the State of Texas ordered that Claude J. Tomplait be examined by Dr. W. V. Leary in Houston, Texas, and said examination was performed on October 19, 1962; that the said Claude J. Tomplait was examined by Dr. Thomas A. Lombardo on February 2, 1963, for the defendants; and that the defendants do not have the benefit of any medical reports on this plaintiff since February 2, 1963; and that the plaintiff has stated under oath that he has been employed and has been injuriously exposed to asbestosis and silicosis in employments subsequent to

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those alleged in his original petition on file herein; that the defendants have offered to pay the plaintiff's expenses to Houston, Texas, to have him re-examined by a specialist in this field, to-wit, Dr. W. V. Leary, and this examination has been refused by the plaintiff's attorney. The defendants then agreed to pay the plaintiff's expenses to be examined by Dr. Thomas A. Lombardo, and this has been refused by plaintiff's attorney. Therefore, an order of this Honorable Court requiring plaintiff to be examined by Dr. Thomas A. Lomardo is necessary, for the reason that this case is set for trial for September 14, 1964, and in this connection, defendants would respectfully show unto the Court that they are entitled to the benefit and should have the benefit of an up-to-date medical examination of the plaintiff; and in this connection, the defendants suggest that the Court require the plaintiff to submit to an examination by Dr. Thomas A. Lombardo.

4.

Defendants are willing to pay not only for the expenses of said examination but to pay all reasonable and necessary expenses of the plaintiff in attending any examination ordered by the Court.

WHEREFORE, defendants respectfully request that the Court enter an order requiring plaintiff to submit himself at a convenient time to a medical examination by Dr. Thomas A. Lombardo.

TEXAS EMPLOYER INSURANCE ASSOCIATION
MARCUS & WELLER, Attorneys
David C. Marcus

QUEEN INSURANCE COMPANY OF AMERICA
ORGAIN, BELL & TUCKER, Attorneys

THE TRAVELERS INSURANCE COMPANY
STRONG, PIPKIN, STRONG & NELSON, Attorneys
Michael D. Mattheny

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THE STATE OF TEXAS)
COUNTY OF JEFFERSON)

BEFORE ME, the undersigned authority, on this day personally appeared MICHAEL D. MATHENY, one of the attorneys for defendant, The Travelers Insurance Company, in the above entitled and numbered cause, and on his oath stated that the foregoing allegations and statements are true and correct.

Michael D. Matheny

SUBSCRIBED AND SWORN TO BEFORE ME on this 31st day of August, 1964.

Elaine Ritter
Notary Public in and for
Jefferson County, Texas

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NO. A-916

CLAUDE TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET. AL.

FIRST AMENDED ORIGINAL ANSWER OF DEFENDANT, TEXAS EMPLOYERS' INSURANCE ASSOCIATION

FILED

4th Day of Sept. 1964

at 9:03 A. M.

[illegible] CLIPTON

By Edna Ennis Deputy

MARCUS & WELLER
ATTORNEYS AT LAW
GOODHUE BUILDING
BEAUMONT, TEXAS

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NO. A-13,916

CLAUDE J. TOMPLAIT	)	IN THE DISTRICT COURT OF
VS.	)	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET. AL.	)	128TH JUDICIAL DISTRICT

FIRST AMENDED ORIGINAL ANSWER OF DEFENDANT, TEXAS EMPLOYERS' INSURANCE ASSOCIATION

COMES NOW Texas Employers' Insurance Association, a defendant in the above entitled and numbered cause, and files this, its First Amended Original Answer herein, and for answer to plaintiff's First Amended Original Petition herein, says:

I.

This defendant denies all and singular the allegations contained in said petition and demands strict proof thereof.

II.

This defendant specially denies that at the time of plaintiff's alleged injury made the basis of this suit, or prior to or thereafter, it was the Workmen's Compensation insurance carrier for Armstrong Contracting and Supply Corporation, alleged to be plaintiff's employer at the time of the injury from occupational disease made the basis of this suit; further, this defendant specially denies that at such time or at any time material hereto it had issued to said Armstrong Contracting and Supply Corporation any policy of workmen's compensation insurance covering the plaintiff, Claude J. Tomplait; and in accordance with the provision of Rule 93 (n) (6), Texas Rules of Civil Procedure, this defendant denies that it was in fact the carrier for said Armstrong Contracting and Supply Corporation at such time.

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III.

This defendant specially denies that plaintiff gave notice as required by law either to it or to any employer insured by it within thirty (30) days after the first distinct manifestation of the alleged occupational disease made the basis of this suit.

IV.

This defendant specially denies that plaintiff filed with the Industrial Accident Board of the State of Texas any claim for compensation against it, within six (6) months after the first distinct manifestation of the alleged occupational disease made the basis of this suit.

V.

This defendant specially denies that plaintiff had good cause for not giving such notice within such period of thirty (30) days and for not giving it sooner than it was given; likewise this defendant denies that he had good cause for not filing such claim for compensation as against it within such period of six (6) months, and for not filing such sooner than it was actually filed.

VI.

Further answering, this defendant says that in the event the plaintiff sustained any injury from occupational disease, as alleged, the same caused only an acute condition which could be arrested by a change of employment or medical treatment, and which would leave plaintiff suffering from no objective symptoms or disability.

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VII.

Defendant would further show that subsequent to the plaintiff's employment with any employer insured by this defendant, plaintiff has worked for one or more employers not insured by this defendant in whose employment he has been injuriously exposed to the hazards of the disease made the basis of this suit, and under the provisions of the Workmen's Compensation Law, the last employer for whom plaintiff works and is injuriously exposed to the hazards of such disease is deemed to be the employer within the meaning of such law.

VIII.

This defendant says that in any event, plaintiff's alleged occupational disease, if any, as a causative factor as related to all other causes of such incapacity, if any, only caused a small amount of such incapacity.

IX.

Further answering and in the alternative, this defendant says that in the event plaintiff has sustained any occupational disease, as alleged (which is not admitted), the same was and is aggravated by non-compensable disease or infirmity; and any incapacity plaintiff is claiming or alleging in this suit, if in any way connected with any occupational disease, has been and is aggravated, prolonged, accelerated or contributed to by such occupational disease; further, this defendant says that such non-compensable disease or infirmity has aggravated, prolonged and contributed to the disability, if any, resulting from such occupational disease, if any.

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X.

Further answering, this defendant says that any incapacity of plaintiff from and after July, 1961 is solely due to and solely caused by disease and pre-existing conditions, and that such incapacity, if any, is and has been only partial.

XI.

Further answering and in the alternative, this defendant says that plaintiff's incapacity, if any, is not the result of occupational disease but on the contrary, is solely due to disease unconnected with his employment.

XII.

Further answering and in the alternative, this defendant says that any incapacity of plaintiff from and after July, 1961 is contributed to by the effects of one or more prior compensable injuries, or by the effects of a subsequent compensable injury, or by a combination thereof.

WHEREFORE, this defendant prays that upon final hearing hereof, plaintiff recover nothing from it herein and that it be permitted to go hence without day.

MARCUS & WELLER
P. O. BOX 350
BEAUMONT, TEXAS

BY _____
ATTORNEYS FOR DEFENDANT, TEXAS EMPLOYERS' INSURANCE ASSOCIATION

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THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

DAVID C. MARCUS, being duly sworn, on oath states that he is a duly authorized attorney for Texas Employers' Insurance Association, a defendant in the above entitled and numbered cause; that he is cognizant of the matters set out in the foregoing answer; and that the statements and allegations in Paragraphs II and IV of the foregoing answer are true and correct; and upon information and belief affiant states that the statements and allegations made in Paragraphs III and V of the foregoing answer are true and correct.

DAVID C. MARCUS

SUBSCRIBED AND SWORN TO by the said David C. Marcus, before me, the undersigned authority, on this, the 2nd day of September, 1964.

NOTARY PUBLIC IN AND
JEFFERSON COUNTY, TEXAS.

OUIDA L. SWOPE, Notary Public
In and for Jefferson County, Texas

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NO. 13,916

CLAUDE J. TOMPLAIT	§	IN THE DISTRICT COURT OF
VS.	§	
THE TRAVELERS INSURANCE COMPANY, ET AL	§	ORANGE COUNTY, TEXAS

O R D E R

This the 4th day of September, 1964, the time for hearing of the Motion for Physical Examination herein mentioned is set for and shall be the 8th day of September, 1964, at 9:00 o'clock A. M.

James N. Nelly
District Judge Presiding

FILED

4 Day of Sept. 1964

at 2 40 P M

ETHEL BURTON

Clerk District Court, Orange County, Texas

By [illegible] Deputy

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

FIRST AMENDED ORIGINAL ANSWER OF DEFENDANT, QUEEN INSURANCE COMPANY OF AMERICA

FILED

8th Day of Sept 1964

at 8:45 o'clock A M.

[illegible] DIETON

District Clerk, Orange County, Texas

By Edna Esmon Deputy

ORGAIN, BELL & TUCKER

ATTORNEYS AT LAW

BEAUMONT, TEXAS

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CB:bh 9-4-64

NO. 13,916

CLAUDE J. TOMPLAIT	◊	IN THE DISTRICT COURT OF
VS.	◊	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET AL	◊	128TH JUDICIAL DISTRICT

FIRST AMENDED ORIGINAL ANSWER OF
DEFENDANT, QUEEN INSURANCE COMPANY OF AMERICA

COMES NOW the defendant, Queen Insurance Company of America, and files this its first amended original answer, and for cause would show the Court the following:

1.

Defendant denies each and all and singular the allegations in plaintiff's petition contained, and demands strict proof thereof, and of this puts itself upon the country.

2.

Further by way of answer herein, and in the nature of an affirmative defense, under the provisions of Rule 93, defendant says that it neither received notice of injury, nor did the plaintiff file claim for compensation within the time provided by law, and further, under the provisions of said Rule, defendant specifically denies that it was the insurance company or was the carrier for plaintiff's employer at the time he alleges, in his petition, that the symptoms manifested themselves, and further denies specifically that there was good cause for failing to give notice within thirty (30) days or file his claim within the six months period provided by statute, all of which is pled in bar of suit herein.

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3.

Further by way of answer herein, and in the alternative, defendant says that the conditions alleged by plaintiff, which he contends caused or brought about his disability or incapacity, did not occur under such circumstances as to bring them under the provisions of Section 26, Article 8306, Revised Civil Statutes of the State of Texas, and that, therefore, he is not entitled to recover herein.

4.

Further by way of answer herein, and in the alternative, defendant says that plaintiff's incapacity, if any, was temporary and partial only.

5.

Further by way of answer herein, and in the alternative, defendant says that plaintiff's incapacity, if any, was solely brought about or caused by injuries, diseases, or conditions, or a combination of such, in nowise related to or caused by any condition or accident sustained while in the course of his employment with said employer as alleged.

6.

Further answering, this defendant says that in the event the plaintiff sustained any injury from occupational disease, as alleged, the same caused only an acute condition which could be arrested by a change of employment or medical treatment, and which would leave plaintiff suffering from no objective symptoms or disability.

7.

This defendant says that in any event, plaintiff's alleged occupational disease, if any, as a causative factor as

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related to all other causes of such incapacity, if any, only caused a small amount of such incapacity.

8.

Further answering and in the alternative, this defendant says that in the event plaintiff has sustained any occupational disease, as alleged (which is not admitted), the same was and is aggravated by non-compensable disease or infirmity; and any incapacity plaintiff is claiming or alleging in this suit, if in any way connected with any occupational disease, has been and is aggravated, prolonged, accelerated or contributed to by such occupational disease; further, this defendant says that such non-compensable disease or infirmity has aggravated, prolonged and contributed to the disability, if any, resulting from such occupational disease, if any.

9.

Further answering and in the alternative, this defendant says that any incapacity of plaintiff from and after July, 1961, is contributed to by the effects of one or more prior compensable injuries or conditions, or by the effects of subsequent compensable injury, or condition, or by a combination thereof, for all of which effects this defendant is not in law liable.

WHEREFORE, PREMISES CONSIDERED, defendant moves and prays the Court that plaintiff take nothing by his suit, that defendant go hence with costs, and for such other relief as it may show itself entitled to receive.

ORGAIN, BELL & TUCKER
First Federal Savings Building
Beaumont, Texas
Attorneys for Defendant, Queen Insurance Company of America

By _____
Cleve Bachman

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Pa i -

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

I, Cleve Bachman, attorney of record for the Queen Insurance Company of America, do state and swear, under oath, that I am cognizant of the matters set forth in paragraph 2 of defendant's first amended original answer, and that said matters and allegations set forth in said paragraph are true and correct.

Cleve Bachman

SWORN TO AND SUBSCRIBED before me, the undersigned authority, this the 4th day of September, 1964.

Barbara Honeberger
Notary Public in and for
Jefferson County, Texas

No. 13,916

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLATT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

M O T I O N

FILED

14th Day of September 1964

at 1:20 P. M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Wilma Hassmer Deputy

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

10TH FLOOR SAN JACINTO BLDG., P. O. BOX 1632

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	§	IN THE DISTRICT COURT OF
VS.	§	
THE TRAVELERS INSURANCE COMPANY, ET AL	§	ORANGE COUNTY, TEXAS

M O T I O N

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES The Travelers Insurance Company, one of the defendants in the above entitled and numbered cause, and would respectfully show unto the Court as follows:

1.

That this defendant is one of three defendants in the above styled and numbered cause and that, as shown by the pleadings on file herein by the plaintiff and defendants, there is no unity of interest among the defendants, and the interests of each defendant towards the other defendants are conflicting, and there is an actual antagonism among defendants as to where the ultimate liability, if any, will fall, and that this is a fact issue upon which the jury may probably be called to determine; therefore, this defendant would respectfully move the Court to allow it six (6) peremptory challenges independent and apart from the other defendants.

Respectfully submitted,

STRONG, PIPKIN, STRONG & NELSON

Michael D. Matheny

Attorneys for Defendant,
The Travelers Insurance Company

1014 San Jacinto Building
P. O. Box 1632
Beaumont, Texas

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NO. 13,916

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

O R D E R

FILED

14th Day of September 19 64

at 1:20 P M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Wilma Lee Simmons Deputy

R-1 P 125

Ludgpd

STRONG, PIERCE, STRONG & NELSON

ATTORNEYS AT LAW

10TH FLOOR SAN JACINTO BLDG. P.O. BOX 1632

BEAUMONT, TEXAS

NO. 13,916

CLAUDE J. TOMPLAIT § IN THE DISTRICT COURT OF

VS. §

THE TRAVELERS INSURANCE COMPANY, § ORANGE COUNTY, TEXAS
ET AL

ORDER

ON THIS the 14th day of September, 1964, prior to the empaneling of the jury in the above matter, came on to be heard the Motion of the defendant, The Travelers Insurance Company, to allow it six (6) peremptory challenges independent and apart from the peremptory challenges allowed to the other defendants; and it appearing to the Court that said motion has been made in due time and duly presented to the Court, and the Court is of the opinion and so finds that said motion should be overruled.

It is, therefore, ORDERED, ADJUDGED AND DECREED that the defendant, The Travelers Insurance Company, shall not be allowed six (6) peremptory challenges independent and apart from the peremptory challenges allowed the other defendants, to which action of the Court the defendant, The Travelers Insurance Company, duly and timely excepted.

DATED this 14th day of September, 1964.

James N. Neff
Judge Presiding

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NO. A-13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL.

ANSWER OF CROSS- DEFENDANT, TEXAS EMPLOYERS' INSURANCE ASSOCIATION, TO CROSS-ACTION OF THE TRAVELERS INSURANCE COMPANY

FILED

14th Day of September 1965

at 2:20, P M.

ETHEL BURT

Clerk, District Court, Orange County

By Helen Grissom Deputy

MARCUS & WELLER
ATTORNEYS AT LAW
GOODHUE BUILDING
BEAUMONT, TEXAS

NO. A-13,916

CLAUDE J. TOMPLAIT	I	IN THE DISTRICT COURT OF
VS.	I	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET. AL.	I	128TH JUDICIAL DISTRICT

ANSWER OF CROSS-DEFENDANT, TEXAS EMPLOYERS' INSURANCE ASSOCIATION, TO CROSS-ACTION OF THE TRAVELERS INSURANCE COMPANY

COMES NOW Texas Employers' Insurance Association, named as a cross-defendant in a pleading filed herein and designated as Cross-Action of The Travelers Insurance Company against Texas Employers' Insurance Association and Queen Insurance Company of America, and for answer to said cross-action or purported cross-action, says:

I.

This cross-defendant specially excepts to said cross-action and says the same should be dismissed or stricken from the pleadings, for the reason that the same wholly fails to state any cause of action as against this cross-defendant, in that it seeks to obtain judgment herein against this cross-defendant for indemnity or contribution for any amount of workmen's compensation benefits the plaintiff, Claude J. Tomplait, is found to be entitled to receive, and under the applicable statutes and laws of the State of Texas, there is no provision for indemnity or contribution as between various insurance carriers in an occupational disease case, such as is involved herein; on the contrary, Section 24 of Article 8306, Revised Civil Statutes of Texas, expressly provides for liability of only one insurance carrier.

Of this exception, this cross-defendant prays judgment of the court.

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II.

Without waiving the foregoing, this cross-defendant denies all and singular the allegations in said cross-action and demands strict proof thereof.

WHEREFORE, this cross-defendant prays that said cross-plaintiff, The Travelers Insurance Company, take nothing as against it by reason of said cross-action.

MARCUS & WELLER
P. O. BOX 350
BEAUMONT, TEXAS

BY _____
ATTORNEYS FOR CROSS-DEFENDANT,
TEXAS EMPLOYERS' INSURANCE
ASSOCIATION

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

MOTION TO PERMIT INDEPENDENT STRIKES

FILED

16th Day of November 1964

at 1:25, P M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Wilma Grossman Deputy

ORGAIN, BELL & TUCKER

ATTORNEYS AT LAW

BEAUMONT, TEXAS

CB:bh 9-14-64

NO. 13,916

CLAUDE J. TOMPLAIT	◊	IN THE DISTRICT COURT
VS.	◊	OF
THE TRAVELERS INSURANCE COMPANY, ET AL	◊	ORANGE COUNTY, TEXAS

MOTION TO PERMIT INDEPENDENT STRIKES

COMES NOW the defendant, Queen Insurance Company of America, and says that in the above captioned cause it is named as a defendant and that its interests are adverse to its co-defendants and that it has affirmatively sought contribution or indemnity in the event of an adverse judgment against it and that the interests of the various defendants are not compatible and that, therefore, this defendant is entitled to its individual strikes.

WHEREFORE, PREMISES CONSIDERED, defendant moves and prays this Honorable Court that it be permitted to have six independent strikes of the other parties and for such other relief as it may show itself entitled to receive.

ORGAIN, BELL & TUCKER
First Federal Savings Building
Beaumont, Texas
ATTORNEYS FOR DEFENDANT,
QUEEN INSURANCE COMPANY
OF AMERICA

By _____
Cleve Bachman

NO. A-13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

MOTION TO ALLOW ADDITIONAL PEREMPTORY CHALLENGES

FILED
14th Day of September A.D. 19 66
at 2 o'clock P M.
ETHEL BURT
Clerk District Court, Orange County, Texas
By Wilma Broussard Deputy

MARCUS & WELLER
ATTORNEYS AT LAW
GOODHUE BUILDING
BEAUMONT, TEXAS

NO. A-13,916

CLAUDE J. TOMPLAIT	)	IN THE DISTRICT COURT OF
VS.	)	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET AL	)	128TH JUDICIAL DISTRICT

MOTION TO ALLOW ADDITIONAL PEREMPTORY CHALLENGES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Texas Employers' Insurance Association, one of the defendants in the above entitled and numbered cause, and would respectfully show unto the Court as follows:

I.

That this defendant is one of three defendants in the above styled and numbered cause and that, as shown by the pleadings on file herein by the plaintiff and defendants, there is not a unity of interest among the defendants, but the interests of each defendant towards the other defendants are conflicting, and there is or probably will be actual antagonism among defendants as to where the ultimate liability, if any, will fall, and in any event there is antagonism between this defendant, and the defendant, Travelers Insurance Company, in that said defendant has filed a pleading seeking indemnity or contribution from this defendant, and that this is a fact issue which the jury may be called upon to determine.

WHEREFORE, this defendant respectfully moves the Court to allow it six (6) peremptory challenges independent and apart from the other defendants.

Respectfully submitted,

MARCUS & WELLER
P. O. BOX 350
BEAUMONT, TEXAS

BY _____
ATTORNEYS FOR DEFENDANT,
TEXAS EMPLOYERS' INSURANCE
ASSOCIATION

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asbestosclaims.law/library/24593/29

Clarke & Courts, Inc.—Houston-Dallas-Galveston

No.

vs.

PLAINTIFF'S JURY LIST

1 ~~Bob L. Sutphen~~
2 Vernon Linscomb
3 Hendrex P. White
4 Mrs. Tommie Rao
5 Joie David Bates
6 L. L. Clark
7 ~~Mrs. Herold Raynor~~
8 ~~R. C. Mauer~~
9 Mrs. Lamar Lynch
10 ~~Iona O. Moorman~~
11 Alvin D. Wright
12 Mrs. A. B. Bryant
13 Mrs. C. U. Hale
14 Thomas T. McLean, Jr.
15 Raymond Davis
16 Mrs. A. S. Shores
17 Mrs. Edward Rosenbalm
18 Sam Randle, Jr.
19 John P. Ginetis
20 ~~Lon Brooks~~
21 ~~Roy J. Woods~~
22 Mrs. W. A. Stidley
23 Mrs. Jack H. Tully
24 Lucy H. Prince
25 Mrs. Phil Honeycutt
26 Katie Ann Hale
27 Hal H. Wray
28 Raymond Fournier
29 Addie P. Stevens
30 Ernest T. Sanders
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C-078—JURY LIST (Civil)—Class 4

No. 13,916

IN THE

Dist. Court, Orange County,

September Term, 19 64

Edward J. Tomplait

vs.

The Travelers Insurance Company, et al

PLAINTIFF'S JURY LIST

FILED

14 Day of Sept. 1964

at 4:50 P.M.

Estelle Burton

Clerk District Court, Orange County, Texas

Clarke & Courts, Inc.—Houston-Dallas-Galveston

No.....

vs.

DEFENDANT'S JURY LIST

1 Bob L. Sutphen Dyson Grocery Prod.
2 ~~Warren Lumcomb~~ North Am Ins Co. Fitter X
3 ~~[redacted]~~ te Baker Mfg. Welder. X
4 Mrs. Tomm[redacted] Rao Parlaw; NW. - Simi
5 Joie David [redacted]tes Hu Insurance Adj. Amer Ins
6 ~~[redacted]~~ or Vidor. X
7 Mrs. Harold Raynor Shipping Cl. Hu Sup DuPont.
8 R. C. Mauermann Design Proj. Eng.
9 Mrs. Lamar Lynch Wife Vidor. Pump Man
10 Iona C. Moorman V. Par. Tax Ext. Accd
11 Alvin D. Wright Sp. Chem Eng
12 Mrs. A. B. Bryant HW (Firm New York)
13 Mrs. C. U. Hale Hu. Sh. Terminal Co.
14 ~~Thomas H.~~ McLean, Jr. Operations Plant Dir
15 ~~[redacted]~~ Wife. X
16 Mrs. A. S. Shores Proj. Engr. Engr.
17 Mrs. Edward Rosenbalm Shipg. Cl. Wife
18 Sam Randle, Jr. (C)
19 ~~[redacted]~~ cis Machinist Wkg
20 Len Brooks Master Mar. Nav Mech X
21 Roy J. Woods Dyer + chem. X
22 Mrs. W. A. Stidley HW (Dr 'A' Sch) X
23 Mrs. Jack H. Tully Hu. Engr
24 Lucy H. Prince HW X
25 Mrs. Phil Honeycutt
26 Katie Ann Hale
27 Hal H. Wray
28 Raymond Fournier
29 Addie P. Stevens
30 Ernest T. Sanders
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T-573—JURY LIST (Civil)—Class 4

No. A13,916

IN THE

Ninth Court, Orange County,

September Term, 19 64

Claude J. Tomplait

vs.

The Travelers Insurance Company, et al.

DEFENDANT'S JURY LIST

FILED

14 Day of Sept. 19 64

at 4:50 P. M.

Cora Burton

Clerk District Court, Orange County, Texas

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

INTERROGATORIES TO PLAINTIFF, CLAUDE J. TOMPLAIT

FILED

17th Day of Sept. 1964

at 8:30 A.M.

ETHEL DUFFTON

Clerk, District Court, Orange County, Texas

By Edna Ermon Deputy

ORGAIN, BELL & TUCKER

ATTORNEYS AT LAW

BEAUMONT, TEXAS

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CB:bh 9-16-64

NO. 13,916

CLAUDE J. TOMPLAIT	◊	IN THE DISTRICT COURT
VS.	◊	OF
THE TRAVELERS INSURANCE COMPANY, ET AL	◊	ORANGE COUNTY, TEXAS

TO: CLAUDE J. TOMPLAIT, PLAINTIFF, AND HIS ATTORNEY OF RECORD, WARD STEPHENSON, STEPHENSON BUILDING, ORANGE, TEXAS:

Please take notice that Queen Insurance Company of America, defendant herein, requires plaintiff, Claude J. Tomplait to answer the following interrogatories, separately and fully in writing, and under oath, within fifteen (15) days from the date of service hereof, pursuant to Rule 168 of the Texas Rules of Civil Procedure:

DIRECT INTERROGATORIES
TO BE PROPOUNDED TO
CLAUDE J. TOMPLAIT

1. State your name.

2. Specify the name of each and every employer by whom you were employed during the period from April 22, 1963, to the date of your answers to these interrogatories, whether you were employed by another, or self-employed.

3. As to each employer designated in response to Interrogatory No. 2 above, specify the following:

(a) Date commenced employment.

(b) Date terminated employment.

(c) Hours worked each day.

(d) Number of days worked each week.

(e) Title or designation of job at which employed.

(f) Specific duties performed.

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(g) Location of job site.

(h) Location on job site at which your duties were performed.

(i) Kinds of tools used.

(j) Protective clothing or other protective devices used.

(k) Did you work with any type of insulating material on this job?

(l) If the answer to the foregoing interrogatory is "Yes", state the types of insulating material used by brand name.

(m) State what your duties were with respect to such insulating materials.

(n) State the name of your immediate supervisor.

(o) State the names of any fellow employees.

(p) What was your wage rate?

(q) What amount of money did you earn on this job?

(r) What insulating jobs were in progress at the job site while you were so employed?

4. Please give the name of all doctors who have treated you for any reason, or examined you for any reason, since July of 1961.

5. Please give the name of any hospital or clinic in which you have been confined or had treatment since July of 1961.

6. Please give the date of such confinements, if any.

ORGAIN, BELL & TUCKER
First Federal Savings Building
Beaumont, Texas
ATTORNEYS FOR QUEEN INSURANCE COMPANY OF AMERICA

By _____
Cleve Bachman

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The foregoing interrogatories were served by mailing a copy thereof in the United States Mail by Certified Mail, on the 16th day of September, 1964, to Ward Stephenson, Stephenson Building, Orange, Texas, Attorney for plaintiff.

Cleve Bachman

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

MOTION FOR DISCOVERY AND PRODUCTION OF DOCUMENTS

FILED

17th Day of Sept. A.D. 1964

at 8:30 A.M.

ETHEL PURTON

Clerk, District Court, Orange County, Texas

By Edna Emmon Deputy

M.V. Vol. 4 Pg. 90

ORGAIN, BELL & TUCKER

ATTORNEYS AT LAW

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT		IN THE DISTRICT COURT
vs.		OF
THE TRAVELERS INSURANCE COMPANY, ET AL		ORANGE COUNTY, TEXAS

MOTION FOR DISCOVERY AND PRODUCTION OF DOCUMENTS

Defendant, Queen Insurance Company of America, **makes this motion for an order described in the prayer hereof, requiring plaintiff to produce certain documents, and shows unto the Court the following:**

1.

In this suit plaintiff seeks to recover damages, alleging that he sustained an injury on or about July of 1961 **. He alleges that he has lost earnings and his earning capacity has been diminished to his damage in the sum of $** 14,000.00. **Under such allegations, records of his earnings are material.**

2.

Plaintiff, Claude J. Tomplait, **is in possession of or has control over and can obtain from the Director of Internal Revenue his income tax reports, or true and correct copies thereof, for the years** 1961, 1962, and 1963 **. Such income tax reports are not privileged and the same constitute and contain material evidence, which is good cause for the order here prayed for, and for further good cause, defendant shows unto the Court that he does not have the original or copies of such reports, and cannot obtain the same other than from the plaintiff or under his direction.**

Premises considered, defendant, Queen Insurance Company of America, **moves and prays the Court that after due notice, this Court order the plaintiff to obtain, produce and permit defendant to inspect and copy his income tax reports for the years** 1961, 1962, and 1963

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or if the plaintiff does not have the same in his possession, that then the Court order plaintiff to obtain the same or sign a consent and permission for defendant to obtain the same.

ORGAIN, BELL & TUCKER
First Federal Savings Building
Beaumont, Texas

By _____
Attorneys for Queen Insurance Company of America

THE STATE OF TEXAS §
§
COUNTY OF JEFFERSON §

Cleve Bachman being duly sworn, upon oath states that he is the attorney of record for defendant, Queen Insurance Company of America, in the above styled cause, and authorized in the course of his employment to make and present the foregoing motion and affidavit thereto, which he does under said authority, and being cognizant of the facts therein alleged, says that the same are true and correct.

_____

SWORN TO AND SUBSCRIBED before me, the undersigned authority, this 16th day of September, 1964.

_____
Notary Public in and for
Jefferson County, Texas

The foregoing motion for discovery and production of documents was served by mailing copy thereof in the United States mail, certified mail, on September 16, 1964, to Mr. Ward Stephenson, Stephenson Bldg., Orange, Texas, attorney for plaintiff.

_____
Attorney for Defendant
Cleve Bachman

NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

NOTICE & APPLICATION TO TAKE WRITTEN DEPOSITION - WRITTEN INTERROGATORIES ATTACHED

FILED
17th Day of Sept 1964
at 9:30 A. M.
ETHEL BURTON
District Court, Orange County, Texas
By Edna Emmons Deputy

ORGAIN, BELL & TUCKER
ATTORNEYS AT LAW
BEAUMONT, TEXAS

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Honorable Ethel Burton
District Clerk
Orange County, Texas
Orange County Courthouse
Orange, Orange County, Texas

Re: No. 13,916 - Claude J. Tomplait vs. The Travelers Insurance Company, et al

Dear Sir:

Notice is hereby given that Queen Insurance Company of America, Defendant in the above styled and numbered suit pending in the court of which you are Clerk desires to take the written deposition of the witness named below, at the time and place designated below, to be used in the above styled and numbered suit; and intends to apply for a commission therefor; and hereby requests that you issue commission therefor six days after the receipt of this notice and application by you.

Name of Witness, and Residence or Place where Witness may be found	Place of Taking Deposition	Time of Taking Deposition
Custodian of Records of the Tax Department, Texas Employment Commission	Austin, Texas	Immediately upon receipt of commission therefor.

Subpoena duces tecum is desired, and it is therefore requested that the commission expressly authorize issuance thereof.

Copy of the written interrogatories to be propounded to the witness, ~~if any~~, is attached hereto.

Notice, as required by the Texas Rules of Civil Procedure, Rules 189 and 200, has been given by serving all adverse parties, or their attorneys of record, with a copy hereof on this the 16th day of September, 1964.

The books, papers, documents and tangible things hereby designated to be produced by the witness are:

Name of Witness	To Produce:
Custodian of Records of the Tax Department, Texas Employment Commission	All records pertaining to Claude J. Tomplait since June 30, 1962.

cc by certified mail:
Mr. Ward Stephenson
Attorney at Law
Stephenson Building
Orange, Texas

Yours very truly,
ORGAIN, BELL & TUCKER
First Federal Savings Building
Beaumont, Texas
By Cleve Bachman

~~Return on reverse side~~

Honorable Ethel Burton
District Clerk
Orange County, Texas
Orange County Courthouse
Orange, Orange County, Texas

Re: No. 13,916 - Claude J. Tomplait vs. The Travelers Insurance Company, et al

Dear Sir:

Notice is hereby given that Queen Insurance Company of America

Defendant in the above styled and numbered suit pending in the court of which you are Clerk desires to take the written deposition of the witness named below, at the time and place designated below, to be used in the above styled and numbered suit; and intends to apply for a commission therefor; and hereby requests that you issue commission therefor six days after the receipt of this notice and application by you.

Name of Witness, and Residence or Place where Witness may be found	Place of Taking Deposition	Time of Taking Deposition
Custodian of Records of the Tax Department, Texas Employment Commission	Austin, Texas	Immediately upon receipt of commission therefor.

Subpoena duces tecum is desired, and it is therefore requested that the commission expressly authorize issuance thereof.

Copy of the written interrogatories to be propounded to the witness, ~~if any~~, is attached hereto.

Notice, as required by the Texas Rules of Civil Procedure, Rules 189 and 200, has been given by serving all adverse parties, or their attorneys of record, with a copy hereof on this the 16th day of September, 1964.

The books, papers, documents and tangible things hereby designated to be produced by the witness are:

Name of Witness	To Produce:
Custodian of Records of the Tax Department, Texas Employment Commission	All records pertaining to Claude J. Tomplait since June 30, 1962.

cc by certified mail:
Mr. Ward Stephenson
Attorney at Law
Stephenson Building
Orange, Texas

Yours very truly,
ORGAIN, BELL & TUCKER
First Federal Savings Building
Beaumont, Texas
By Cleve Bachman

~~Return on reverse side~~

NO. 13,916

CLAUDE J. TOMPLAIT

VS.

QUEENS INSURANCE COMPANY

ANSWERS OF PLAINTIFF TO INTERROGATORIES

FILED

24 Day of Sept 1964

at 11 o'clock A M

Ella Burton

Clerk District Court, Orange County, Texas

LAW OFFICES
STEPHENSON, STEPHENSON AND THOMPSON
STEPHENSON BUILDING
ORANGE, TEXAS

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NO. 13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT :

VS. : ANSWERS OF PLAINTIFF TO INTERROGATORIES

QUEENS INSURANCE COMPANY:

TO: QUEEN INSURANCE COMPANY OF AMERICA, and Its Attorneys of Record, Orgain, Bell and Tucker First Federal Savings Building, Beaumont, Texas:

COMES NOW CLAUDE J. TOMPLAIT, plaintiff in this cause, and under oath herewith makes his answers to the Interrogatories propounded to him by the defendant Queen Insurance Company of America:

INTERROGATORY NO. 1 — Claude J. Tomplait, Sr.

INTERROGATORY NO. 2 — I can tell you who I worked for in 1963 and 1964, and the amounts I made; but I cannot give you the dates I worked for my employers in 1963. The following is a list of my employers in 1963 as shown by copies of my W-2 forms: B & B Engineering and Supply Company; Julien Angelle (Triangle Insulation Company); The Industrial Insulators, Inc.; Johns-Manville Sales Corporation; The Aber Company, Inc.; Sabine Insulation Company, Inc.; Insulation Engineers, Inc.

The following is a list of my employers in 1964 as shown by my check stubs: Triangle Insulation Company; B and B Engineering & Supply Co., Inc.; Sabine Insulation C o., Inc.; Johns-Manville; and The Industrial Insulators, Inc.

INTERROGATORY NO. 3 — B & B ENGINEERING AND SUPPLY COMPANY:

(a) I do not recall.
(b) I do not recall.
(c) As I recall, eight hours a day.
(d) As I recall, five days a week.
(e) DuPont in Orange, Texas. This was about February, 1963.
(f) We were fire-proofing.

(g) DuPont in Orange, Texas.
(h) I don't remember the area number.
(i) Mostly nippers and trowles.
(j) No protective clothing but safety belts, and goggles.
(k) I do not recall. I believe I did use some.
(l) I believe it was Carytemp.
(m) Applied pipe covering to the pipe.
(n) Noble Wise.
(o) Otis Boudreaux; George Petry; Walter Smith; Preston Pelterie; Leon Smith. These are all I recall.
(p) About $4.00 an hour.
(q) My income tax W-2 form shows $458.00.
(r) Fire-proofing,and insulating.

INTERRO

JULIEN ANGELLE (TRIANGLE INSULATION COMPANY):
(a) Around the 1st of Nov., 1963.
(b) About Jan. 9, 1964.
(c) Eight hours.
(d) Five days.
(e) Houston C hemical, Beaumont.
(f) Insulating.
(g) Houston Chemical Plant, Beaumont.
(h) I do not recall the area.
(i) Saws, nippers, trowles, roofing knife; butcher knife.
(j) None.
(k) Yes, all kinds.
(l) I don't recall the brand name but it was 85% magnesium.
(m) I was applying pipe covering.
(n) Harold Lee Broussard.
(o) Percy LaGrappe; Lee Trahan; Joe Dupuis; Preston Pelterie; and that's all I recall.
(p) It was about $4.12 per hour.
(q) $759.04 as shown by my W-2 form.
(r) Insulating pipe.

THE INDUSTRIAL INSULATION, INC.
(a) I don't recall.
(b) I don't recall.
(c) Eight hours.
(d) Five days.
(e) Jefferson Chemical, Port Neches.
(f) Insulating and applying sheet metal.
(g) Jefferson Chemical, Port Neches.
(h) I don't recall.
(i) Trowles, nippers, knife, saw, tin snips, punch, screw driver, dividers.
(j) None.
(K) Yes.
(l) Asbestos insulating material, fiberglas, and Magnesia; I don't recall the brand names.

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(m) Applying insulation material and sheet metal.
(n) Cecil Gladon.
(o) Walter Thibodeaux; Clarence Whitodeaux; Johnny Crochet; Lee Trahan; Preston Pelterie; and that is all I recall.
(p) About $4.12 per hour.
(q) $957.99.
(r) Insulating pipe and exchanges.

JOHNS-MANVILLE SALES CORPORATION:
(a) I don't recall.
(b) I don't recall.
(c) I don't recall.
(d) I don't recall.
(e) I don't recall.
(f) I don't recall.
(g) I don't recall.
(h) I don't recall.
(i) I don't recall.
(j) None; they never do have.
(k) I must have.
(l) I don't recall.
(m) I must have applied it.
(n) I don't recall.
(o) I don't recall.
(p) I don't recall.
(q) My W-2 Form shows $396.00.
(r) I don't recall.

THE ABER COMPANY, INC.
(a) I don't recall.
(b) I don't recall.
(c) I don't recall.
(d) I don't recall.
(e) I don't recall.
(f) I don't recall.
(g) I don't recall.
(h) I don't recall.
(i) I don't recall.
(j) They never had any.
(k) Well, I probably did.
(l) I don't recall the brand name.
(m) I don't recall.
(n) I don't recall.
(o) I don't recall.
(p) I don't recall.
(q) My W-2 form shows $408.00.
(r) I don't recall. I don't remember whether this was the Bridge City Power House job or the Gulf job, and therefore I cannot answer all these questions.

SABIN INSULATION, INC.
(a) I believe it was the first part of 1965.
(b) About June or July, 1965.

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966) Published by AsbestosClaims.Law
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(c) Eight.
(d) Five.
(e) Firestone job, Orange, Texas.
(f) Applying pipe covering.
(g) Firestone, Orange, Texas.
(h) All over the plant.
(i) The same as I used on the other jobs listed above.
(j) None.
(k) Yes.
(l) I don't know the brand names; but I believe it was magnesia and fiberglas.
(m) Applying insulation on pipes.
(n) Andrew Guidry.
(o) R. L. Faulk; H. L. LeBlanc; Walter Smith; Leon Smith; Marvin Potter.
(p) About $4.00 an hour.
(q) My W-2 form shows $1,479.10.
(r) Insulating pipes.

INSULATION ENGINEERS, INC.
(a) About first of July, 1963.
(b) About the end of August, 1963.
(c) Ten hours.
(d) Six and seven.
(e) A refinery in Pascagoula, Miss.
(f) Insulating.
(g) A refinery in Pascagoula, Miss.
(h) I don't recall.
(i) Mostly the same kinds of tools used on the jobs listed above.
(j) None.
(k) Yes.
(l) Foamglas and magnesia.
(m) Applied to pipe.
(n) I don't remember his name.
(o) Joe Gonzales; Walter Smith; Al Gonzales.
(p) I don't remember.
(q) My W-2 form shows $1,918.20.
(r) Insulating pipes and towers.

TRIANGLE INSULATION COMPANY:
(a) Around the 1st of Nov. 1963.
(b) About Jan. 9, 1964.
(c) Eight hours.
(d) Five days.
(e) Houston Chemical, Beaumont.
(f) Insulating.
(g) Houston Chemical, Beaumont.
(h) I do not recall the area.
(i) Saws, nippers, trowles, roofing knife; butcher knife.
(j) None.
(k) Yes, all kinds.
(l) I don't recall the brand name but it was 85% magnesium.

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966) Published by AsbestosClaims.Law
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(m) I was applying pipe covering.
(n) Harold Lee Broussard.
(o) Percy LaGrappe; Lee Trahan; Joe Dupuis; Preston Pelterie; and that's all I recall.
(p) It was about $4.12 per hour.
(q) $106.52 and $78.98 as shown by my check stubs.
(r) Insulating pipe.

B AND B ENGINEERING & SUPPLY CO.:
(a) January, 1964.
(b) January 27, 1964.
(c) Ten hours a day.
(d) I believe it was seven.
(e) Big Three Welding, Orange.
(f) Packing cold box with rockwool.
(g) Big Three Welding, Orange.
(h) Where the plant is.
(i) Nippers, trowles, hacksaw and rule.
(j) None.
(k) Yes.
(l) Foamglas.
(m) Packing cold box with rockwool and covering pipe with Foamglas.
(n) Earl Kersler.
(o) Donald Guidry; Carl Bellair; and those are all I remember.
(p) About $4.12 an hour.
(q) $185.52, $309.38 and $165.00 as shown by my check stubs.
(r) Packing cold box and covering pipe.

SABINE INSULATION CO., INC.:
(a) About 1st of February, 1964.
(b) March 23, 1964.
(c) Eight hours.
(d) Five.
(e) Firestone, Orange.
(f) Insulating pipe.
(g) Firestone plant, Orange.
(h) All over the plant.
(i) Generally the same tools listed above.
(j) None.
(k) Yes.
(l) Magnesia.
(m) Applied to pipe and repair work.
(n) Andrew Guidry.
(o) Leslie Faulk; O. J. LeBlanc; Joe LeBlanc; H. L. LeBlanc; Walter Smith, Leon Smith.
(p) $4.12 per hour.
(q) $129.20, $129.20 and $45.18 and $129.20, as shown by my check stubs.

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JOHNS-MANVILLE:
(a) About March 2, 1964.
(b) About March 15, 1964.
(c) Eight.
(d) Five.
(e) Firestone Plant, Orange.
(f) Insulating pipe.
(g) Firestone plant, Orange.
(h) Finishing building or area.
(i) Generally the same used on the jobs above listed.
(k) Yes.
(l) Magnesia.
(m) Applied to pipe.
(n) Bruce Bell.
(o) Nolan Gaspar; Birt Coulter; D. P. Green; Roy Bergeron; Raymond Potter and S. R. Potter.
(p) $4.12 an hour.
(q) $117.52 and $69.63 as shown by my check stubs.
(r) Insulating pipe.

SABINE INSULATING CO., INC.
(a) About April, 19, 1964.
(b) About May 10, 1964.
(c) Varied.
(d) It varied.
(e) Levingston Shipbuilding, Orange, Texas.
(f) Insulating pipe.
(g) Levingston Shipbuilding, Orange, Texas.
(h) On an oil rig.
(i) Generally the same as usual.
(j) None.
(k) Yes.
(l) Magnesia,and Fiberglas.
(m) Applied to pipe.
(n) A. J. Mello.
(o) George Petry; and I can't remember any more.
(p) $4.12 per hour.
(q) $49.82, $91.50, $127.04 and $223.93 as shown by my check stubs.
(r) Insulating pipe.

THE INDUSTRIAL INSULATORS, INC.:
(a) About a week prior to June 1, 1964.
(b) June 4, 1964.
(c) Eight.
(d) Five.
(e) Atlantic Refinery, Port Arthur, and Olin Mathieson, Beaumont.
(f) Covering and insulating a tower, and repairing a boiler.
(g) Atlantic Refinery in Port Arthur, and Olin Mathieson Plant, Beaumont.
(h) Boiler area.
(i) Generally the same as usual.
(j) None.

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(k) Yes.
(l) Magnesia.
(m) Applied to boiler and tower.
(n) On the Atlantic job, Cecil Gladdon; and on the Olin Mathieson job, U. N. Landry.
(o) Atlantic: Ily Ardeaux.
Mathieson: Percy LaGrappe; Joe Dupuis.
(p) A little over $4.22 an hour.
(q) $109.00, $14.85 and $68.28 as shown by my check stubs.
(r) Insulating a tower and a boiler.

INTERROGATORY NO. 4: Dr. John C. Greco, Bridge City.
Dr. Tom R. Jones, Houston.
Dr. Thomas Lombardo, Beaumont.
Dr. Leary, Houston.
Dr. Rudeseal, Orange.

INTERROGATORY NO. 5: Memorial Baptist Hospital, Houston.
Orange Memorial Hospital, Orange.

INTERROGATORY NO. 6: Memorial Baptist Hospital, three days in August, 1961.
Orange Memorial Hospital, Orange: May, 1963 for about six or seven days; and then had to return for five more days; February, 1964 for about one week; About September 10, 1964, for one night.

Claude J. Tomplait
CLAUDE J. TOMPLAIT

SWORN TO AND SUBSCRIBED before me by the said Claude J. Tomplait, on this the 21st day of September, 1964.

Jackie Bean
Notary Public, Orange County, Texas.

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

APPLICATION FOR COMMISSION TO TAKE WRITTEN DEPOSITION - INTERROGATORIES ATTACHED

FILED

24d Day of Sept. 1966

at 11:30, A M.

THEL BURTON

District Court, Orange County, Texas

By Edna Simmons Deputy

ORGAIN, BELL & TUCKER

ATTORNEYS AT LAW

BEAUMONT, TEXAS

Published by AsbestosClaims.Law

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Honorable Ethel Burton
District Clerk
Orange County, Texas
Orange County Courthouse
Orange, Orange County, Texas

Re: No. 13,916 - Claude J. Tomplait vs.
The Travelers Insurance Company, et al

Dear Sir:

Notice is hereby given that Queen Insurance Company of America Defendant in the above styled and numbered suit pending in the court of which you are Clerk desires to take the written deposition of the witness named below, at the time and place designated below, to be used in the above styled and numbered suit; and intends to apply for a commission therefor; and hereby requests that you issue commission therefor six days after the receipt of this notice and application by you.

Name of Witness, and Residence or Place where Witness may be found	Place of Taking Deposition	Time of Taking Deposition
Custodian of Hospital Records Orange Memorial Hospital Orange, Texas	Orange, Texas	Immediately upon receipt of commission therefor.

Subpoena duces tecum is desired, and it is therefore requested that the commission expressly authorize issuance thereof.

Copy of the written interrogatories to be propounded to the witness, ~~if any~~ is attached hereto.

Notice, as required by the Texas Rules of Civil Procedure, Rules 189 and 200, has been given by serving all adverse parties, or their attorneys of record, with a copy hereof on this the 23rd day of September, 1964.

The books, papers, documents and tangible things hereby designated to be produced by the witness are:

Name of Witness	To Produce:
Custodian of Hospital Records	All records regarding Claude J. Tomplait except nurses' notes and x-rays.

cc by certified mail:
Mr. Ward Stephenson
Stephenson Building
Orange, Texas

Yours very truly,
ORGAIN, BELL & TUCKER
First Federal Savings Building
Beaumont, Texas
By Cleve Bachman

~~Return on reverse side~~

DIRECT INTERROGATORIES TO BE PROPOUNDED TO THE WITNESS

CUSTODIAN OF HOSPITAL RECORDS, ORANGE MEMORIAL HOSPITAL

1. State your name, please.

2. State the name of your employer and the capacity in which you are employed.

3. State whether or not you are the official custodian of the records of Orange Memorial Hospital?

4. In your capacity as custodian of said records, do you have in your custody any records concerning Claude J. Tomplait?

5. State whether or not such records pertaining to the person named in question 4 were made and have been preserved and maintained in the usual and customary course of business of said hospital.

6. State whether or not said records have been made under your care and in your custody and further whether or not they have been in any way altered, changed or tampered with.

7. State whether or not the entries on such records were made and prepared by persons who actually performed the treatment, examination, operation, tests, or performed the services or made the observations reflected by said entries or otherwise had occasion to treat or examine the patient in question.

8. State whether or not the entries on such hospital records were made by persons with actual and personal knowledge of the act, event, observation or condition to which the entry pertains.

9. State whether or not the antries on such records were made at the time of, or very soon after the act, event, observation or condition to which the entry pertained.

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asbestosclaims.law/library/24593/54

#2-

10. State the dates during which the named patient was or has been confined to such hospital or under treatment at such hospital.

11. Please produce in obedience to the subpoena duces tecum served upon you, the hospital records in your care and custody pertaining to the person named in question 4, and hand such records to the court reporter marking the same for identification, except the following:

nurses' notes

x-rays

12. Please state whether or not these are all of the records pertaining to the patient in the custody of said hospital, except those expressly excluded.

13. Mr. Court Reporter, please attach said records to the deposition and mark the same for identification. (Copies may be substituted for all but X-ray films).

14. Please state whether or not the copies substituted for your original records are true and exact copies, and state if they have been altered, changed or tampered with in any way.

ORGAIN, BELL & TUCKER
First Federal Savings Building
Beaumont, Texas

By _____
Attorneys for Defendant
Clive Bachman

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C O P

ORGAIN, BELL & TUCKER
ATTORNEYS AT LAW
BEAUMONT, TEXAS
77701

November 18, 1965

RE: Claude J. Tomplait v. Queens Insurance Company; No. A-13,916
Orange County, Texas - OB&T file X-2904.

Mr. Ward Stephenson
Attorney at Law
Stephenson Building
Orange, Texas

Dear Ward:

Enclosed you will find some cross interrogatories which I would appreciate your having submitted to the doctor in New York. Also, please tell the reporter to send me carbon copies of answers to both the direct and the cross interrogatories. Insofar as objections to the man not attaching the X-rays to the interrogatories, I have none and will not raise this matter in the event of trial.

Best regards,

ORGAIN, BELL & TUCKER

Cleve Bachman

CB:jj
Enclosure
cc: Mrs. Ethel Burton, District Clerk
Orange, Texas

Dear Mrs. Burton:

Please file these Cross Interrogatories among the papers the said cause.

CB
Cleve Bachman

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CB:jj 11-18-65

NO. A-13,916

CLAUDE J. TOMPLAIT	X	IN THE DISTRICT COURT
VS.	X	OF
QUEENS INSURANCE COMPANY	X	ORANGE COUNTY, TEXAS

Written interrogatories to be propounded to Dr. Irving J. Selikoff, Head of the Section of Environmental Health, The Mount Sinai Hospital, New York 29, New York, on behalf of the Defendant:

CROSS INTERROGATORIES

Cross Interrogatory No. 1:

In connection with the diagnosis you have made, based solely upon your examination of the X-rays above mentioned, would it not be important to have the benefit of additional clinical, both subjective and objective findings in addition to the X-rays?

Cross Interrogatory No. 2:

Is not your diagnosis solely on the basis of the X-rays examined?

Cross Interrogatory No. 3:

Is it not true that even though you may feel that the X-rays which you examined reflected the possibility of a disease or a condition suggestive of asbestosis, you are not attempting to tell the jury how disabling such a condition may or may not be.

Cross Interrogatory No. 4:

Is it not true, that before making any estimate as to how much disability or incapacity might be caused by the conditions which you found reflected on the X-rays, it would be necessary for you to examine the man in person?

Cross Interrogatory No. 5:

Is it not true that any observations that you have made, are simply a diagnosis as to the possibility or reasonable probability of a condition, but that your observations or your diagnosis are not in anywise intended to reflect the amount of incapacity or disability which the man may be suffering from at this time or which he may in the past or may in the future suffer from.

Cross Interrogatory No. 6:

Is it not true that a person may have a condition known as asbestosis and yet, such condition may be only slightly disabling, not disabling at all or extremely disabling?

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Cross Interrogatory No. 7:

Is it not true that in this particular case, you are not insinuating any specific degree of incapacity or disability.

ORGAIN, BELL & TUCKER
First Federal Savings Building
Beaumont, Texas

By: Cleve Bachman
Cleve Bachman, Attorney for
Defendant

FILED

19th Day of November 1965
at 8:30, A M.

ETHEL BURTON
Clerk, District Court, Orange County, Texas

By Edna Emmon Deputy

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asbestosclaims.law/library/24593/59

No. 13916 | DATE OF FILING 9-16-64 | Claude J. Tomplait vs. The Travelers Ins. Co. of Texas

COURT

ENVELOPE—CIVIL CASES

No. 13916

In ..... Court,

County of .....

STATE OF TEXAS

Claude J. Tomplait

vs.

The Travelers Ins. Co.

See Page 6397 of this Cause

MEMORANDUM OF PAPERS FILED

1. .....
2. .....
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Form 26—Texas

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CIVIL DOCKET

CASE No. A 13,916-A

CLARKE & COURTS, INC.—HOUSTON—FORM 38-L

Number of Case	STYLE OF CASE	ATTORNEYS	KIND OF ACTION	DATE OF FILING Month	Day	Year
A-13,916-A	CLAUDE J. TOMPLAIT	STEPHENSON, STEPHENSON & THOMPSON	SUIT TO SET ASIDE AWARD BY I A B	12	21	1962
	VS.					
FEE BOOK Vol. / Page	THE TRAVELERS INSURANCE COMPANY, AND TEXAS EMPLOYERS	~~ORGAIN, BELL & PUCKER~~ STRONG, PIPKIN, STRONG & NELSON MARCUS & WELLER		Jury Demanded by		
		Defendant.		Jury Fee, $		
				Paid by		

Date of Orders	ORDERS OF COURT	MINUTE BOOK Vol.	MINUTE BOOK Page	PROCESS
9-16-64	Agreed judgement as per decree. James N. Nelson Judge.	R-1	153	

Published by AsbestosClaims.Law
asbestosclaims.law/library/24593/61
Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
ACL Doc 24593 · Page 61 of 213

NO. 13,916

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

MOTION TO SEVER

FILED

Clerk, District Court

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

10TH FLOOR SAM JACINTO BLDG. P. O. BOX 1638

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	)	IN THE DISTRICT COURT OF
VS.	)	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET. AL.	)	128TH JUDICIAL DISTRICT

MOTION TO SEVER

NOW COMES the plaintiff, Claude J. Tomplait, and the defendants, The Travelers Insurance Company and Texas Employers' Insurance Association, and make and file this agreed Motion to Sever any and all claims, issues, and causes of action which the plaintiff, Claude J. Tomplait, has asserted against The Travelers Insurance Company and Texas Employers' Insurance Association, each and both, from any and all claims, issues, and causes of action asserted by the plaintiff, Claude J. Tomplait, against the remaining defendant herein, to-wit, Queen Insurance Company of America, in order that an agreed judgment in said severed cause may be presented to the Court.

WHEREFORE, premises considered, plaintiff, Claude J. Tomplait, and defendants, The Travelers Insurance Company and Texas Employers' Insurance Association, respectfully move the Court to sever any and all claims, issues, and causes of action which the plaintiff has asserted against The Travelers Insurance Company and Texas Employers' Insurance Association from any and all claims, issues, and causes of action asserted by plaintiff against the remaining defendant, Queen Insurance Company of America.

MARCUS & WELLER

BY _____
ATTORNEYS FOR DEFENDANT,
TEXAS EMPLOYERS'
INSURANCE ASSOCIATION

STEPHENSON, STEPHENSON & THOMPSON

BY _____
ATTORNEYS FOR PLAINTIFF

STRONG, PIPKIN, STRONG & NELSON

BY _____
ATTORNEYS FOR DEFENDANT,
THE TRAVELERS INSURANCE COMPANY

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asbestosclaims.law/library/24593/63

NO. 13,916

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY
ET AL

MOTION TO DISMISS
WITHOUT PREJUDICE

FILED

16 Day of Sept 1965

10:15 A.M.

Ethel Burton

Clerk, District Court, Orange County, Texas

By [illegible] Deputy

MN 1-90

STRONG, PIPKIN, STRONG & NELSON
ATTORNEYS AT LAW
10TH FLOOR SAN JACINTO BLDG. P. O. BOX 1638
BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPIAIT	§	IN THE DISTRICT COURT OF
VS.	§	
THE TRAVELERS INSURANCE COMPANY, ET AL	§	ORANGE COUNTY, TEXAS

MOTION TO DISMISS WITHOUT PREJUDICE

NOW COMES the defendant, The Travelers Insurance Company, and makes and files this its Motion to Dismiss Without Prejudice its cross-actions against the other defendants herein, and woul respectfully show unto the Court that it no longer wishes to prosecute this cause of action against said cross-defendants, and respectfully moves the Court to dismiss its cause of action without prejudice to re-file against Queen Insurance Company of America and Texas Employers Insurance Association any claims or causes of action that have been asserted herein.

STRONG, PIPKIN, STRONG & NELSON

Michael H. Mathews

Attorneys for Defendant,
The Travelers Insurance Company

1014 San Jacinto Building
P. O. Box 1632
Beaumont, Texas

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NO. 13,916

IN THE DISTRICT COURT OF
ORANGE COUNTY, TEXAS,
128TH JUDICIAL DISTRICT

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY,
ET AL

ORDER OF SEVERANCE

FILED
16 Da. of Sept 1965
at 11:20 A.M.
ETHEL BURTON
District Court, Orange County, Texas
By Dan Lee Deputy
Recorded Vol R-1 pg 132
Comp

STRONG, PIPKIN, STRONG & NELSON
ATTORNEYS AT LAW
10TH FLOOR SAN JACINTO BLDG. - P. O. BOX 1632
BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	‡	IN THE DISTRICT COURT OF
VS.	‡	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET. AL.	‡	128TH JUDICIAL DISTRICT

ORDER OF SEVERANCE

On this, the 16th day of September, 1964, in the above entitled and numbered cause wherein Claude J. Tomplait is plaintiff, The Travelers Insurance Company, Texas Employers' Insurance Association and Queen Insurance Company of America are defendants, came on to be considered by the Court the joint motion of said plaintiff and the defendants, The Travelers Insurance Company and Texas Employers' Insurance Association, for a severance of all claims, issues and causes of action which plaintiff has asserted against the defendants, The Travelers Insurance Company and Texas Employers' Insurance Association, from all claims, issues and causes of action asserted by plaintiff against the remaining defendant, Queen Insurance Company of America; and it appearing to the Court that such joint motion should be granted:

It is therefore ORDERED by the Court that all claims, issues and causes of action herein asserted by plaintiff against the defendants, The Travelers Insurance Company and Texas Employers' Insurance Association, be and the same are hereby severed from the cause of action therein asserted by plaintiff against the defendant, Queen Insurance Company of America, and said severed cause shall henceforth bear No. A-13,916-A, styled Claude J. Tomplait vs. The Travelers Insurance Company and Texas Employers' Insurance Association.

RENDERED, this 16th day of September, 1964.

James D. Neff

JUDGE, 128TH JUDICIAL DISTRICT
COURT OF ORANGE COUNTY, TEXAS.

NO. 13,916

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

ORDER OF DISMISSAL

FILED

16 Day of Sept 19 64

at 1:15 P M.

ETHEL BURTON

Clerk District Court, Orange County, Texas

By Deputy

Recorded Vol. R-1 Pg 133

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

10TH FLOOR SAN JACINTO BLDG. P. O. BOX 1338

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT § IN THE DISTRICT COURT OF

VS. §

THE TRAVELERS INSURANCE COMPANY, § ORANGE COUNTY, TEXAS
ET AL

ORDER OF DISMISSAL

ON THIS 16th day of September, 1964, came on to be heard the above entitled and numbered cause, and came the defendant and cross-plaintiff, The Travelers Insurance Company, and moved the Court to dismiss its cross-action against the other defendants herein;

It is, therefore, ORDERED, ADJUDGED AND DECREED by the Court that the cause of action of defendant and cross-plaintiff, The Travelers Insurance Company, against Queen Insurance Compan of Americaand Texas Employers Insurance Association be and the same is hereby dismissed without prejudice to the right of the defendant and cross-plaintiff, The Travelers Insurance Company, to again re-file any claims, causes of action, or assertions against the cross-defendants herein.

REMEMBERED AND ENTERED this 16th day of September, 1964.

James N. Neff
Judge Presiding

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NO. 13,916-A

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY AND TEXAS EMPLOYERS' INSURANCE ASSOCIATION

AGREED JUDGMENT

FILED
16 Day of Sept 19 64
at 1:20 P.M.
ETHEL BURTON
County Clerk, Orange County, Texas
By Dot Ham Deputy
Recorded Vol R-1 pg 133
Indexed Comps

NO. A-13,916-A

CLAUDE J. TOMPLAIT	)	IN THE DISTRICT COURT OF
VS.	)	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY AND TEXAS EMPLOYERS' INSURANCE ASSOCIATION	)	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 attorneys 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 prior to this date, the defendant, The Travelers Insurance Company, being the insurance 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

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 ONE THOUSAND ($1000.00) DOLLARS in full compromise, settlement and satisfaction of all claims for workmen's compensation benefits that 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 judgment by payment of the amounts herein provided, the plaintiff shall thereafter have no claim of any type whatsoever under the Texas Workmen's Compensation Act for an occupational disease and any injurious 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,

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
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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 apportioned, seventy (70%) per cent to the said Claude J. Tomplait and thirty (30%) per cent to his attorneys, Stephenson, Stephenson & Thompson.

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
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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 16th day of September, 1964.

James R. Nelson
JUDGE PRESIDING

APPROVED:

STEPHENSON, STEPHENSON AND THOMPSON

By Ward Stephenson
ATTORNEYS FOR PLAINTIFF,
CLAUDE J. TOMPLAIT

STRONG, PIPKIN, STRONG AND NELSON

By Michael D. Mathews
ATTORNEYS FOR DEFENDANT,
THE TRAVELERS INSURANCE COMPANY

MARCUS AND WELLER

By Bird E. Marcus
ATTORNEYS FOR DEFENDANT, TEXAS
EMPLOYERS' INSURANCE ASSOCIATION

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966) Published by AsbestosClaims.Law
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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, settled, paid and satisfied.

Signed this 16th day of September, 1964.

Claude J. Tomplait

CLAUDE J. TOMPLAIT, PLAINTIFF

STEPHENSON, STEPHENSON & THOMPSON

BY Ward Stephenson

ATTORNEYS FOR PLAINTIFF

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THE STATE OF TEXAS §

COUNTY OF ORANGE §

I, JOY HAM, District Clerk of Orange County, Texas, do hereby certify that the foregoing is a true and correct microfilmed copy of the Case Papers, Orders and Judgments of the 128th Judicial District Court, 163rd Judicial District Court and the County Court at Law Sitting as a Domestic Relations Court of Orange County, Texas; said records having been microfilmed under the personal supervision of JOY HAM, District Clerk of Orange County, Texas.

GIVEN under my hand and seal of office this _____ day of 3-28-78 . D., 19 78.

Joy Ham

JOY HAM, DISTRICT CLERK

I certify that I personally microfilmed the above records.

Colleen Gray

Deputy District Clerk

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No. 13916 | DATE OF FILING 12-21-62

COURT

Claude J. Tomplait
VS.
The Travelers Ins. Co. et al

ENVELOPE—CIVIL CASES

A No. 13916

In District Court,

County of Orange

STATE OF TEXAS

Claude J. Tomplait
vs.
The Travelers Ins. Co. et al

MEMORANDUM OF PAPERS FILED

1. Original Petition
2. Executed Citations
3. Orig. & 1 Cert. Jury Demand
4. Citation
5. Orig. Trans. Writ 24th Dist. Ct.
6. Orig. & 1 Cert. Docket Entries
7. Plaintiff's Req. for C. F.
8. Def's. Ans. to Plff's Req. for Admissions
9. Docket Entries

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Stephens, Stephens & Thompson
Def. 25 cc
Pl. 2 cc

CIVIL DOCKET

Case No. A 13,916

Form 4—The Steck Co., Austin

Number of Case	NAME OF PARTIES	ATTORNEYS	Kind of Action and Party Demanding Jury	DATE OF FILING Mo. / Day / Year
A 13,916	CLAUDE J. TOMPLAIT	STEPHENSON, STEPHENSON, &	SUIT TO SET ASIDE	12 / 196
FEE BOOK Vol. / Page	VS.	THOMPSON Plf.	AWARD BY I A B	Jury Fee, $ 5.00 10-25-63
	THE TRAVELERS INSURANCE	Organ, Bell & Dunlevy; Starling, Lipshie, Strong & Nelson; Morris & Walker Deft.		Paid by A.S.S.
	COMPANY, ET AL			Jury No.

DATE OF ORDERS Month	Day	Year	ORDERS OF COURT	Minute Book Vol.	Page	PROCESS
1	31	63	Set for Mar. 25, 1963	81	20	
2	18	63	Motion for Summary Judgment Set for Mar 1, 1963 10:00 a.m.	81	20	
9	15	64	Cause settled as between plaintiff and defendants, The Travelers Ins. Co. and Texas Employers Association and continued as to Defts. Queens Ins. Co. by agreement of parties	81	20	
9	16	64	motion of deft. The Travelers Ins. Co. to dismiss its cross action against Deft. Queen Ins. Co. and Texas Employers Insurance Assn. granted as per order -	81	20	

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Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
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VS. NO. _____

Date of Orders Month	Day	Year	ORDERS OF COURT	Minute Book Vol.	Page	PROCESS
9	16	64	motion of defts The Travelers and Travelers Employers Liability Insurance Corporation for plaintiff from caption and Defts., Queen Ins. Co. be dismissed, as per motion wm N. Neff 5-9-66 Judge.	4-1	71	
5	26	66	agreed judgement as to Queen Insurance Co. as per decree- James N. Neff Judge-	4-1	71	

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Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
ACL Doc 24593 · Page 80 of 213

NO._____

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

PLAINTIFF'S ORIGINAL PETITION

FILED

_____ day of _____ 19__

_____

_____ District Court, Orange County, Texas

STEPHENSON, STRIPLING, STEPHENSON AND THOMPSON

ATTORNEYS AT LAW

PROFESSIONAL BUILDING

ORANGE, TEXAS

SERVICE REQUESTED

Orange County

Out of Town

Non-Resident

Publication

Number of Defendants to be served _____

Deliver to Sheriff _____ Beat, County? _____

Deliver to Constable _____

Hold for Attorney _____

Mail to Attorney _____

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asbestosclaims.law/library/24593/81

No. _____

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
	:	PLAINTIFF'S ORIGINAL
VS.	:	
	:	PETITION
THE TRAVELERS INSURANCE COMPANY, ET AL	:	

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW CLAUDE J. TOMPLAIT, plaintiff, who resides in Orange County, Texas, complaining of THE TRAVELERS INSURANCE COMPANY, TEXAS EMPLOYERS INSURANCE ASSOCIATION and QUEEN INSURANCE COMPANY OF AMERICA, defendants, private corporations duly incorporated under and by virtue of the laws of the State of Texas, having license and permission to do business in said State, for the purpose of writing insurance; and for cause of action the plaintiff says the following:

1.

The plaintiff says that in the month of July, 1961 he was working in the County of Orange, State of Texas, for Armstrong Contracting and Supply Corporation in the capacity of insulator and in the furtherance of and while within the usual course of the business of his employer; that his said employer is engaged in the construction business; that the plaintiff was receiving an average weekly wage in the amount of $196.85 working eight hours per day and five days per week; that such average weekly wage in the amount of $196.85 entitled him to have his compensation calculated on the basic figure of $35.00 per week.

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
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2.

The plaintiff says that he was working in the above named county, and at the time of his injury his employer was engaged in a business within and subject to the Workmen's Compensation Act of the State of Texas, and was a subscriber, as that term is used in the Workmen's Compensation Act of the State of Texas, and carried a policy of insurance in compliance with said act with one of the defendants by the terms of which it agreed to pay to any person entitled thereto under the Workmen's Compensation Act of the State of Texas compensation for disability and death produced by an injury sustained in the course of such persons' employment with said employer, in accordance with the provisions of said act; that the said defendant thereby became bound and obligated to pay to the plaintiff the compensation for which he sues; that the said policy was issued to said employer and was at all times pertinent to this cause of action in full force and effect.

3.

The plaintiff says that prior to his injury and prior to the first distinct manifestation of disease during the month of July, 1961, he was a strong, healthy and able-bodied man, able to perform and did perform the duties of his employment in a satisfactory manner, but during said month aforesaid while engaged in the discharge of his duties and in the scope of his employment the following conditions became apparent: Personal injury and occupational disease, asbestosis and silicosis; that as a result of the occurence made the basis of this suit, plaintiff has suffered the following injuries:

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Severe and permanent injury to his body caused by dust, asbestos and other materials causing asbestosis and silicosis causing severe external and internal injuries including pulmonary fibrosis, restrictive ventilatory defect and arterio-desaturation. In the alternative, plaintiff says that if his injuries are not the sole cause of the disability and incapacity, then the same aggravated, prolonged or accelerated a prior condition.

4.

Plaintiff says that as a result of the injuries which he received he is now unable to work and has been unable to work or follow the pursuits of a working man so as to obtain and retain employment as such; and he therefore says that he is totally incapacitated at this time within the meaning of the Workmen's Compensation Law, and has been so incapacitated since the date of the receipt of said injuries and will continue to be totally incapacitated permanently; or in the alternative, the plaintiff says that he has received such lesser degree and percentage of disability as he may show himself entitled to receive upon trial hereof; and he says that his disability began on the date of the receipt of such injuries.

5.

Plaintiff says that he gave due and timely notice (within thirty days) to his employer and to the Industrial Accident Board after the receipt of the said injuries sustained by him, and did within due time (i.e., six months) after the receipt of such injuries make due claim for compensation to the Industrial Accident Board of the State of

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966) Published by AsbestosClaims.Law
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Texas; and in the alternative, plaintiff says that his employer had actual notice of said injuries within thirty days after the receipt thereof.

6.

Plaintiff says that he gave notice of appeal to the Industrial Accident Board within twenty (20) days after the rendition of the award by the Board that he would not abide by the said final ruling and decision of said Board; that within twenty (20) days after having given such notice of appeal to the said Board, plaintiff instituted suit to set aside such award of the said Board, claiming compensation for the full amount claimed by him before the said Board, together with full payment of all expenses heretofore incurred, including but not limited to medical aid, hospital services, nursing and medicines, to-wit:

Dr. John C. Greco	$ 107.00
Dr. Tom R. Jones	90.00
Dr. Peron O. Jones	35.00
Memorial Baptist Hospital	132.50
Orange Memorial Hospital	12.00
Expenses relative to examination by Dr. William W. Leary, Houston, Texas	58.50
	$ 435.00

and full payment of all such expenses incurred in the future.

7.

Plaintiff says that for at least two hundred ten (210) days of the year immediately preceding his injuries, he had worked in the employment in which he was working at the time of his injuries, and during the days when so employed, he earned an average daily wage or salary of $34.12 per day; in the alternative, plaintiff says that if he be mistaken as to the foregoing allegation and that he did not

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
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work in such employment for at least two hundred ten (210) days of the year immediately preceding his accident and injuries, he shows that there were other employees of his class at the time of his injuries who had worked in such employment for at least two hundred ten (210) days of the year immediately preceding his accident and injuries, in the same or a similar employment in the same or a neighboring place, and that during the days when so employed, earned an average daily wage of $34.12 per day; and plaintiff further says that his average weekly wage shall consist of three hundred (300) times the average daily wage or salary which he has earned or which an employee of the same class has earned during the days which he or an employee of the same class actually worked in such year, divided by fifty-two (52); and plaintiff says that by such computation he earned an average weekly wage of $196.85 per week. Further in the alternative, plaintiff says that if by reason of the shortness of the time of the employment of other employees engaged in the same class of work during the year immediately preceding his injuries, and for other good and sufficient reasons, it is impracticable to compute his average weekly wage under the two methods above alleged, then he prays that his average weekly wage be computed by the court or jury in any manner that is fair and just to both parties, as of the date of his injuries, and in this connection says that $196.85 as an average weekly wage would be fair and just.

8.

The plaintiff says that he has employed the attorneys whose names are signed to this petition to represent him

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in this behalf and has contracted to pay said attorneys such fee as the court may allow, not to exceed thirty (30%) per cent of the recovery herein.

9.

Plaintiff says that he has no property, real or personal, from which he can support himself and that if compensation be awarded to him in weekly payments, after the attorneys' fees are paid out of each payment the balance will be wholly inadequate to support him. Further, he shows that he is a men of prudence and care in business matter and in the handling of money, and that, if compensation herein due him be paid him in a lump sum, he will be able to invest part of same in a business of some kind, out of which he can make a living. Plaintiff further says that if future payments of compensation are not awarded to him in a lump sum, then manifest hardship and injustice will result to him.

WHEREFORE, plaintiff praysthat the defendant be cited to appear and answer herein, and that upon trial hereof, plaintiff have judgment against defendant setting aside the final decision and award of the Industrial Accident Board and for compensation for four hundred and one (401) weeks at the rate of $35.00 per week, for payment of all expenses heretofore incurred,including but not limited to medical aid, hospital services, nursing and medicines, and payment of all such expenses incurred in the future, that he have judgment against defendant for all past due installments of compensation together with four (4%) per cent interest, compounded annually, from the respective dates of maturity of each instamment of compensation due him herein; and that the balance

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966) Published by AsbestosClaims.Law
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of compensation due him herein be awarded to him in a lump sum, allowing four (4%) per cent discount on such future installments; and plaintiff prays for such other and further relief, both general and special, at law and in equity, to which he may be entitled, and all costs of suit.

STEPHENSON, STEPHENSON
AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

ORIGINAL ANSWER OF DEFENDANT, QUEEN INSURANCE COMPANY OF AMERICA

FILED

8th Day of Jan. 1962

at 2 o'clock P M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Edna Emmons Deputy

ORGAIN, BELL & TUCKER

ATTORNEYS AT LAW

BEAUMONT, TEXAS

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asbestosclaims.law/library/24593/89

Citation—District Court — Port Printers

THE STATE OF TEXAS

To: TEXAS EMPLOYERS INSURANCE ASSOCIATION
Upon whom service may be obtained by serving anyone subject to service at 2693 North Street, Beaumont, Texas.

Greeting:

You are commanded to appear by filing a written answer to the Plaintiff's petition at or before 10 o'clock A. M. of the Monday next after the expiration of 20 days from the service hereof, before the Honorable District Court of Orange County for the 128th Judicial District of Texas, at the Court House in Orange, Texas.

Said plaintiff's petition was filed on the 21st day of December, 19 62

The file number of said suit being No. 13,916.

The style of the case is

CLAUDE J. TOMPLAIT, is - - - - - - - - - - - - - - - - Plaintiff,

versus

THE TRAVELRRS INSURANCE COMPANY, ET AL is - - - - Defendant.

A copy of plaintiff's petition accompanies this citation.

If this Citation is not served within 90 days after the date of its issuance, it shall be returned unserved.

Issued this the 21st day of December, A. D., 19 62.

Given under my hand and seal of said Court, at office in Orange, Texas, this the 21st day of December, A. D., 19 62.

EXECUTE WHEN COPY IS DELIVERED:

This, a true copy of the original Citation, was delivered to Defendant:

_____

on the _____ day of _____ 19____

_____ Sheriff-Constable

_____ County, Texas

By _____ Deputy.

ETHEL BURTON, Clerk
District Court, Orange County, Texas
By Joy Hamm Deputy

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SHERIFF'S RETURN

Came to hand on the 22 day of December, 1962, at 7:30 o'clock A M., and executed in JEFFERSON County, Texas, by delivering to each of the within named defendants, in person, a true copy of this Citation together with the accompanying copy of the plaintiff's petition, at the following times and places, to-wit:

NAME	DATE Month	Day	Year	TIME Hour	Min.	M.	Place, and Course and Distance From Court House	Mileage
The Travelers Insurance Company								
BY DELIVERING TO								
D.W. Grimes, Claim Manager	12	26	1962	9	35	A		

And not executed as to defendant..., _____

the diligence used in finding said defendant..., being: _____

and the cause of failure to execute this process is: _____

and the information received as to the whereabouts of the said defendant..., being: _____

I actually and necessarily traveled _____ miles in the service of this Citation, in addition to any other mileage I may have traveled in the service of other process in the same case during the same trip.

FEES—Serving _____ cop _____, $ 1.25

Mileage _____ miles, 1.00

Total, ... $ 2.25

Pd by SS+T

R. E. CULBERTSON, Acting Sheriff } Sheriff / Constable

JEFFERSON County, Texas

By W. R. Hedgpeth Deputy

RECEIVED DEC 22 1962

File No. 13,916

DISTRICT COURT
Orange County, Texas
128th Judicial District of Texas

CITATION

CLAUDE J. TOMPLAIT

vs.

THE TRAVELERS INSURANCE CO. ET AL

Issued ____ day of December 21, 19 62

Ethel Burton, Clerk

By Ora Mae Deputy

Filed 31 Day of Dec, 19 62

Ethel Burton, Clerk

By Edna Brown Deputy

Port Printers

Published by AsbestosClaims.Law
asbestosclaims.law/library/24593/91

Citation—District Court — Port Printers

THE STATE OF TEXAS

To: THE TRAVELERS INSURANCE COMPANY
Upon whom service may be obtained by serving anyone subject to service at Adams Building, Port Arthur, Texas.

Greeting:

You are commanded to appear by filing a written answer to the Plaintiff's petition at or before 10 o'clock A. M. of the Monday next after the expiration of 20 days from the date hereof before the Honorable District Court of Orange County for the 128th Judicial District of Texas, at the Court House in Orange, Texas.

Said plaintiff's petition was filed on the 21 day of December, 19 62

The file number of said suit being No. 13,916

The style of the case is

CLAUDE J. TOMPLAIT is - - - - - - - - - - - - - - - - Plaintiff,

versus

THE TRAVELERS INSURANCE COMPANY, ET AL is - - - - - Defendant.

A copy of plaintiff's petition accompanies this citation.

If this Citation is not served within 90 days after the date of its issuance, it shall be returned unserved.

Issued this the 21st day of December, A. D., 19 62

Given under my hand and seal of said Court, at office in Orange, Texas, this the 21st day of December, A. D., 19 62

EXECUTE WHEN COPY IS DELIVERED:

This, a true copy of the original Citation, was delivered to Defendant:

Mrs J. C. Lalonde

on the 26 day of December 1962

R. E. Culbertson
Sheriff-Constable

Jefferson County, Texas

By C. W. Tarbet Deputy.

ETHEL BURTON, Clerk
District Court, Orange County, Texas

By Joy Hann Deputy

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SHERIFF'S RETURN

Came to hand on the 26 day of December, 1962, at 8:30 o'clock A M., and executed in JEFFERSON County, Texas, by delivering to each of the within named defendants, in person, a true copy of this Citation together with the accompanying copy of the plaintiff's petition, at the following times and places, to-wit:

NAME	DATE Month	Day	Year	TIME Hour	Min.	M.	Place, and Course and Distance From Court House	Mileage
Travelers Ins. Co. rec'd								
by Serving								
Mrs. J. L. Toland	12	26	62	9:	00	A.	1st Visitor,	

And not executed as to defendant__, _____

the diligence used in finding said defendant__, being: _____

and the cause of failure to execute this process is: _____

and the information received as to the whereabouts of the said defendant__, being: _____

I actually and necessarily traveled _____ miles in the service of this Citation, in addition to any other mileage I may have traveled in the service of other process in the same case during the same trip.

FEES—Serving 1 cop 1.35, $ 1.25

Mileage 42 x 10 miles, 4.20

Total, ... $ 5.45

Pd. by SSH

R. E. CULBERTSON, Acting Sheriff Sheriff / Constable

JEFFERSON County, Texas

By _____ Deputy

File No. 13,916

DISTRICT COURT

Orange County, Texas

128th Judicial District of Texas

CITATION

RECEIVED DEC 22 1962

CLAUDE J. TOMPLAIT

vs.

THE TRAVELERS INSURANCE CO., et al

Issued December 21, 19 62

By Ethel Burton, Clerk Deputy

Filed 31 Day of Dec. 1962

By Ethel Burton, Clerk Deputy

Port Printers

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MTB/ja 1/7/63

NO. 13,916

CLAUDE J. TOMPLAIT	)	IN THE DISTRICT COURT OF
VS.	)	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET AL	)	128TH JUDICIAL DISTRICT

ORIGINAL ANSWER OF DEFENDANT, QUEEN INSURANCE COMPANY OF AMERICA

COMES NOW the defendant, Queen Insurance Company of America, and files this its original answer, and for cause would show the Court the following:

1.

Defendant denies each and all and singular the allegations in plaintiff's petition contained, and demands strict proof thereof, and of this puts itself upon the country.

2.

Further by way of answer herein, and in the nature of an affirmative defense, under the provisions of Rule 93, defendant says that it neither received notice of injury, nor did the plaintiff file claim for compensation within the time provided by law, and further, under the provisions of said Rule, defendant specifically denies that it was the insurance company or was the carrier for plaintiff's employer at the time he alleges, in his petition, that the symptoms manifested themselves, and further denies specifically that there was good cause for failing to file his claim within the six months period provided by statute, all of which is pled in bar of suit herein.

3.

Further by way of answer herein, and in the alternative, defendant says that the conditions alleged by plaintiff, which he contends caused or brought about his disability or incapacity, did not occur under such circumstances as to bring them under the provisions of Section 26,

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Article 8306, Revised Civil Statutes of the State of Texas, and that, therefore, he is not entitled to recover herein.

4.

Further by way of answer herein, and in the alternative, defendant says that plaintiff's incapacity, if any, was temporary and partial only.

5.

Further by way of answer herein, and in the alternative, defendant says that plaintiff's incapacity, if any, was solely brought about or caused by injuries, diseases, or conditions, or a combination of such, in nowise related to or caused by any condition or accident sustained while in the course of his employment with said employer as alleged.

WHEREFORE, premises considered, defendant moves and prays the Court that plaintiff take nothing by his suit, that defendant go hence with costs, and for such other relief as it may show itself entitled to receive.

Respectfully submitted,

ORGAIN, BELL & TUCKER
First Federal Savings Building
Beaumont, Texas

By Cleve Bachman
Cleve Bachman
Attorneys for Defendant, Queen Insurance Company of America

THE STATE OF TEXAS §
§
COUNTY OF JEFFERSON §

I, Cleve Bachman, attorney of record for the Queen Insurance Company of America, do state, and swear, under oath, that such denial is made on information and belief that the facts alleged in paragraph 2 are true and correct.

Cleve Bachman

SWORN TO AND SUBSCRIBED before me, the undersigned authority, this 4th day of January, A. D. 1963.

Jane Adams
Notary Public in and for
Jefferson County, Texas

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Citation—District Court — Port Printers

THE STATE OF TEXAS

To: QUEEN INSURANCE COMPANY OF AMERICA
Upon whom service may be obtained by serving anyone subject to service in the office of G. J. Henry, 2405 Cedar Springs Road, Dallas, Texas, Attorney for Service.
Served H.A Watson - Agent
12-26-62 7:10 pm
16 miles

Greeting:

You are commanded to appear by filing a written answer to the Plaintiff's petition at or before 10 o'clock A. M. of the Monday next after the expiration of 20 days from the service hereof, before the Honorable District Court of Orange County for the 128th Judicial District of Texas, at the Court House in Orange, Texas.

Said plaintiff's petition was filed on the 21st day of December, 19 62

The file number of said suit being No. 13,916

The style of the case is

CLAUDE J. TOMPLAIT is - - - - - - - - - - - - - - - - - Plaintiff,

versus

THE TRAVELERS INSURANCE COMPANY, ET AL is - - - - - - Defendant.

A copy of plaintiff's petition accompanies this citation.

If this Citation is not served within 90 days after the date of its issuance, it shall be returned unserved.

Issued this the 21st day of December, A. D., 19 62

Given under my hand and seal of said Court, at office in Orange, Texas, this the 21st day of December, A. D., 19 62.

EXECUTE WHEN COPY IS DELIVERED:

This, a true copy of the original Citation, was delivered to Defendant:

_____

on the _____ day of _____ 19____

_____ Sheriff-Constable

_____ County, Texas

By _____ Deputy.

ETHEL BURTON, Clerk
District Court, Orange County, Texas

By _____ Deputy

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SHERIFF'S RETURN

Came to hand on the 22nd day of December, 19 62, at 9:49 o'clock A M., and executed in Dallas County, Texas, by delivering to ~~each of~~ the within named defendant~~s~~ in person, a true copy of this Citation together with the accompanying copy of the plaintiff's petition, at the following times and places, to-wit: ~~first endorsed on same the date of delivery;~~ having

NAME	DATE Month	Day	Year	TIME Hour	Min.	M.	Place, and Course and Distance From Court House	Mileage
Queen Insurance Company of America by delivering to H. C. Watson, its agent	December	26	1962	9	10	AM	16 miles	1.60

And not executed as to defendant__, _____

the diligence used in finding said defendant__, being: _____

and the cause of failure to execute this process is: _____

and the information received as to the whereabouts of the said defendant__, being: _____

I actually and necessarily traveled 16 miles in the service of this Citation, in addition to any other mileage I may have traveled in the service of other process in the same case during the same trip.

FEES—Serving 1 cop y, $ 1.25

Mileage 16 miles, 1.60

Total, ... $ 2.85

Paid by SSH

Bill Decker Sheriff

Dallas County, Texas

By J. F. Kemp Deputy

No. 13,916

DISTRICT COURT

Orange County, Texas

128th Judicial District of Texas

CITATION

CLAUDE J. TOMPLAIT

vs.

THE TRAVELERS INSURANCE CO., ET AL

Issued December 21, 19 62

Ethel Burton, Clerk

By _____ Deputy

Filed 8 Day of Jan, 19 62

Ethel Burton, Clerk

By Edna Emmons Deputy

Port Printers

Published by AsbestosClaims.Law
asbestosclaims.law/library/24593/97

NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET. AL.

ORIGINAL ANSWER OF DEFENDANT, TEXAS EMPLOYERS' INSURANCE ASSOCIATION

FILED

15th Day of Jan 1969

at 8:15, A M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By: Edna Emmons, Deputy

MARCUS & WELLER

ATTORNEYS AT LAW

GOODHUE BUILDING

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	)	IN THE DISTRICT COURT OF
VS.	)	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET. AL.	)	128TH JUDICIAL DISTRICT

ORIGINAL ANSWER OF DEFENDANT,
TEXAS EMPLOYERS' INSURANCE ASSOCIATION

COMES NOW Texas Employers' Insurance Association, named as a defendant in the above entitled and numbered cause, and files this, its original answer herein, and for answer to plaintiff's original petition herein, says:

I.

This defendant denies all and singular the allegations contained in said petition and demands strict proof thereof.

II.

This defendant specially denies that at the time of plaintiff's alleged injury made the basis of this suit, or prior to or thereafter, it was the Workmen's Compensation insurance carrier for Armstrong Contracting and Supply Corporation, alleged to be plaintiff's employer at the time of such injury; further, this defendant specially denies that at such time or at any time material hereto it had issued to said Armstrong Contracting and Supply Corporation any policy of workmen's compensation insurance covering the plaintiff, Claude J. Tomplait; and in accordance with the provision of Rule 93 (n) (6), Texas Rules of Civil Procedure, this defendant denies that it was in fact the carrier for said Armstrong Contracting and Supply Corporation at such time.

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WHEREFORE, this defendant prays that upon final hearing hereof, plaintiff recover nothing from it herein, and that it be permitted to go hence without day.

MARCUS & WELLER
P. O. BOX 350
BEAUMONT, TEXAS

BY David C. Marcus
ATTORNEYS FOR DEFENDANT,
TEXAS EMPLOYERS' INSURANCE ASSOCIATION

THE STATE OF TEXAS X
COUNTY OF JEFFERSON X

David C. Marcus, being duly sworn, on oath states that he is a duly authorized attorney for Texas Employers' Insurance Association, a defendant in the above entitled and numbered cause; that he is cognizant of the matters set out in the foregoing answer; and that the statements and allegations in Paragraph II of the foregoing answer are true and correct.

David C. Marcus
DAVID C. MARCUS

SUBSCRIBED AND SWORN TO by the said David C. Marcus, before me, the undersigned authority, on this, the 11th day of January, 1963.

Ouida L. Swope
NOTARY PUBLIC, JEFFERSON COUNTY, TEXAS

OUIDA L. SWOPE, Notary Public
In and for Jefferson County, Texas

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966) Published by AsbestosClaims.Law
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No. 13,916
IN THE DISTRICT COURT OF
ORANGE COUNTY, TEXAS.

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE CO.

DEFENDANT'S ORIGINAL ANSWER

FILED
17 Day of Sept 19
o'clock A M.
LETHEL DURTON
Clerk, District Court, Orange County, Texas
By Esbert Barrett Deputy

STRONG, PIPKIN, STRONG & NELSON
ATTORNEYS AT LAW
318 McFADDIN BUILDING - P. O. BOX 1682
BEAUMONT, TEXAS

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asbestosclaims.law/library/24593/101

No. 13,916.

CLAUDE J. TOMPLAIT § IN THE DISTRICT COURT OF
§
VS. §
§
THE TRAVELERS INSURANCE COMPANY ET AL § ORANGE COUNTY, TEXAS.

Now comes The Travelers Insurance Company, one of the Defendants in the above-entitled and numbered cause, and makes and files this, its answer to the plaintiff's First Original Petition, and for such answer would show unto the Court the following:

1.

This defendant denies generally, all and singular, the material allegations in plaintiff's petition contained, and says that same are not true, in whole or in part, and demanding strict proof thereof, puts itself upon the country.

WHEREFORE, premises considered, defendant prays that plaintiff take nothing herein, and that defendant go hence, without day, with its costs.

Attorneys for defendant,
P.O. Box 1632; 319 McFaddin Bldg.,
Beaumont, Texas.

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asbestosclaims.law/library/24593/102

NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

PLAINTIFF'S REQUEST FOR ADMISSION OF FACTS

FILED

24 Day of Jan 1963

at 10:20, A M.

ETHEL DUPTON

County Clerk, Orange County, Texas

By: Edna Emmons Deputy

LAW OFFICES

STEPHENSON, STEPHENSON AND THOMPSON

STEPHENSON BUILDING

ORANGE, TEXAS

Published by AsbestosClaims.Law
asbestosclaims.law/library/24593/103

No. 13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
	:	PLAINTIFF'S REQUESTS FOR
VS.	:	
	:	ADMISSION OF FACTS
THE TRAVELERS INSURANCE COMPANY, ET AL	:	

TO: THE TRAVELERS INSURANCE COMPANY
In care of Strong, Pipkin, Strong & Nelson
P. O. Box 1632, Beaumont, Texas

Comes now the plaintiff in the above entitled and numbered cause, and, in order to simplify the issues for the consideration of the Court and jury, makes the following requests for admission of facts under the provisions of Rule 169 of the Texas Rules of Civil Procedure, and demands that within eleven days after the service of these requests on the defendant insurance company or its attorneys, that the defendant insurance company admit under oath or deny under oath the following facts, and demands that each fact set forth be specifically admitted or denied. The defendant is here advised that a failure to specifically answer any request will be taken as an admission of the truth of the request. A true copy of this is being timely delivered to the Clerk of the Court for filing in this case.

1. That in the month of July, 1961, the plaintiff was an employee of Armstrong Contracting and Supply Corporation in Orange County, Texas.

2. That during the month above stated, certain physical conditions of the plaintiff became apparent while in the course of such employment in Orange County with the above named employer.

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
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3. That prior to the date above stated the defendant issued a policy of workman's compensation insurance to the plaintiff's employer, whereby said employer became a subscriber as that term is defined in the Employer's Liability Act of the State of Texas.

4. That such policy of insurance was in full force and effect on the date above stated.

5. That plaintiff's employer had actual notice of said personal injury and occupational disease within 30 days from the above stated date.

6. That if the plaintiff's employer did not have notice of said personal injury and occupational disease then that said employer was notified within thirty days of the date above stated that said plaintiff had sustained or was claiming to have sustained personal injury and occupational disease while in the course of his employment with said employer.

7. That the defendant herein had actual notice of the plaintiff's personal injury and occupational disease within thirty days from the above stated date.

8. That if the defendant herein did not have actual notice of said personal injury and occupational disease within thirty days of the above stated date then that the defendant was advised within thirty days of said date that the plaintiff was claiming to have sustained personal injury and occupational disease within the course of his employment with said employer.

9. That the books and records showing the number of days that plaintiff had been employed by said employer and the amount of money paid the plaintiff for such employment are available to the defendant insurance company for its inspection.

10. That the defendant insurance company has been furnished a record showing the numberof days that the plaintiff had worked for such employer during the year preceding the date of plaintiff's personal injury and occupational disease.

11. That the defendant insurance company has been furnished a record showing the amount of money that was paid the plaintiff for the time that the plaintiff worked for such employer during the year next preceding the date of plaintiff's personal injury and occupational disease.

12. That the plaintiff worked in the employment in which he was working at the time of his alleged personal injury and occupational disease for the same employer for at least two hundred ten (210) days of the year immediately preceding his injuries and earned at least $4.265 per hour during the days when so employed.

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13. That the plaintiff had been employed in the employment in which he was then working on the above stated date set out in Request No. 1, for the same or another employer, for at least two hundred ten (210) days of the year immediately preceding his personal injury and occupational disease.

14. That there was employed by plaintiff's employer at least one other employee of the same class as plaintiff, in the same or similar employment as plaintiff, in the same or a neighboring place, who worked for at least two hundred ten (210) days of the year immediately preceding the above date set out in Request for Admission No. 1.

15. That the employee inquired about in the preceding request for admission had an average daily wage of at least $34.12 during the days that he worked in the year next preceding the date of plaintiff's injuries inquired about in Request for Admission No. 1.

16. That an average weekly wage as a basisupon which to compute the compensation that the plaintiff is entitled to receive which would be just and fair to both the plaintiff and defendant would be $196.85.

17. That prior to, at the time of, and since the date specified in Request No. 1, the defendant had an agent with authority to investigate the plaintiff's claim for compensation.

18. That the defendant herein has authorized or solicited Dr. John C. Greco to examine and treat the plaintiff for his injuries.

19. That the defendant herein has paid or has agreed to pay Dr. John C. Greco for services rendered to the plaintiff herein.

20. That the plaintiff was directed by his employer, or his employer's agents having authority in the premises, to report to the above named doctor for examination or treatment.

21. That the plaintiff was directed by the defendant or its agent having authority in the premises to report to the above named doctor for examination or treatment.

22. That the above named doctor examined or treated the plaintiff for or on behalf of the defendant insurance company.

23. That the defendant insurance company has failed and refused to pay the plaintiff any compensation growing out of the personal injury and occupational disease alleged by the plaintiff in this suit.

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24. That the defendant insurance company has paid the plaintiff in this case compensation at the rate of $35.00 per week for a number of weeks for total disability growing out of the personal injury and occupational disease alleged by the plaintiff in his petition on file herein.

25. That the proper compensation rate for the plaintiff in this case for total disability as a result of the alleged injury in issue in this case is $35.00 per week.

26. That the defendant herein has secured from Dr. John C. Greco one medical report concerning the plaintiff's physical condition.

27. That the defendant herein has secured from Dr. John C. Greco two medical reports concerning the plaintiff's physical condition.

28. That the defendant herein has secured from Dr. John C. Greco three medical reports concerning the plaintiff's physical condition.

29. That within six months of the above stated date the plaintiff filed a claim for compensation, growing out of said personal injury and occupational disease with the Industrial Accident Board of the State of Texas.

30. That on the 18th day of December, 1962 the Industrial Accident Board of the State of Texas made a final ruling, decision and award on said claim for compensation filed by plaintiff.

31. That within twenty days of the date of said final award of the Industrial Accident Board, the plaintiff notified said Board that the plaintiff would not abide by the said final award and decision and would appeal therefrom.

32. That within twenty days after said notice of appeal was given to the Industrial Accident Board, the plaintiff filed this suit in this Court to set aside the said award and to have adjudicated his rights under the Workmen's Compensation Act of the State of Texas.

I certify that the above Requests for Admission of Facts were delivered to the above named defendant on this the 24th day of January, 1963, by mailing same on this date to Strong, Pipkin, Strong & Nelson, Beaumont, Texas Attorneys for Defendant, The Travelers Insurance Company.

STEPHENSON, STEPHENSON
AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

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NO. 13,916

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY

DEFENDANT'S ANSWER TO PLAINTIFF'S REQUEST FOR ADMISSIONS OF FACT

FILED

1 Day of Feb 1963

at 9:29 A M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Dorothy Dunn Deputy

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

319 McFADDIN BUILDING - P. O. BOX 1632

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	)	IN THE DISTRICT COURT OF
VS.	)	
THE TRAVELERS INSURANCE COMPANY	)	ORANGE COUNTY, TEXAS

DEFENDANT'S ANSWER TO PLAINTIFF'S REQUEST FOR ADMISSIONS OF FACT

The defendant, The Travelers Insurance Company, in the above entitled and numbered cause, makes the following statement in response to the Request for Admissions of Fact served upon it by plaintiff:

1.

Defendant objects to Request No. 2 for the reason that same is ambiguous, in that it inquires about certain physical conditions without setting forth what physical conditions the plaintiff is inquiring about; however, defendant denies that any physical condition became apparent while in the employ of Armstrong Contracting and Supply Corporation.

2.

In response to Request No. 5, defendant, The Travelers Insurance Company, denies that the plaintiff sustained a personal injury or occupational disease and denies that it had notice within thirty (30) days that the plaintiff was claiming to have sustained either.

3.

In response to Request No. 6, defendant denies that the plaintiff sustained a personal injury or occupational disease and further denies that it was notified within thirty (30) days that the plaintiff was claiming to have sustained a personal injury or occupational disease as set forth in Request No. 6.

4.

In response to Request No. 7, defendant denies that the plaintiff sustained any personal injury or occupational disease and denies that it had actual notice that plaintiff was claiming to have sustained any personal injury or occupational

disease.

5.

In response to Request No. 8, defendant denies that it was advised within thirty (30) days that the plaintiff was claiming to have sustained a personal injury ad occupational disease within the course of his employment and denies that he did sustain a personal injury or occupational disease.

6.

In response to Request No. 10, defendant denies that the plaintiff sustained any personal injury or occupational disease.

7.

In response to Request No. 11, defendant denies that the plaintiff sustained any personal injury or occupational disease.

8.

In response to Request No. 12, defendant denies that the plaintiff sustained any personal injury or occupational disease and denies that he worked for the Armstrong Contracting and Supply Corporation 210 days as set forth in said request.

9.

In response to Request No. 13, defendant objects for the reason that same refers to Request No. 1 and the date set forth therein, and in this connection defendant would show the Court that there is no specific date set forth in Request No. 1, and for that reason this defendant cannot either admit or deny said request. However, if an answer be required, defendant denies the truth of the matters set forth therein, and denies that the plaintiff sustained any personal injury or occupational disease.

10.

In response to Request No. 14, defendant objects for the reasons set forth in reply to No. 13; however, if an answer be required, defendant denies the truth of the matters set forth therein.

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11.

In response to Request No. 15, defendant denies that plaintiff sustained any injuries and further objects for the reasons set forth in Request No. 13.

12.

In response to Request No. 16, defendant denies the truth of the matters set forth therein.

13.

In response to Request No. 18, defendant denies the truth of the matters set forth therein.

14.

In response to Request No. 19, defendant denies the truth of the matters set forth therein.

15.

In response to Request No. 20, defendant denies the truth of the matters set forth therein.

16.

In response to Request No. 21, defendant denies the truth of the matters set forth therein.

17.

In response to Request No. 22, defendant denies the truth of the matters set forth therein.

18.

In response to Request No. 23, defendant, The Travelers Insurance Company, admits that it has failed and refused to pay the plaintiff any compensation, and denies that it owes plaintiff any compensation, and denies that the plaintiff sustained any personal injury or occupational disease as alleged while in the employ of Armstrong Contracting and Supply Corporation, and for said reasons, the defendant is not liable and does not and has not owed the plaintiff any workmen's compensation.

19.

In response to Request No. 24, defendant denies that it has paid the plaintiff any compensation and further denies that the plaintiff sustained any personal injury or occupational disease as set forth in said request or that he has sustained

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any total disability.

20.

In response to Request No. 25, defendant denies that the plaintiff has sustained any total disability, and further denies that the proper compensation rate, if he had sustained any, would be $35 per week.

21.

In response to Request No. 26, defendant denies the truth of the matters set forth therein.

22.

In response to Request No. 27, defendant denies the truth of the matters set forth therein.

23.

In response to Request No. 28, defendant denies the truth of the matters set forth therein.

24.

In response to Request No. 29, defendant objects for the reason that said request is ambiguous, in that it refers to the above stated date, and there is no above stated date to which to refer; however, defendant denies that plaintiff sustained any personal injury or occupational disease.

CHARLES S. PIPKIN

Gordon R Pate

Attorneys for Defendant.
The Travelers Insurance Company
319 McFaddin Bldg., P.O. Box 1632
Beaumont, Texas

THE STATE OF TEXAS }
COUNTY OF JEFFERSON }

BEFORE ME, the undersigned authority, on this day personally appeared Gordon R. Pate, who being by me duly sworn, deposes and says:

That he is one of the attorneys for the defendant in the above entitled and numbered cause, and that as such he is authorized to make this affidavit for and on behalf of said defendant; that he has read the plaintiff's Request for Admissions of Fact and he has read the above statement in response thereto,

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and that the above statements made in response to the Requests are true and correct.

Gordon Pate

SUBSCRIBED AND SWORN TO BEFORE ME on this the 31 day of January, 1963.

Elaine Ritter
Notary Public in and for
Jefferson County, Texas.

A copy of the foregoing Defendant's Answer to Plaintiff's Request for Admissions of Fact was served upon Mr. Ward Stephenson, Stephenson Bldg., Orange, Texas, Attorney for Plaintiff, by ~~delivering~~ a copy to him on the 1st day of February, 1963.

W. Gilbert Fox

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

MOTION FOR SUMMARY JUDGMENT

FILED

18 Day of Feb 1963

at 4:45 P M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Vera Semple Deputy

Recorded Vol P-1 page 37

Judged Comp

ORGAIN, BELL & TUCKER

ATTORNEYS AT LAW

BEAUMONT, TEXAS

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CB/ja 2/13/63

NO. 13,916

CLAUDE J. TOMPLAIT		IN THE DISTRICT COURT
VS.		OF
THE TRAVELERS INSURANCE COMPANY, ET AL		ORANGE COUNTY, TEXAS

MOTION FOR SUMMARY JUDGMENT

COMES NOW the defendant, Queen Insurance Company of America, and files this its motion for summary judgment under the provisions of Rule 166-A of the Texas Rules of Civil Procedure, and as grounds therefor would show unto the Court the following:

1.

Your defendant moves for a summary judgment in this cause, contending that it was not the insurance carrier for the plaintiff's employer during the period or at the time which he alleges and contends the occupational disease causing or bringing about incapacity or disability manifested itself, and, therefore, this defendant is not in law liable for any benefits under the provisions of such act.

2.

In connection with this motion for summary judgment, defendant attaches hereto and makes a part hereof Exhibit "A", which is an affidavit from the Industrial Accident Board of the State of Texas.

WHEREFORE, premises considered, defendant moves and prays this Honorable Court set this hearing for summary judgment down ten (10) days from date of notice to the opposing parties, and that judgment be entered that the plaintiff take nothing by his claim against Queen Insurance Company of America, and that said company go hence with costs and for such other relief as it may show itself entitled to receive.

Respectfully submitted,

ORGAIN, BELL & TUCKER
First Federal Savings Building
Beaumont, Texas

By _____
Cleve Bachman
Attorneys for Defendant, Queen Insurance Company of America

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I, Clove Bachman, do hereby certify that a copy of this Motion for Summary Judgment has this date been served on the firm of Stephenson, Stephenson & Thompson, Counsel for the Plaintiff, by delivering a copy in person to said firm, this the _____ day of February, A.D., 1963.

Clove Bachman

The above captioned cause is set for hearing on the 1st day of March, 1963, at ten o'clock A.M.

James N. Neff
Judge Presiding

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STATE OF TEXAS I

COUNTY OF TRAVIS I

I, LES MORELAND, Secretary and Custodian of the Records of the Industrial Accident Board of the State of Texas, DO HEREBY CERTIFY that:

ARMSTRONG CONTRACTING AND SUPPLY CORPORATION

1824 NORTH INDUSTRIAL BOULEVARD
DALLAS, TEXAS

311 LEELAND AVENUE
HOUSTON, TEXAS

9140 PREMIER ROW
DALLAS 7, TEXAS

7310 ARDMORE
HOUSTON 21, TEXAS

610 NORTH MEDINA
SAN ANTONIO 7, TEXAS

was for the period of January 1, 1961 through December 31, 1962 a subscriber to the Texas Workmen's Compensation Act under a policyof insurance issued by the Travelers Insurance Company, and which was at all times in force during the period according to the records in this Department in the Subscriber's File captioned:

SUBSCRIBER FILE NUMBER 95284
ARMSTRONG CONTRACTING AND SUPPLY CORPORATION

I FURTHER CERTIFY that according to the records of this Department such Workmen's Compensation Insurance Coverage was based on policies issued to ARMSTRONG CONTRACTING AND SUPPLY CORPORATION by Travelers Insurance Company and not Queen Insurance Company of America.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of the Industrial Accident Board at its offices in the State Insurance Building in Austin, Texas, on this 14th day of February A. D. 1963.

LES MORELAND, SECRETARY

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET. AL.

MOTION FOR SUMMARY JUDGMENT

FILED

18 Day of Feb. 1965

at 1:45 P.M.

ETHEL BURTON

Clerk District Court, Orange County, Texas

By Vera Sanford Deputy

Recorded Vol. P-1 Page 31

Minute Book

MARCUS & WELLER

ATTORNEYS AT LAW

GOODHUE BUILDING

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	X	IN THE DISTRICT COURT OF
VS.	X	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET. AL.	X	128TH JUDICIAL DISTRICT

MOTION FOR SUMMARY JUDGMENT

COMES NOW the defendant, Texas Employers' Insurance Association, and files this, its motion for summary judgment herein, under the provisions of Rule 166-A of the Texas Rules of Civil Procedure, and as grounds therefor respectfully shows to the court:

I.

This is a suit for workmen's compensation benefits based on injury from occupational disease allegedly sustained by plaintiff while in the course of his employment with Armstrong Contracting and Supply Corporation, the first distinct manifestation thereof being in July, 1961. This defendant has filed a sworn denial, as provided by Rule 93 (n) (6) of the Texas Rules of Civil Procedure, that it was the insurer of Armstrong Contracting and Supply Corporation at such time, reference being made to such pleading.

II.

Attached hereto and made a part hereof is a certificate issued by Les Moreland, Secretary of the Industrial Accident Board of the State of Texas, and given under the seal of said Board, wherein it is certified that this defendant did not provide any coverage for said Armstrong Contracting and Supply Corporation from January 1, 1961 through December 31, 1962, but that such coverage was based

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on policies issued to Armstrong Contracting and Supply Corporation by The Travelers Insurance Company, such certificate being marked Exhibit A for identification.

III.

This defendant says that since it was not the insurance carrier for plaintiff's employer during the period or at the time he alleges the occupational disease causing or bringing about his incapacity manifested itself, it is entitled to a summary judgment herein providing that plaintiff recover nothing from it herein.

WHEREFORE, this defendant moves and prays this Honorable Court to set a hearing on this motion for summary judgment, ten (10) days after notice to the opposing parties, and that a summary judgment be entered herein that plaintiff take nothing by his suit herein as against this defendant, and that it be permitted to go hence without day.

Respectfully submitted,

MARCUS & WELLER
P. O. BOX 350
BEAUMONT, TEXAS

BY: David E Weller
ATTORNEYS FOR DEFENDANT, TEXAS EMPLOYERS' INSURANCE ASSOCIATION

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
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ORDER

On this, the 18th day of February, 1963, the court hereby sets the foregoing motion for summary judgment for hearing on the 1st day of March, 1963, at 10 o'clock A.M.

James N. Nelson
DISTRICT JUDGE PRESIDING

A copy of the foregoing motion for summary judgment and order setting hearing thereof was delivered-mailed, to Messrs. Stephenson, Stephenson & Thompson, Stephenson Building, Orange, Texas, attorneys for plaintiff, Claude J. Tomplait, on the _____ day of February, 1963.

David L. Mann
ATTORNEY FOR DEFENDANT, TEXAS EMPLOYERS' INSURANCE ASSOCIATION

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
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STATE OF TEXAS I

COUNTY OF TRAVIS I

I, LES MORELAND, Secretary and Custodian of the Records of the Industrial Accident Board of the State of Texas, DO HEREBY CERTIFY that:

ARMSTRONG CONTRACTING AND SUPPLY CORPORATION

1824 NORTH INDUSTRIAL BOULEVARD
DALLAS, TEXAS

311 LEELAND AVENUE
HOUSTON, TEXAS

9140 PREMIER ROW
DALLAS 7, TEXAS

7310 ARDMORE
HOUSTON 21, TEXAS

610 NORTH MEDINA
SAN ANTONIO 7, TEXAS

was for the period of January 1, 1961 through December 31, 1962 a subscriber to the Texas Workmen's Compensation Act under a policy of insurance issued by the Travelers Insurance Company, and which was at all times in force during the period according to the records in this Department in the Subscriber's File captioned:

SUBSCRIBER FILE NUMBER 95284
ARMSTRONG CONTRACTING AND SUPPLY CORPORATION

I FURTHER CERTIFY that according to the records of this Department such Workmen's Compensation Insurance Coverage was based on policies issued to ARMSTRONG CONTRACTING AND SUPPLY CORPORATION by Travelers Insurance Company and not Texas Employers' Insurance Association.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of the Industrial Accident Board at its offices in the State Insurance Building in Austin, Texas, on this 6th Day of February A.D. 1963.

Les Moreland

LES MORELAND, SECRETARY

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NO. 13,916

IN THE DISTRICT COURT OF
ORANGE COUNTY, TEXAS.

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY

NOTICE TO TAKE DEPOSITION OF
MR. JOHN W. BRADLEY
AND
DIRECT INTERROGATORIES

FILED

22 Day of 9-6. 1963

at 8:30 A.M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Ethel Burton Deputy

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

318 McFADDIN BUILDING - P. O. BOX 1632

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	)	IN THE DISTRICT COURT OF
VS.	)	
THE TRAVELERS INSURANCE COMPANY, ET AL.	)	ORANGE COUNTY, TEXAS

TO: Claude J. Tomplait, Plaintiff, through his attorney of record, Mr. Ward Stephenson, Stephenson Building, Orange, Texas.

NOTICE is hereby given to Claude J. Tomplait, plaintiff in this case, and/or his attorney of record that five (5) days after service of this Notice and of the interrogatories hereto attached, the defendant, The Travelers Insurance Co. and/or its attorneys of record, shall apply to the Clerk of the District Court of Orange County, Texas, for a commission to take the deposition of Mr. John W. Bradley, a witness who is Unemployment Insurance Supervisor of the Texas Employment Commission, at Austin, Travis County, Texas, in accordance with the attached interrogatories, which deposition will be used as evidence in the above-entitled and numbered cause.

CHARLES S. PIPKIN

Gordon Pipkin

819 McFaddin Bldg., P. O. Box 1632
Beaumont, Texas

Attorneys for Defendant,
The Travelers Insurance Co.

A copy of the foregoing Notice and Interrogatories was mailed to Mr. Ward Stephenson, Stephenson Bldg., Orange, Texas,

on the 27 day of February, 1963.

Gordon Pipkin

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NO. 13,916

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS.

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY

MOTION FOR SUMMARY JUDGMENT

FILED

1st Day of March 1963

at 8:50, A M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Edna Brown Deputy

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

319 MEFADDIN BUILDING - P. O. BOX 1632

BEAUMONT, TEXAS

NO. 13,916

CLAUDE J. TOMPLAIT	)	IN THE DISTRICT COURT OF
VS.	)	
THE TRAVELERS INSURANCE COMPANY	)	ORANGE COUNTY, TEXAS

MOTION FOR SUMMARY JUDGMENT

COMES NOW the defendant, The Travelers Insurance Company, and files this its Motion for Summary Judgment under the provisions of Rule 166-A of the Texas Rules of Civil Procedure, and as grounds therefor would show unto the Court the following:

1.

This defendant moves for a summary judgment in this cause, contending that it was not the insurance carrier for the plaintiff's employer as same is defined in the Workmen's Compensation Act at the time the employee was "last injuriously exposed to the hazards" of the disease for which he claims he is entitled to recover workmen's compensation benefits in the present suit. The plaintiff is claiming workmen's compensation benefits for asbestosis and silicosis, and in this connection this defendant would show the Court that the plaintiff's deposition has been taken and that the plaintiff has testified under cath that he was last injuriously exposed to the hazards of such disease in the latter part of 1962. Therefore, under the terms and provisions of the Workmen's Compensation Act, if the claimant is entitled to recover any workmen's compensation benefits, which this defendant does not admit, then same is recoverable against the insurance carrier for the employer in whose employ he was last injuriously exposed to the hazards of such disease, which was not Armstrong Contracting & Supply Corporation for whom The Travelers Insurance Company was the carrier.

WHEREFORE, premises considered, defendant moves and prays this Honorable Court to set a hearing on this Motion for

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Summary Judgment, and that upon a hearing that summary judgment be granted in favor of this defendant and that judgment be entered that the plaintiff take nothing by reason of his claim against The Travelers Insurance Company and that said Company go hence with its costs, and for such other and further relief as it may show itself justly entitled to receive.

Respectfully submitted,

CHARLES S. PIPKIN



Attorneys for Defendant,
The Travelers Insurance Company

319 McFaddin Bldg., P.O. Box 1632
Beaumont, Texas.

NO. 13,916

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS.

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY

NOTICE TO TAKE DEPOSITION OF
DR. JOHN C. GRECO
AND
DIRECT INTERROGATORIES

FILED

1 Day of March 1963

at 9 o'clock A M

Ethel Burton

Clerk District Court, Orange County, Texas

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

319 McFADDIN BUILDING - P. O. BOX 1632

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	)	IN THE DISTRICT COURT OF
VS.	)	
THE TRAVELERS INSURANCE COMPANY	)	ORANGE COUNTY, TEXAS

TO: CLAUDE J. TOMPLAIT, Plaintiff, through his attorney of record, Mr. Ward Stephenson, Stephenson Building, Orange, Texas.

NOTICE is hereby given to CLAUDE J. TOMPLAIT, plaintiff in this cause, and/or his attorney of record, that five (5) days after service of this Notice and of the interrogatories hereto attached, the defendant, The Travelers Insurance Company, and/or its attorneys of record, shall apply to the Clerk of the District Court of Orange County, Texas, for a commission to take the deposition of Dr. John C. Greco, a witness, who has his office at 2832 Texas Street, Bridge City, Orange County, Texas, in accordance with the attached interrogatories, and for a subpoena duces tecum requiring said witness to produce all medical records, office records, correspondence received by him and correspondence directed by him to others, and claim forms pertaining to Claude J. Tomplait.

CHARLES S. PIPKIN

Attorneys for Defendant,
The Travelers Insurance Company

319 McFaddin Bldg., P.O. Box 1632
Beaumont, Texas

A copy of the foregoing Notice and interrogatories was mailed to Mr. Ward Stephenson, Stephenson Bldg., Orange, Texas, attorney for plaintiff, on the 6 day of March, 1963.

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Direct Interrogatories to be propounded to Dr. John C. Greco, 2832 Texas Street, Bridge City, Texas:

Interrogatory Number

1. Is your name John C. Greco?

2. Has a man by the name of Claude J. Tomplait come to you for examination or treatment at any time in or after July, 1961?

3. When was the first time that you saw Claude J. Tomplait in or after July, 1961?

4. Please state what history, if any, that you obtained on the first time that you saw Mr. Tomplait in or after July, 1961.

5. How many times did you see Mr. Tomplait after July, 1961, and on what dates, and what were his complaints?

6. When did you discharge Mr. Tomplait from further treatment after July, 1961?

7. Have you seen Mr. Tomplait for any accident and/or illness or disease since July, 1961, and if so, with respect to each accident, illness or disease, please give the date of the accident and/or illness or disease and the part of the body that Mr. Tomplait was complaining of, and the nature and duration of the illness.

8. Have you written any reports to anyone concerning the physical or mental condition of Mr. Tomplait since July, 1961?

9. If you have answered the foregoing interrogatory "Yes," then please hand to the Court Reporter one copy of each of such letters or other written memoranda that you have forwarded to any person, firm or corporation so that he may mark same for identification, have same photostated and attached to this deposition, and return the original to you.

10. Have you received any letters, written memoranda or forms from any person, firm or corporation concerning the physical and mental condition of Claude J. Tomplait since July, 1961?

11. If you have answered the foregoing interrogatory "Yes," then please hand to the Court Reporter a copy of any such letters or other written memoranda that you have received from any person, firm or corporation so that he may mark same for identification, have same photostated and attached to this deposition and return the original to you.

12. Do you have any written notes, patients' cards, forms or written office records concerning Claude J. Tomplait in or after July, 1961?

13. If you have answered the foregoing interrogatory "Yes," then please read to the court reporter the information

contained on such written notes, patients' cards, forms or written office records, identifying the type of record from which such information is being read and the date thereof.

14. Have you had occasion to examine or treat Mr. Tomplait for an accident and/or illness or disease prior to July, 1961?

15. If you have answered the foregoing interrogatory "Yes," then please state with respect to each accident and/or illness or disease complained of the following: (a) the date of the alleged accident, illness or disease; (b) the part of the body Mr. Tomplait was comlaining of; and (c) who you sent written reports to. Also, please hand to the Court Reporter a copy of each of such written reports with respect to each accident, illness, or disease complained of prior to July, 1961, so that he may mark same for identification; have the same photostated and attached to this deposition, and then return the originals to you.

16. Please hand to the Court Reporter any written notations or other written office records that you have pertaining to Claude J. Tomplait concerning any examinations or treatments prior to July, 1961, in order that he may mark same for identification, have the same photostated and attached to this deposition, and then return the originals to you.

CHARLES S. PIPKIN

Taylor Pate

Attorneys for Defendant,
The Travelers Insurance Company

319 McFaddin Bldg., P.O. Box 1632
Beaumont, Texas

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NO. 13,916

IN THE DISTRICT COURT OF
ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE CO.

NOTICE TO TAKE DEPOSITION OF
DR. W. V. LEARY
AND DIRECT INTERROGATORIES

FILED

8 Day of March 1963

at 9:00, A M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Vera Sanford Deputy

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

319 McFADDIN BUILDING, P. O. BOX 1535

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT § IN THE DISTRICT COURT OF

VS. §

THE TRAVELERS INSURANCE COMPANY § ORANGE COUNTY, TEXAS

TO: CLAUDE J. TOMPLAIT, Plaintiff, through his attorney of record, Mr. Ward Stephenson, Stephenson Building, Orange, Texas.

NOTICE is hereby given to CLAUDE J. TOMPLAIT, plaintiff in this cause, and/or his attorney of record, that five (5) days after service of this Notice and of the interrogatories hereto attached, the defendant, The Travelers Insurance Company, and/or its attorneys of record, shall apply to the Clerk of the District Court of Orange County, Texas, for a commission to take the deposition of Dr. W. V. Leary, a witness, who has his office at the Kelsey-Leary-Seybold Clinic, 6655 Travis Street, Houston, Harris County, Texas, in accordance with the attached interrogatories, and for a subpoena duces tecum requiring said witness to produce all medical records, office records, correspondence received by him and correspondence directed by him to others, and claim forms pertaining to Claude J. Tomplait.

CHARLES S. PIPKIN

Attorneys for Defendant,
The Travelers Insurance Company

319 McFaddin Bldg., P.O. Box 1632
Beaumont, Texas

A copy of the foregoing Notice and interrogatories was mailed to Mr. Ward Stephenson, Stephenson Bldg., Orange, Texas, attorney for plaintiff, on the 7 day of March, 1963.

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Direct Interrogatories to be propounded to Dr. W. V. Leary of the Kelsey-Leary-Seybold Clinic, 6655 Travis Street, Houston 25, Texas

Interrogatory Number

1. Please state your name and residence.
2. What business or profession are you engaged in?
3. Are you duly licensed to practice your profession in the State of Texas?
4. Is your license on file in the county in which you practice?
5. How long have you been practicing your profession?
6. Are you a graduate of a medical school, and, if so, please state the name of the school and the year of your graduation.
7. What branch of the medical profession are you engaged in?
8. Are you a member of any Boards or Societies? If so, please list.
9. Have you had an occasion to see Mr. Claude J. Tomplait professionally?
10. What is the date that you first saw Claude J. Tomplait professionally, and where did you see him?
11. Did you have occasion to examine Claude J. Tomplait?
12. Did you have an occasion to treat Claude J. Tomplait?
13. Please state the dates that you saw Claude J. Tomplait professionally.
14. Did you obtain a history from Claude J. Tomplait?
15. If you answered the foregoing interrogatory that you obtained a history, then explain what a history is.
16. Please state what history you obtained from Claude J. Tomplait.
17. Where did you obtain the history?
18. Is the history something that Claude J. Tomplait himself told or related to you?
19. What was the nature of the complaints or symptoms that Claude J. Tomplait gave you?
20. What parts of his body did Claude J. Tomplait complain of?
21. Please state how long Claude J. Tomplait had been suffering from the condition, if any, that you saw him for.
22. Please state what your findings were as a result of your examination of Claude J. Tomplait.
23. How long did Claude J. Tomplait tell you he had been suffering from the condition that you saw him for?
24. What were his complaints on the date that you first saw him?

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25. Had Claude J. Tomplait had any similar trouble or complaints prior to December 10, 1960?

26. Do you have an opinion as to whether his work with Armstrong Contracting & Supply Corporation from December 11, 1960 to August 27, 1961 had anything to do with the condition for which you saw him?

27. If you have an opinion, then please give same and explain the basis for your opinion.

CHARLES S. PIPKIN

Gordon Pate

Attorneys for Defendant,
The Travelers Insurance Company

319 McFaddin Blgd., P.O. Box 1632
Beaumont, Texas

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NO. 13,916

IN THE DISTRICT COURT OF
ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE CO.

DEFENDANT'S FIRST AMENDED ORIGINAL ANSWER AND CROSS-ACTION

FILED

14 Day of March 19[illegible]

at 12:3[illegible] P.M.

ETHEL LURTON

Clerk, District Court, Orange County, Texas

By [illegible] Deputy

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

[illegible] ALADDIN BUILDING - P. O. BOX [illegible]

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	§	IN THE DISTRICT COURT OF
VS.	§	
THE TRAVELERS INSURANCE COMPANY	§	ORANGE COUNTY, TEXAS

DEFENDANT'S FIRST AMENDED ORIGINAL ANSWER
AND CROSS-ACTION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES The Travelers Insurance Company, defendant in the above entitled and numbered cause, and makes and files this its First Amended Original Answer herein to the petition of the plaintiff, and for such answer says:

1.

Defendant specially excepts to the allegation contained in Paragraph 1 and to plaintiff's petition as a whole for the reason that plaintiff alleges no specific date as to when the injury occurred or the occupational disease manifested itself, for the following reasons:

(a) Because under the provisions of the Workmen's Compensation Law, it is necessary for the plaintiff to comply with certain statutory requirements within a given period following the date of an injury or the date that an occupational disease manifested itself, and plaintiff's petition is insufficient to permit this defendant to properly prepare its defense or to know what proof it will be expected to meet upon a trial of this case.

Of which special exception defendant prays judgment of the Court.

2.

Defendant specially excepts to the allegations contained in Paragraph No. 3 wherein it is alleged:

> "Personal injury and occupational disease, asbestosis and silicosis;"

for the following reasons:

(a) Because plaintiff is attempting to allege both a personal injury and an occupational disease, and same are governed by different

provisions of the Workmen's Compensation Law;

(b) Because plaintiff should be required to elect whether he is going to attempt to recover under the provisions of the Workmen's Compensation Law pertaining to a personal injury or under the provisions of the Workmen's Compensation Law pertaining to an occupational disease, for the reason that different provisions with reference to recovery of weekly benefits and medical expenses govern the two types of recovery.

Of which special exception defendant prays judgmen Court.

3.

Defendant specially excepts to the allegations contained in Paragraph 3 of plaintiff's petition wherein it is alleged:

"prolonged or accelerated a prior condition."

for the following reasons:

(a) Plaintiff refers to a prior condition without ... forth specifically what prior condition existed.

(b) Because plaintiff should be required to plead what prior conditions he was suffering from in order that this defendant may properly prepare its defense and know what facts or proof it will be expected to meet upon a trial of this case.

Of which special exception defendant prays judgment of the Court.

4.

Defendant specially excepts to the allegations contained in Paragraph 6 of plaintiff's petition wherein plaintiff attempts to sue for medical expenses which have been and will be reasonably necessary, because the same is insufficient in law, in that there is no provision in the Workmen's Compensation Act for recovery of future medical expenses, it being specifically provided that no recovery can be had for any medical expenses not actually furnished to and received by the employee, and, therefore, said allegations insofar as they pertain to future medical expenses are improper; of which special exception defendant prays judgment of the Court.

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5.

Defendant excepts to Paragraph 6 of plaintiff's petition wherein plaintiff attempts to sue for medical expenses which have been incurred, because same is insufficient in law and does not state specifically what medical aid, hospital services, chiropractic services, and medicines provided for by the Texas Workmen's Compensation Law plaintiff has incurred and whether same has been paid and further for the reason that plaintiff is seeking to recover for an occupational disease, and the medical aid and medical services under the provisions of Section 26 of Article 8306 pertaining to occupational disease is limited to a period of 91 days, and plaintiff does not allege the date that said medical expenses and services were incurred; of which special exception defendant prays Judgment of the Court.

6.

Defendant specially excepts to plaintiff's petition as a whole for the reason that he is attempting to recover for an occupational disease: namely, silicosis and asbestosis, and under the provisions of Section 26, Article 8306, defendant is not liable unless during the ten (10) years immediately preceding the date of incapacity, the employee has been exposed to the inhalation of silica dust or asbestos dust over a period of not less than five (5) years, two (2) years of which shall have been in this State, or the said employee has been employed by the same employer during the whole of the 5-year period immediately preceding his incapacity, and under the pleadings contained in plaintiff's original petition, same is insufficient as a matter of law to afford any basis for the recovery under the occupational disease provisions of the Workmen's Compensation Act. Of which special exception defendant prays Judgment of the Court.

7.

Defendant specially denies the allegations contained in Paragraph No. 5 of plaintiff's original petition wherein it is alleged that within thirty (30) days plaintiff notified his employer,

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and in this connection defendant here pleads and alleges that plaintiff did not give notice within thirty (30) days from the alleged date of the occurrence made the basis of this suit and that his alleged employe r, Armstrong Contracting & Supply Corporation, had no notice or knowledge that plaintiff was claiming to have sustained an injury or occupational disease within thirty (30) days from the date plaintiff alleges that same occurred.

8.

Defendant specially denies that Armstrong Contracting & Supply Corporation was the employer of the plaintiff, Claude J. Tomplait, within the meaning of the Texas Workmen's Compensation Act at the time the condition, disability, or incapacity, if any, made the basis of this suit arose.

9.

Defendant denies generally, all and singular, the material allegations in plaintiff's petition contained, and says that same are not true in whole or in part, and demanding strict proof thereof, puts itself upon the country.

10.

Further answering herein, defendant denies that plaintiff sustained an accident or injury or incurred an occupational disease in the course of his employment for Armstrong Contracting & Supply Corporation and says that if plaintiff had any incapacity or disability as claimed or alleged, the same was solely caused by disease or pre-existing conditions, and in this connection, defendant would show the Court that the plaintiff had been suffering from the condition made the basic of his present claim for a period of several years prior to his employment with Armstrong Contracting & Supply Corporation.

11.

Further answering herein and in the alternative, in the event plaintiff had any impacity or disability which was not solely caused by disease or pre-existing conditions or some combination thereof, then in that event defendant says that disease, pre-existing

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conditions, or some combination thereof, were the sole cause of a distinct and separate percentage of any such incapacity, and that any incapacity in any way contributed to by an injury or an occupational disease, if any, while in the employment of Armstrong Contracting & Supply Corporation was only a small percentage, not to exceed 10%, and was temporary, after which any remaining disability was solely caused by disease, pre-existing conditions, or subsequent conditions, or some combination thereof.

12.

Further answering herein and in the alternative, defendant says that any incapacity plaintiff had was not sufficient to affect his average weekly wage earning capacity, in that plaintiff's average weekly wage earning capacity after any occurrence made the basis of plaintiff's claim and suit was equal to or greater than his average weekly wage at the time of any such occurrence, or in the alternative, in the event plaintiff had any incapacity which was sufficient to affect his average weekly wage earning capacity to decrease same below his average weekly wages, then in that event, defendant says same was only temporary and partial, after which his average wage earning capacity was equal to or greater than his average weekly wages at the time of the occurrence, if any.

13.

Further answering herein and in the alternative, defendant says that plaintiff has had an average weekly wage earning capacity and has worked for at least four (4) employers subsequent to his employment with Armstrong Contracting & Supply Corporation and will continue to have an average weekly wage earning capacity, and thus has not sustained and will not sustain any total disability.

14.

Further answering herein and in the alternative, defendant says that the condition for which the plaintiff presently complains existed prior to his employment for Armstrong Contracting & Supply Corporation and that if plaintiff had not had any incapacity as claimed or alleged in his petition, then same was an incapacity

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to which such prior condition and its effects and the occupational disease made the basis of plaintiff's suit, if any, contributed, and had plaintiff not had said prior condition, he would have sustained no incapacity; or in the alternative, same would only have been temporary and partial.

15.

Further answering herein and in the alternative, defendant says that in the event plaintiff sustained any occupational disease in the course of his employment for Armstrong Contracting & Supply Corporation, then in that event, defendat says that plaintiff had suffered from disease, infirmities, pre-existing conditions, and other ailments which were noncompensable causes under the Texas Workmen's Compensation Law, and any incapacity plaintiff is claiming or alleging in his suit, if any, if in any way connected with any occupational disease, is an incapacity brought about by said non-compensable causes aggravating said occupational disease, or said occupational disease aggravated, prolonged, or accelerated the incapacity from said noncompensable causes, and in this connection defendant says that occupational disease, if any, as a causative factor as related to all other causes of any such incapacity only caused a minor amount of said incapacity, not to exceed 10%, and further, that same was temporary.

16.

Further answering herein, defendant alleges, in the alternative, that in the event plaintiff sustained any occupational disease in the course of his employment for Armstrong Contracting & Supply Corporation, the same only caused an acute condition which could be arrested by a change of employment or medical treatment which would leave plaintiff suffering from no objective symptoms, and with such change of employment or medical treatment, same would only persist for a period of a few weeks' duration.

17.

Defendant would further show to the Court that subsequent to the plaintiff's employment with Armstrong Contracting & Supply

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Corporation, plaintiff has worked for at least two (2) employers in whose employment he has been injuriously exposed to the hazards of the disease made the basis of his present claim, to-wit: Johns-Mansville Company and the Aber Company, and under the provisions of the Workmen's Compensation Law, the last employer for whom the plaintiff works and is injuriously exposed to the hazards of said disease is his employer, or in the alternative, defendant says that plaintiff's employment with said employers contributed a large percent to his present incapacity or disability, if any, and defendant would show the Court that had plaintiff not worked for said employers and injuriously exposed himself to the hazards of said disease, that his incapacity, if any, resulting from his employment with Armstrong Contracting & Supply Corporation would not have exceeded 10% and would have been temporary in nature.

18.

Further answering herein and in the alternative, defendant would show the Court that under the provisions of Section 25, Article 8306, that this defendant is not liable for the plaintiff's incapacity, if any, sustained while working in the employment of Armstrong Contracting & Supply Corporation for the reason that plaintiff's incapacity, if any, did not result within one (1) year from the date of his employment with said company for the reason that the plaintiff has continued to work in said employment up to and including 1962 and a portion of 1963.

WHEREFORE, premises considered, defendant prays that plaintiff take nothing herein and that defendant go hence without day with its costs.

CHARLES S. PIPKIN

Gordon Pate

Attorneys for Defendant,
The Travelers Insurance Company
P.O. Box 1632; 319 McFaddin Bldg.
Beaumont, Texas

THE STATE OF TEXAS }
COUNTY OF JEFFERSON }

BEFORE ME, the undersigned authority, on this day personally appeared Gordon R. Pate, who being by me first duly sworn upon his oath deposed and said that he is one of the attorneys of record for The Travelers Insurance Company; that he has read the allegations contained in Paragraph 5 of plaintiff's petition, and he says that the defendant's denial of said allegations contained in Paragraph 7 of Defendant's First Amended Original Answer is true and correct.

Gordon Pate

SUBSCRIBED AND SWORN TO before me this 13 day of March, 1963.

Blair Kittell

Notary Public in and for
Jefferson County, Texas.

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CROSS-ACTION OF THE TRAVELERS INSURANCE COMPANY AGAINST TEXAS EMPLOYERS INSURANCE ASSOCIATION AND QUEEN INSURANCE COMPANY OF AMERICA

NOW COMES The Travelers Insurance Company, one of the defendants in the above entitled and numbered cause, and files this its Cross-Action against Texas Employers Insurance Association and Queen Insurance Company of America, and as grounds for such cross-action would show the Court the following:

1.

That the plaintiff, Claude J. Tomplait, has been injuriously exposed to the hazards of the disease made the basis of the present suit subsequent to his employment with Armstrong Contracting & Supply Corporation, for whom the defendant, The Travelers Insurance Company, is the insurance carrier; that while employed by Johns-Manaville Company for which the cross-defendant Texas Employers Insurance Association is the insurance carrier, the plaintiff was injuriously exposed to the hazards of the disease made the basis of the present suit; that the employment with Johns-Manaville Company was subsequent to the plaintiff's employment with Armstrong Contracting & Supply Corporation; that the plaintiff, while employed by the Aber Company whose insurance carrier was cross-defendant Queen Insurance Company of America, was injuriously exposed to the hazards of the disease made the basis of the present suit; that the employment with the Aber Company was subsequent to the plaintiff's employment with Armstrong Contracting & Supply Corporation; that the liability, if any, for the condition of which plaintiff complains in his suit should be apportioned between the successive carriers based on the amount of incapacity or disability, if any, that his employment with each employer contributed to his present condition, or in the alternative, the defendant, The Travelers Insurance Company, is entitled to contribution or indemnity from cross-defendants Texas Employers Insurance Association and Queen Insurance Company of America for

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the amount of compensation the plaintiff is entitled to, if any, as a result of being injuriously exposed to the hazards of the disease made the basis of his suit, while in the employment of Johns-Mansville Company and the Aber Company.

WHEREFORE, premises considered, defendant, The Travelers Insurance Company, prays that upon a final hearing that the liability for workmen's compensation due the plaintiff, if any, be apportioned among each of said carriers, or in the alternative, that the defendant, The Travelers Insurance Company, have judgment over against Texas Employers Insurance Association and Queen Insurance Company of America for full indemnity, or in the alternative, for contribution for the amount of workmen's compensation benefits, if any the plaintiff is found to be entitled to, as a result of his employment with Johns-Mansville Company and the Aber Company and the incapacity, if any, sustained as a result of being injuriously exposed to the hazards of the disease while in the employment of said employers, and for such other and further relief to which the defendant, The Travelers Insurance Company, may show itself entitled to.

CHARLES S. PIPKIN

Gordon Pate

Attorneys for Defendant and Cross-Plaintiff, The Travelers Insurance Co.

P.O. Box 1632; 319 McFaddin Bldg.
Beaumont, Texas

A copy of the foregoing Defendant's First Amended Original Answer and Cross-Action was this 13 day of March, 1963, delivered to Mr. Cleve Bachman, First Federal Savings Bldg., Beaumont, Texas, attorney for cross-defendant, Queen Insurance Company of America; delivered to Mr. Dave Marcus, Goodhue Bldg., Beaumont, Texas, attorney for cross-defendant, Texas Employers Insurance Association this 13 day of March, 1963; and delivered to Mr. Ward Stephenson, Stephenson Bldg., Orange, Texas, attorney for plaintiff, this 13 day of March, 1963.

Gordon R. Pate

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY

PLAINTIFF'S OBJECTIONS TO DEFENDANT THE TRAVELERS INS. COMPANY'S WRITTEN INTERROGATORIES TO BE PROPOUNDED TO DR. W. V. LEARY

FILED

14 Day of Mar 1963

at 4:50 P. M

Ethel Burton

Clerk District Court, Orange County, Texas

Recorded Vol. P. 1 Page 128 Comp

LAW OFFICES
STEPHENSON, STEPHENSON AND THOMPSON
STEPHENSON BUILDING
ORANGE, TEXAS

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No. 13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	PLAINTIFF'S OBJECTIONS
	:	TO DEFENDANT THE TRAVELERS
VS.	:	INSURANCE COMPANY'S
	:	WRITTEN INTERROGATORIES TO
THE TRAVELERS INSURANCE COMPANY	:	BE PROPOUNDED TO DR. W. V. LEARY

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now CLAUDE J. TOMPLAIT, plaintiff in the above entitled and numbered cause, and makes the following objections to certain written interrogatories to be propounded to Dr. W. V. Leary on behalf of the defendant Travelers Insurance Company, served herein by said defendant:

1.

Plaintiff objects to Interrogatory No. 21 because the same is too vague and uncertain and does not inquire as to the source of the information; whether or not this is a medical opinion; and if it is a medical opinion, it is not based upon proper form as to reasonable certainty.

2.

Plaintiff objects to Interrogatory No. 26 because the same is not a proper inquiry in that the Workmen's Compensation Statute provides that the employer for whom the employee was last injuriously exposed shall assume responsibility for occupational disease of this type; and this would serve only to prejudice the plaintiff in his case, and the same is improper.

3.

Plaintiff objects to Interrogatory No. 27 because the same is not a proper inquiry in that the Workmen's Compensation Statute provides that the employer for whom the employee was last injuriously exposed shall assume responsibility for occupational disease of this type; and this would serve only to prejudice the plaintiff in his case, and the same is improper.

WHEREFORE, plaintiff moves the Court for an order striking said Interrogatories Nos. 21, 26 and 27 and excusing the

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said Dr. W. V. Leary from answering the same.

STEPHENSON, STEPHENSON
AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

* * * * * * * * * * * * * * * * * *

ORDER OF THE COURT

On this the 14th day of March, 1963 came on to be considered plaintiff's request for a hearing on the objections of plaintiff to defendant Travelers Insurance Company's written interrogatories to be propounded to Dr. W. V. Leary, Houston, Texas, and the Court being of the opinion that such objections constitute sufficient grounds for a hearing thereon,

It is therefore ORDERED that plaintiff's request for a hearing be granted, and that plaintiff's objections to said defendant's written interrogatories to be propounded to DR. W. V. LEARY be heard on the 15th day of March, 1963 at 9 o'clock A .m.

It is further ORDERED that said defendant's written interrogatories shall not be propounded to the said Dr. W. V. Leary nor answered by said witness prior to the date of the hearing as above set out.

DATED this 14th day of March, 1963 .

James N. Veff.
JUDGE PRESIDING

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NO. 3595

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY

CROSS-INTERROGATORIES TO BE PROPOUNDED TO DR. W. V. LEARY ON BEHALF OF THE PLAINTIFF, CLAUDE J. TOMPLAIT

FILED

14 Day of May 1962

at 4:50 o'clock P M

Gene Burton

Clerk District Court, Orange County, Texas

LAW OFFICES
STEPHENSON, STEPHENSON AND THOMPSON
STEPHENSON BUILDING
ORANGE, TEXAS

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No. 13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	: CROSS-INTERROGATORIES TO BE
	: PROPOUNDED TO DR. W. V. LEARY
VS.	: ON BEHALF OF THE PLAINTIFF,
	: CLAUDE J. TOMPLAIT
THE TRAVELERS INSURANCE COMPANY	:
	:

Cross-Interroagories to be [illegible] to Dr. W. V. Leary, Houston, Texas, on behalf of the pla. tiff in the above entitled and numbered cause, Claude J. Tomplait.

Cross Interrogatory No. 1:	Please state what type examination you made upon Claude J. Tomplait.
Cross Interrogatory No. 2:	Please state the date such examination was made.
Cro Interrogatory No. 3:	Please explain where such examinat. was made.
Cross Interrogatory No. 4:	Please state the length of time such examination required.
Cross Interrogatory No. 5:	Please state whether or not anyone assisted you in such examination.
Cross Interrogatory No. 6:	Please state the exact clinical procedure used in such examination.

STEPHENSON, STEPHENSON AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

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NO. 1,016

CLAUDE J.

VS.

THE TRAVELERS INSURANCE COMPANY, ET. AL.

ORDER GRANTING SUMMARY JUDGMENT

FILED
14 Day of Nov 1963
at 4:20 P. M
Chris Hatcher, County Clerk, Orange County, Texas
Recorded in F-1 Page 179
By Joseph Lucchese

MARCUS & WELLER
ATTORNEYS AT LAW
GOODHUE BUILDING
BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	I	IN THE DISTRICT COURT OF
VS.	I	ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET. AL.	I	128TH JUDICIAL DISTRICT

BE IT REMEMBERED that on the 1st day of March, 1963 after due and proper notice, came on to be heard the various Motions for Summary Judgment filed by the defendants in the above entitled and numbered cause, to-wit, The Travelers Insurance Company, Queen Insurance Company of America and Texas Employers' Insurance Association; and the pleadings, exhibits, arguments, stipulations and agreements of counsel having been heard and considered by the Court, the Court is of the opinion that the Motions for Summary Judgment filed herein by Queen Insurance Company of America and Texas Employers' Insurance Association should be granted and that an interlocutory judgment should be rendered in favor of each of said defendants, as hereinafter provided.

It is ORDERED, ADJUDGED AND DECREED that there is no severance of the cause of action herein asserted by the plaintiff, Claude J. Tomplait, against the defendants, Queen Insurance Company of America or Texas Employers' Insurance Association, or either of them, and that a final judgment in favor of said defendants and each of them will be rendered only upon final disposition of this cause, so that an appeal can be taken from such final judgment by the plaintiff, Claude J. Tomplait, it being expressly provided herein that this order is interlocutory in nature and is not a final or appealable order.

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It is therefore ORDERED, ADJUDGED AND DECREED by the court that the motions of the defendants, Texas Employers' Insurance Association, and Queen Insurance Company of America are, each and both, hereby granted, and that the plaintiff, Claude J. Tomplait, do have and recover nothing herein from the defendants, Texas Employers' Insurance Association and Queen Insurance Company of America, or either of them.

It is further ORDERED, ADJUDGED AND DECREED by the court that the motion for summary judgment of defendant, The Travelers Insurance Company, be and the same is hereby in all things [illegible]d [illegible] overruled.

To which ruling and judgment of the court in granting said motions for summary judgment the plaintiff, Claude J. Tomplait, then and there duly excepted, and The Travelers Insurance Company duly excepted to the ruling of the Court denying its motion for summary judgment.

RENDERED on this, the 14th day of March, 1963.

James V. Neff
DISTRICT JUDGE PRESIDING

APPROVED:

STEPHENSON, STEPHENSON & THOMPSON

BY Ward Stephenson
ATTORNEYS FOR PLAINTIFF

ORGAIN, BELL & TUCKER

BY Clem Bahman
ATTORNEYS FOR DEFENDANT QUEEN INSURANCE COMPANY OF AMERICA

MARCUS & WELLER

BY David C Marcus
ATTORNEYS FOR DEFENDANT TEXAS EMPLOYERS' INSURANCE ASSOCIATION

STRONG, PIPKIN, STRONG & NELSON

BY Lindsay Pate
ATTORNEYS FOR DEFENDANT THE TRAVELERS INSURANCE COMPANY

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966) Published by AsbestosClaims.Law
ACL Doc 24593 · Page 153 of 213 asbestosclaims.law/library/24593/153

NO. 13,916

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE CO.

ORDER OVERRULING EXCEPTIONS TO INTERROGATORIES

FILED

19 Day of March 1963

at 2:00 P M

[illegible]

By Edna Impson Deputy

Recorded 15-1 pg 165

Comp

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

319 McFADDIN BUILDING - P. O. BOX 1632

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT § IN THE DISTRICT COURT OF

VS. §

THE TRAVELERS INSURANCE COMPANY § ORANGE COUNTY, TEXAS

ORDER OVERRULING
EXCEPTIONS TO INTERROGATORIES

ON THE 15th day of March came on to be heard the objections of the plaintiff, Claude J. Tomplait, to interrogatories Nos. 21, 26 and 27 to be submitted to Dr. W. V. Leary, and the plaintiff and defendant having appeared by counsel and the plaintiff having advised the Court that his objections were withdrawn, it is, therefore, ORDERED, ADJUDGED AND DECREED that said objections be and the same are hereby overruled.

SIGNED AND ENTERED this 19th day of March, 1963.

James N. Nebb
Judge Presiding

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NO. 13,916

IN THE DISTRICT COURT OF

ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE CO.

ORDER SUSTAINING EXCEPTIONS

FILED

19 Day of March 1963

at 2 o. P M.

ETHEL BURTON

Clerk District Court, Orange County, Texas

By Edna Emmon

Recorded Vol. Page 65

Corp Docket

STRONG, PIPKIN, STRONG & NELSON

ATTORNEYS AT LAW

319 McFADDIN BUILDING - P. O. BOX 1632

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	)	IN THE DISTRICT COURT OF
VS.	)	
THE TRAVELERS INSURANCE COMPANY	)	ORANGE COUNTY, TEXAS

ORDER SUSTAINING EXCEPTIONS

ON THE 15th day of March, 1963, came on to be heard the exceptions of The Travelers Insurance Company contained in its Amended Original Answer, said exceptions being directed to Plaintiff's Original Petition, and the plaintiff and defendant having appeared by counsel and the Court having duly considered same, it is ORDERED, ADJUDGED AND DECREED by the Court that said defendant's special exceptions Nos. 1, 2, 3, 4, 5 and 6 be and the same are hereby sustained.

SIGNED AND ENTERED this 19th day of March, 1963.

James N. Neff
Judge Presiding

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

PLAINTIFF'S MOTION TO REINSTATE PARTIES

FILED
19 Day of March 19 66
at 2:45 P.M.
ETHEL BURTON
Clerk, District Court, Orange County, Texas
By Jon Dean Deputy
Recorded Vol. [illegible] Page 276
Comp Docket
Vol. 429 58

LAW OFFICES
STEPHENSON, STEPHENSON AND THOMPSON
STEPHENSON BUILDING
ORANGE, TEXAS

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No. 13,916

CLAUDE J. TOMPLAIT	:	IN THE DISTRICT COURT
VS.	:	OF ORANGE COUNTY,
THE TRAVELERS INSURANCE COMPANY, ET AL	:	TEXAS

PLAINTIFF'S MOTION TO REINSTATE PARTIES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Claude J. Tomplait, and files this his Motion to Reinstate Parties and as grounds would show unto the Court the following:

That on the 1st day of March, 1963, after due and proper notice, came on to be heard the various motions for Summary Judgment filed by the defendants in the above entitled and numbered cause, to-wit: Traveler's Insurance Company; Queen Insurance Company of America; and Texas Employers Insurance Association; and the Court was of the opinion that the Motions for Summary Judgment filed by the Queen Insurance Company of America and Texas Employers Insurance Association should be and was granted; and that the Motion for Summary Judgment of the defendant Traveler's Insurance Company should be and was denied and overruled.

That on the 14th day of March, 1963, the Court entered an order sustaining the defendant, Queen Insurance Company of America and Texas Employers Insurance Association Motion for Summary Judgment and overruling the defendant, Traveler's Insurance Company's Motion for Summary Judgment.

Plaintiff would herein show the Court that said Order was signed and rendered on the 14th day of March, 1963; that said order was interlocutory in nature and was not a final order, and that this Motion is presented within 30 days from

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the rendition of said order; and further that a final order has not been rendered in the above entitled and numbered cause.

Plaintiff would show unto the Court that the defendants, Queen Insurance Company of America and Texas Employer's Insurance Association should be reinstated as party defendants in this cause, and that the Motion for Summary Judgment of these defendants should be overruled and that the Court should enter an Order reinstating said defendants as party defendants in this cause since the Court at this time is unable to ascertain as a matter of law or fact which of the defendants provided Workman's Compensation Insurance for the employer for whom the plaintiff, Claude J. Tomplait was last injuriously exposed for the occupational disease described in this cause.

Plaintiff further requests the Court to reinstate all party defendants in this cause in order that a proper finding may be made by the Court or a jury and that the proper party defendant or defendants would be before the Court when a final order for judgment is rendered in this cause.

A copy of the foregoing Motion for Reinstatement of Parties and Order setting hearing thereof was delivered - mailed to David C. Marcus, Marcus & Weller, Attorney for Defendant, Texas Employers Insurance Association; Gordon Pate, Strong, Pipkin, Strong & Nelson, Attorneys for Defendant, Traveler's Insurance Company; and Cleve Bachman, Orgain, Bell & Tucker, Attorneys for Defendant, Queen Insurance Company of America, on the 19th day of March, 1963.

STEPHENSON, STEPHENSON
AND THOMPSON

By Jim L. Stevenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

O R D E R

ON THIS the 19th day of March, 1963, the Court hereby sets the foregoing Motion for Reinstatement of Parties for hearing on the 22nd day of March, 1963, at 9 o'clock A.m.

James N. Neff
Judge Presiding

NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

FILED

25 Day of March 19[illegible]

at [illegible] M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By [illegible] Deputy

LAW OFFICES

STEPHENSON, STEPHENSON AND THOMPSON

STEPHENSON BUILDING

ORANGE, TEXAS

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13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
	:	PLAINTIFF'S FIRST
VS.	:	AMENDED ORIGINAL
	:	PETITION
THE TRAVELERS INSURANCE COMPANY, ET AL	:	

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW CLAUDE J. TOMPLAIT, plaintiff, who resides in Orange County, Texas, leave of the court having been first had and obtained, and files this his first amended original petition in lieu of his original petition heretofore filed herein, complaining of THE TRAVELERS INSURANCE COMPANY, TEXAS EMPLOYERS INSURANCE ASSOCIATION and QUEEN INSURANCE COMPANY OF AMERICA, defendants, private corporations duly incorporated under and by virtue of the laws of the State of Texas, having license and permission to do business in said state, for the purpose of writing insurance; and for cause of action the plaintiff says the following:

1.

That on or about the 26th day of July, 1961, the plaintiff was working in the County of Orange, State of Texas, for Armstrong Contracting and Supply Corporation in the capacity of insulator and in the furtherance of and while within the usual course of the business of his employer; that his said employer is engaged in the construction business; that the plaintiff was receiving an average weekly wage in the amount of $196.85 working eight hours per day and five days per week; that such average weekly wage in the amount

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966) Published by AsbestosClaims.Law
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entitled him to have his compensation calculated
the figure of $35.00 per week.

2.

The plaintiff says that he was working in the above named county, and at the time of his injury his employer was engaged in a business within and subject to the Workmen's Compensation Act of the State of Texas, and was a subscriber as that term is used in the Workmen's Compensation Act of the State of Texas, and carried a policy of insurance in compliance with said act with one of the defendants by the terms of which it agreed to pay to any person entitled thereto under the Workmen's Compensation Act of the State of Texas compensation for disability and death produced by an injury sustained in the course of such persons' employment with said employer, in accordance with the provisions of said act; that the said defendant thereby became bound and obligated to pay to the plaintiff the compensation for which he sues; that the said policy was issued to said employer and was at all times pertinent to this cause of action in full force and effect.

3.

The plaintiff says that prior to the first distinct manifestiation of disease during the month of July, 1961, he was a strong, healthy and able-bodied man, able to perform and did perform the duties of his employment in a satisfactory manner, but during said month aforesaid while engaged in the discharge of his duties and in the scope of his employment the following conditions became apparent: Occupational disease, asbestosis and silicosis; that as a result of the occurrence

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made the basis of this suit, plaintiff has suffered the following injuries: Severe and permanent injury to his body caused by dust, asbestos and other materials causing asbestosis and silicosis causing severe external and internal injuries includi , pulmonary fibrosis, restrictive ventilatory defect and arterio-desaturation.

4.

intiff says that in the absence of conclusive evidence that the plaintiff suffere disability fr contracting silicosis or asbestosis due to the nature of h employment, then plaintiff says that during the ten (10) years immediately preceding the date of incapacity the plaintiff has been exposed to the inhalation of silica dust or asbestos dust over a period of not less than five (5) years, at least two (2) years of which were in this state under a contract of employment existing in this state.

5.

Plaintiff says that as a result of the injuries which he received he is now unable to work and has been unable to work or follow the pursuits of a working man so as to obtain and retain employment as such; and he therefore says that he is totally incapacitated at this time within the meaning of the Workmen's Compensation Law and has been so incapacitated since the date of the receipt of said injuries and will continue to be totally incapacitated permanently; or in the alternative, the plaintiff says that he has received such lesser degree and percentage of disability as he may show himself entitled to receive upon trial hereof; and he says that his disability began on the date of the receipt of such injuries.

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6.

Plaintiff says that he gave due and timely notice (within thirty days) to his employer and to the Industrial Accident Board after the receipt of the said injuries sustained by him, and did in due time (i.e., six months) after the receipt of such injuries make due claim for compensation to the Industrial Accident Board of the State of Texas; and in the alternative, plaintiff says that his employer had actual notice of said injuries within thirty days after the receipt thereof; or in the alternative, plaintiff says that any failure (which is specifically denied) to give notice of injury and/or file claim for compensation within the statutory periods is excused for good cause which continued up to the time of filing.

7.

Plaintiff says that he gave notice of appeal to the Industrial Accident Board within twenty (20) days after the rendition of the award by the Board that he would not abide by the said final ruling and decision of said Board; that within twenty (20) days after having given such notice of appeal to the said Board, plaintiff instituted suit to set aside sich award of the said Board, claiming compensation for the full amount claimed by him before the said Board, together with full payment of all expenses heretofore incurred within ninety-one (91) days according to the provision of Section 26(d) of Article 8306, V.A.T.S., including but not limited to medical aid, hospital services, nursing and medicines, to-wit:

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Medical Expense	Amount	Date
Dr. John C. Greco	$ 67.00	July 26 - Oct. 24, 1961
Dr. Tom R. Jones	90.00	Aug. 1 - 28, 1961
Dr. Peron O. Jones	35.00	Aug. 10, 1961
Memorial Baptist Hospital	132.50	Aug. 8-10, 1961
Orange Memorial Hospital	12.00	July 26, 1961
	$ 336.50	

8.

Plaintiff says that for at least two hundred ten (210) days of the year immediately preceding his injuries, he had worked in the employment in which he was working at the time of his injuries, and during the days when so employed, he earned an average daily wage or salary of $34.12 per day; in the alternative, plaintiff says that if he be mistaken as to the foregoing allegation and that he did not work in such employment for at least two hundred ten (210) days of the year immediately preceding his accident and injuries, he shows that there were other employees of his class at the time of his injuries who had worked in such employment for at least two hundred ten (210) days of the year immediately preceding his accident and injuries, in the same or a similar employment in the same or a neighboring place, and that during the days when so employed, earned an average daily wage of $34.12 per day; and plaintiff further says that his average weekly wage shall consist of three hundred (300) times the average daily wage or salary which he has earned or which an employee of the same class has earned during the days which he or an employee of the same class actually worked in such year, divided by fifty-two (52); and plaintiff says that by such computation he earned an average weekly wage of $196.85 per week. Further in the alternative, plaintiff says that if by reason of the shortness of the time of

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the employment of other employees engaged in the same class of work during the year immediately preceding his injuries, and for other good and sufficient reasons, it is impracticable to compute his average weekly wage under the two methods above alleged, then he prays that his average weekly wage be computed by the court or jury in any manner that is fair and just to both parties, as of the date of his injuries, and in this connection says that $196.85 as an average weekly wage would be fair and just.

9.

The plaintiff says that he has employed the attorneys whose names are signed to this petition to represent him in this behalf and has contracted to pay said attorneys such fee as the court may allow, not to exceed thirty (30%) per cent of the recovery herein.

10.

Plaintiff says that he has no property, real or personal, from which he can support himself and that if compensation be awarded to him in weekly payments, after the attorneys' fees are paid out of each payment the balance will be wholly inadequate to support him. Further, he shows that he is a man of prudence and care in business matters and in the handling of money, and that, if compensation herein due him be paid him in a lump sum, he will be able to invest part of same in a business of some kind, out of which he can make a living. Plaintiff further says that if future payments of compensation are not awarded to him in a lump sum, then manifest hardship and injustice will result to him.

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WHEREFORE, plaintiff prays that the defendant be cited to appear and answer herein, and that upon trial hereof, plaintiff have judgment against defendant setting aside the final decision and award of the Industrial Accident Board and for compensation for four hundred and one (401) weeks at the rate of $35.00 per week, for payment of all expenses heretofore incurred, including but not limited to medical aid, hospital services, nursing and medicines, and that he have judgment against defendant for all past due installments of compensation together with four (4%) per cent interest, compounded annually, from the respective dates of maturity of each installment of compensation due him herein; and that the balance of compensation due him herein be awarded to him in a lump sum, allowing four (4%) per cent discount on such future installments; and plaintiff prays for such other and further relief, both general and special, at law and in equity, to which hemay be entitled, and all costs of suit.

STEPHENSON, STEPHENSON
AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELER'S INSURANCE COMPANY, ET AL

ORDER

FILED

27 Day of March 1963

at 9:20 A. M.

Clerk District Court, Orange County, Texas

Recorded in F.I.C.S. #7

Comp. Docket

LAW OFFICES
STEPHENSON, STEPHENSON AND THOMPSON
STEPHENSON BUILDING
ORANGE, TEXAS

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No. 13,91

CLAUDE J. TOMPLAIT	:	
	:	IN THE DISTRICT COURT
VS.	:	
	:	OF ORANGE COUNTY, TEXAS
THE TRAVELERS INSURANCE COMPANY, ET AL	:	
	:	128th JUDICIAL DISTRICT

O R D E R

BE IT REMEMBERED that on the 23rd day of March, 1963, after due and proper notice, came on to be heard the Plaintiff's Motion to Reinstate Parties filed in the above entitled and numbered cause; and the pleadings, exhibits, arguments, stipulations and agreements of counsel having been heard and considered by the Court, the Court is of the opinion that the Plaintiff's Motion to Reinstate Parties should be granted; and that certain Order of the Court rendered on the 14th day of March, 1963, granting the defendants, Texas Employers Insurance Association and Queen Insurance Company of America, Motion for Summary Judgment should be set aside.

It is therefore ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Reinstate Parties hereby be granted and that the defendants, Texas Employers Insurance Association and Queen Insurance Company of America, are hereby reinstated as party defendants in this cause.

It is further ORDERED, ADJUDGED AND DECREED that the Order of this Court on the 14th day of March, 1963, which granted the defendants, Texas Employers Insurance Association and Queen Insurance Company of America's Motions for Summary Judgment is hereby expressly set aside and overruled, and that said defendants are reinstated as party defendants in this cause.

RENDERED on this the 26th day of March, 1963.

James N. Neff
Judge Presiding

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

NOTICE AND APPLICATION TO TAKE WRITTEN DEPOSITION OF 1. Custodian of Records of the Tax Department, Texas Employment Commission

FILED

21 Day of March 1963
at 8:30, A. M.
ETHEL BURTON
Clerk, District Court, Orange County, Texas
By Edna Emmon Deputy

ORGAIN, BELL & TUCKER
ATTORNEYS AT LAW
BEAUMONT, TEXAS

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AES:ve - 3-20-63

Honorable Ethel Burton
District Clerk
Orange County, Texas
Orange County Courthouse
Orange, Orange County, Texas

Re: CLAUDE J. TOMPLAIT V. THE TRAVELERS INSURANCE COMPANY, ET AL - NO. 13,916 IN 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

Dear Sir:

Notice is hereby given that Queen Insurance Company of America, Defendant in the above styled and numbered suit pending in the court of which you are Clerk desires to take the written deposition of the witness named below, at the time and place designated below, to be used in the above styled and numbered suit; and intends to apply for a commission therefor; and hereby requests that you issue commission therefor six days after the receipt of this notice and application by you.

Name of Witness, and Residence or Place where Witness may be found	Place of Taking Deposition	Time of Taking Deposition
1. Custodian of Records of the Tax Department, Texas Employment Commission	Austin, Texas	Immediately upon receipt of commission therefor

NO Subpoena duces tecum is desired, and it is therefore not requested that the commission expressly authorize issuance thereof.

A Copy of the written interrogatories to be propounded to the witness XXXXXX, is attached hereto.

Notice, as required by the Texas Rules of Civil Procedure, Rules 189 and 200, has been given by serving all adverse parties, or their attorneys of record, with a copy hereof on this the 20 day of March, 1963.

The books, papers, documents and tangible things hereby designated to be produced by the witness ____: - NOT APPLICABLE
Name of Witness To Produce:

*cc by certified mail:
1. Mr. Gordon Pate, Attorney
McFaddin Building
Beaumont, Texas
2. Mr. David C. Marcus, Attorney
Marcus & Weller
Goodhue Building, Beaumont, Texas
3. Mr. Ward Stephenson, Attorney
Stephenson Building, Orange, Texas

Yours very truly,
ORGAIN, BELL & TUCKER

By Allen E. Smith
Allen E. Smith
First Federal Savings Building
Beaumont, Texas

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

DIRECT INTERROGATORIES TO BE PROPOUNDED TO CLAUDE J. TOMPLAIT

FILED

16 Day of April 1963

at 8:20, 2 M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Dorothy Wann Deputy

ORGAIN, BELL & TUCKER

ATTORNEYS AT LAW

BEAUMONT, TEXAS

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NO. 13,916

CLAUDE J. TOMPLAIT	0	IN THE DISTRICT COURT
VS.	0	OF
THE TRAVELERS INSURANCE COMPANY, ET AL	0 0	ORANGE COUNTY, TEXAS

TO: WARD STEPHENSON, ESQUIRE, STEPHENSON, STEPHENSON & THOMPSON, STEPHENSON BUILDING, ORANGE, TEXAS, ATTORNEY FOR PLAINTIFF, CLAUDE J. TOMPLAIT:

Dear Sir:

Please take notice that Queen Insurance Company of America, Defendant herein, requires plaintiff, Claude J. Tomplait to answer the following interrogatories, separately and fully in writing, and under oath, within fifteen (15) days from the date of service hereof, pursuant to Rule 168 of the Texas Rules of Civil Procedure:

DIRECT INTERROGATORIES
TO BE PROPOUNDED TO
CLAUDE J. TOMPLAIT

1. State your name.

2. Specify the name of each and every employer by whom you were employed during the period from December 31, 1962, to the date of your answers to these interrogatories, whether you were employed by another, or self-employed.

3. As to each employer designated in response to Interrogatory No. 2 above, specify the following:

(a) Date commenced employment.

(b) Date terminated employment.

(c) Hours worked each day.

(d) Number of days worked each week.

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(e) Title or designation of job at which employed.

(f) Specific duties performed.

(g) Location of job site.

(h) Location on job site at which your duties were performed.

(i) Kinds of tools used.

(j) Protective clothing or other protective devices used.

(k) Did you work with any type of insulating material on this job?

(l) If the answer to the foregoing interrogatory is "Yes", state the types of insulating material used by brand name.

(m) State what your duties were with respect to such insulating materials.

(n) State the name of your immediate supervisor.

(o) State the names of any fellow employees.

(p) What was your wage rate?

(q) What amount of money did you earn on this job?

(r) What insulating jobs were in progress at the job site while you were so employed?

ORGAIN, BELL & TUCKER
First Federal Savings Bldg.
Beaumont, Texas

By _____
Attorney for Defendant,
Queen Insurance Company of America

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The foregoing interrogatories were served by mailing a copy thereof in the United States Mail by Certified Mail, on the 15th day of April, 1963, to Ward Stephenson, Attorney, Stephenson Building, Orange, Texas, Attorney for Plaintiff, and by mailing a copy thereof in the United States Mail, by Certified Mail, on the 15th day of April, 1963, to Gordon Pate, Attorney, P. O. Box 1632, Beaumont, Texas, and to David C. Marcus, Attorney, P. O. Box 350, Beaumont, Texas, and a copy thereof is on file in the office of the District Clerk of Orange, County, Texas.

Allen E. Smith

Allen E. Smith, Attorney for Defendant, Queen Insurance Company of America

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NO. 13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY ET AL

PLAINTIFF'S ANSWER TO INTERROGATORIES OF DEFENDANT QUEEN INSURANCE COMPANY OF AMERICA

FILED

22 Day of June 1965

at 4:10 P. M.

Clerk District Court, Orange County, Texas

LAW OFFICES
STEPHENSON, STEPHENSON AND THOMPSON
STEPHENSON BUILDING
ORANGE, TEXAS

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No. 13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
	:	PLAINTIFF'S ANSWERS TO
VS.	:	INTERROGATORIES OF
	:	DEFENDANT QUEEN INSURANCE
THE TRAVELERS INSURANCE COMPANY, ET AL	:	COMPANY OF AMERICA
	:	

TO THE HONORABLE JUDGE OF SAID COURT:

CLAUDE J. TOMPLAIT, plaintiff in the above entitled and numbered cause, makes the following answers to Direct Interrogatories served herein by Defendant Queen Insurance Company of America on the 15th day of April, 1963:

Plaintiff's Answer to Interrogatory No. 1:

Claude J. Tomplait

Plaintiff's Answer to Interrogatory No. 2:

(1) The Aber Company

(2) Sabine Insulation Company, Inc.

(3) B & B Engineering and Supply Company

Plaintiff's Answer to Interrogatory No. 3:

(1) The Aber Company

(a) During the month of November, 1962

(b) Approximately January 7, 1963

(c) Eight hours

(d) Five days

(e) Insulator

(f) Covered pipe with insulating material

(g) Bridge City power house of Gulf States Utilities Company

(h) Inside and outside the building

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(i) Nippers, trowels, saw, scissors, mallet, knife, and other tools pertaining to this craft

(j) Hard hat and safety shoes

(k) Yes

(l) Unibestos, magnesia, finishing mud, rock wool mud, and one coat mud; I do not know the brand names of these materials.

(m) I put unibestos and magnesia around the pipes, then covered them with each of the different kinds of muds to make the insulation firm and to seal the joints.

(n) J. C. Gary

(o) J. P. Carter, Weston Harrington, and Andrew LeLeaux

(p) Four dollars per hour

(q) Approximate average: $100.00 per week

(r) Insulation of pipes

(2) Sabine Insulation Company, Inc.

(a) January 30, 1963

(b) February 5, 1963

(c) Jan 30, Jan 31, Feb 1 and Feb 4: 10 hours each day; Feb 5: 8 hours

(d) Three days during one week and two days during the next week

(e) Insulator

(f) Canvased pipe

(g) Levingston Shipbuilding Company, Orange, Texas

(h) Oil rig which was floating in Sabine River

(i) Trowel and scissors

(j) Hard hat and safety shoes

(k) No; I worked only with canvas.

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(l) No answer required

(m) No answer required

(n) A. J. Mello

(o) Connie Jean, Doc Jean, and Emmett Jean

(p) Four dollars per hour

(q) Approximately $224.00

(r) None, except canvasing the pipe

(3) B & B Engineering and Supply Company

(a) March 25, 1963

(b) April 2, 1963

(c) March 25 through and including March 31: 10 hours each day; April 1, 2 hours; April 2, 8 hours

(d) Seven days during one week and two days during the next week

(e) Insulator

(f) Fireproofing beams and covering pipe

(g) Sabine River Works, E. I. Du Pont De Nemours, Inc.

(h) Fireproofing in an area which I believe is designated as "1020"; covering pipe in an area which I believe is designated as "1010"

(i) Knife, nippers, saw and trowel

(j) Hard hat, safety shoes, safety glasses, safety belt, safety goggles, and safety gloves

(k) Yes

(l) Unibestos, magnesia, one coat mud, sheet metal and fireproofing cement; I do not know the brand names of these materials.

(m) I put unibestos and magnesia around the pipes and then covered them with mud; I put metal lath around the beams and then troweled fireproofing cement on the lath.

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966)
ACL Doc 24593 · Page 180 of 213
Published by AsbestosClaims.Law
asbestosclaims.law/library/24593/180

(n) Mobel Wise

(o) D. P. Green, L. J. Trahan, George Pietre; D. R. Franklin, Walter Smith, Lennis Faulk, Paul Creel

(p) Four dollars per hour

(q) Approximately $440.00

(r) Fireproofing the beams, and covering the pipe

Claude J. Tomplait

THE STATE OF TEXAS :
COUNTY OF ORANGE :

BF RE ME, the undersigned authority, a Notary Public in and for Orange County, Texas, on this day personally appeared CLAUDE J. TOMPLAIT, to me well known, and who, after being by me duly sworn on oath, did depose and say that he is the plaintiff in the above numbered and entitled cause and that the facts stated in the foregoing answers are true and correct to the best of his knowledge and belief.

Claude J. Tomplait

SUBSCRIBED AND SWORN TO before me, on this the 22nd day of April, 1963.

Jessie D. Littlepage
Notary Public in and for
Orange County, Texas

A copy of the foregoing Plaintiff's Answers to Interrogatories of Defendant Queen Insurance Company of America was served upon Orgain, Bell & Tucker, First Federal Savings Building, Beaumont, Texas, by mailing a copy of the same to said attorneys on the 22 day of April, 1963.

Ward Nykeus

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966) Published by AsbestosClaims.Law
ACL Doc 24593 · Page 181 of 213 asbestosclaims.law/library/24593/181

CLAUDE J. TOMPLAIT vs. THE TRAVELERS INSURANCE COMPANY

No. A-13,916 Suit Pending in 128TH DISTRICT Court of

ORANGE County Texas

To THE TRAVELERS INS. CO. *(Defendant, or ORGAIN, BELL & TUCKER, Its Attorney of Record:

Sir: You will take notice that at the expiration of five days from the service hereof I will apply to the Clerk of the 128th District Court in and for Orange County, for a commission to take the depositions of the General Manager of Sabine Insulation Company, Inc., who *(is to be found in the County of Orange, in answer to the accompanying interrogatories, to be read as evidence in behalf of the *(Plaintiff, on the trial of said cause.

STEPHENSON, STEPHENSON & THOMPSON

By: Ward Stephenson

Attorneys for Plaintiff

*Strike out according to facts.

NO. A-13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ETAL

NOTICE OF INTENTION TO TAKE WRITTEN INTERROGATORIES OF GENERAL MANAGER OF B & B ENGINEERING & SUPPLY COMPANY

FILED

27th Day of February 1964

at 4:25 P M.

ETHEL EATON

County District Court, Orange County, Texas

By Edna Evanson Deputy

LAW OFFICES

STEPHENSON, STEPHENSON AND THOMPSON

STEPHENSON BUILDING

ORANGE, TEXAS

NO. A-13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
		INTERROGATORIES TO BE PROPOUNDED
VS.	:	TO GENERAL MANAGER, SABINE INSULATION COMPANY, INC.
THE TRAVELERS INSURANCE COMPANY	:	
	:	

No. 1 Please state your full name and address.

No. 2 By whom are you employed and in what capacity?

No. 3 Please state the date that Claude J. Tomplait was employed by your company.

No. 4 Please state the date that the employment of Claude J. Tomplait with your company ended.

No. 5 Please state the exact location where Mr. Tomplait worked for your company. For example, the Bridge City power house of Gulf States Utilities Company.

No. 6 Please state whether or not Claude J. Tomplait was employed by you as an insulator.

No. 7 If Mr. Tomplait was not employed as an insulator, in what capacity was he employed?

No. 8 Please state exactly what types of insulation was used by Mr. Tomplait in his work for your company, giving the manufacturers' name and address.

No. 9 Please give the full description of what this insulation consisted of, such as fiberglas, rock wool, foam glass, thermabestos, etc.

STEPHENSON, STEPHENSON AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

Published by AsbestosClaims.Law
asbestosclaims.law/library/24593/184

FILED

29 / Day of Feb. 1966

at 4:00, P. M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Joy Ham Deputy

Published by AsbestosClaims.Law
asbestosclaims.law/library/24593/185

NO. A-13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
VS.	:	NOTICE OF INTENTION TO TAKE WRITTEN INTERROGATORIES OF GENERAL MANAGER OF B & B ENGINEERING & SUPPLY COMPANY
THE TRAVELERS INSURANCE COMPANY	:	
	:	

TO: TRAVELERS INSURANCE COMPANY, Defendant, and Strong, Moore, Pipkin & Nelson, P. O. Box 1632, Beaumont, Texas, Attorney for Defendant Travelers Insurance Company;

TEXAS EMPLOYERS INSURANCE ASSOCIATION, Defendant, and Marcus & Weller, P. O. Box 350, Beaumont, Texas, Attorney for Defendant Texas Employers Insurance Association;

QUEEN INSURANCE COMPANY OF AMERICA, Defendant, and Orgain, Bell & Tucker, First Federal Savings Building, Beaumont, Texas; Attorneys for Defendant Queen Insurance Company of America:

Notice is hereby given to the Defendants in the above entitled and numbered cause, and their attorneys of record, that five (5) days after service of this notice and of the interrogatories hereto attached, the plaintiff will apply to the clerk of this court for a commission to take the deposition of the general manager of B & B Engineering & Supply Company, in accordance with the attached written interrogatories, which deposition will be used as evidence in the above entitled and numbered cause.

STEPHENSON, STEPHENSON AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

A copy of the foregoing notice and interrogatories were mailed to the respective attorneys hereinabove mentioned, at their addresses shown, by certified mail, on this the 27 day of February, 1964.

Ward Stephenson
Ward Stephenson

NO. A-13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
VS.	:	INTERROGATORIES TO BE PROPOUNDED TO GENERAL MANAGER OF B & B ENGINEERING & SUPPLY COMPANY
THE TRAVELERS INSURANCE COMPANY, ET AL	:	

No. 1 Please state your full name and address.

No. 2 By whom are you employed and in what capacity?

No. 3 Please state the date that Claude J. Tomplait was employed by your company.

No. 4 Please state the date that the employment of Claude J. Tomplait with your company ended.

No. 5 Please state the exact location where Mr. Tomplait worked for your company. For example, the Bridge City power house of Gulf States Utilities Company.

No. 6 Please state whether or not Claude J. Tomplait was employed by you as an insulator.

No. 7 If Mr. Tomplait was not employed as an insulator, in that capacity was he employed?

No. 8 Please state exactly what types of insulation was used by Mr. Tomplait in his work for your company, giving the manufacturers' name and address.

No. 9 Please give the full description of what this insulation consisted of, such as fiberglas, rock wool, foam glass, thermasbestos, etc.

STEPHENSON, STEPHENSON AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

Published by AsbestosClaims.Law
asbestosclaims.law/library/24593/187

NO\-43,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

NOTICE OF INTENTIN TO TAKE WRITTEN INTERROGATORIES OF GENERAL MANAGER OF THE ABER COMPANY

FILED

27th Day of February 1964

at 1:25, P M.

ETTA L. BURTON

Dist. Court, Orange County, Texas

Edna Tanner Deputy

LAW OFFICES
STEPHENSON, STEPHENSON AND THOMPSON
STEPHENSON BUILDING
ORANGE, TEXAS

Published by AsbestosClaims.Law
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NO. A-13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
VS.	:	NOTICE OF INTENTION TO TAKE WRITTEN INTERROGATORIES OF GENERAL MANAGER OF
THE TRAVELERS INSURANCE COMPANY	:	THE ABER COMPANY
	:	

TO: TRAVELERS INSURANCE COMPANY, Defendant, and Strong, Moore, Pipkin & Nelson, P. O. Box 1632, Beaumont, Texas, Attorney for Defendant Travelers Insurance Company;

TEXAS EMPLOYERS INSURANCE ASSOCIATION, Defendant, and Marcus & Weller, P. O. Box 350, Beaumont, Texas, Attorney for Defendant Texas Employers Insurarce Association;

QUEEN INSURANCE COMPANY OF AMERICA, Defendant, and Orgain, Bell & Tucker, First Federal Savings Building, Beaumont, Texas; Attorneys for Defendant Queen Insurance Company of America:

Notice is hereby given to the Defendants in the above entitled and numbered cause, and their attorneys of record, that five (5) days after service of this notice and of the interrogatories hereto attached, the plaintiff will apply to the clerk of this court for a commission to take the deposition of the general manager of

The Aber Company,

in accordance with the attached written interrogatories, which deposition will be used as evidence in the above entitled and numbered cause.

STEPHENSON, STEPHENSON
AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

A copy of the foregoing notice and interrogatories were mailed to the respective attorneys hereinabove mentioned, at their addresses shown, by certified mail, on this the 27 day of February, 1964.

Ward Stephenson
Ward Stephenson

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NO. A-13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
VS.	:	INTERROGATORIES TO BE PROPOUNDED TO GENERAL MANAGER OF THE ABER COMPANY
THE TRAVELERS INSURANCE COMPANY, ET AL	:	

No. 1 Please state your full name and address.

No. 2 By whom are you employed and in what capacity?

No. 3 Please state the date that Claude J. Tomplait was employed by your company.

No. 4 Please state the date that the employment of Claude J. Tomplait with your company ended.

No. 5 Please state the exact location where Mr. Tomplait worked for your company. For example, the Bridge City power house of Gulf States Utilities Company.

No. 6 Please state whether or not Claude J. Tomplait was employed by you as an insulator.

No. 7 If Mr. Tomplait was not employed as an insulator, in that capacity was he employed?

No. 8 Please state exactly what types of insulation was used by Mr. Tomplait in his work for your company, giving the manufacturers' name and address.

No. 9 Please give the full description of what this insulation consisted of, such as fiberglas, rock wool, foam glass, thermasbestos, etc.

STEPHENSON, STEPHENSON
AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

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NO. A-13,916

CLAUDE J. TOMPLAIT

VS.

THE TRAVELERS INSURANCE COMPANY, ET AL

NOTICE OF INTENTION TO TAKE WRITTEN INTERROGATORIES OF GENERAL MANAGER OR SABINE INSULATION COMPANY, INC.

FILED

27th Day of July 1966

at 4:25 P. M.

ETHEL BURTON

District Clerk, Orange County, Texas

Edna Brannon

LAW OFFICES
STEPHENSON, STEPHENSON AND THOMPSON
STEPHENSON BUILDING
ORANGE, TEXAS

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NO. A-13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
VS.	:	NOTICE OF INTENTION TO TAKE WRITTEN INTERROGATORIES OF GENERAL MANAGER OF SABINE INSULATION COMPANY, INC.
THE TRAVELERS INSURANCE COMPANY	:	

TO: TRAVELERS INSURANCE COMPANY, Defendant, and Strong, Moore, Pipkin & Nelson, P. O. Box 1632, Beaumont, Texas, Attorney for Defendant Travelers Insurance Company;

TEXAS EMPLOYERS INSURANCE ASSOCIATION, Defendant, and Marcus & Weller, P. O. Box 350, Beaumont, Texas, Attorney for Defendant Texas Employers Insurance Association;

QUEEN INSURANCE COMPANY OF AMERICA, Defendant, and Orgain, Bell & Tucker, First Federal Savings Building, Beaumont, Texas; Attorneys for Defendant Queen Insurance Company of America:

Notice is hereby given to the Defendants in the above entitled and numbered cause, and their attorneys of record, that five (5) days after service of this notice and of the interrogatories hereto attached, the plaintiff will apply to the clerk of this court for a commission to take the deposition of the general manager of Sabine Insulation Company, Inc., in accordance with the attached written interrogatories, which deposition will be used as evidence in the above entitled and numbered cause.

STEPHENSON, STEPHENSON
AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

A copy of the foregoing notice and interrogatories were mailed to the respective attorneys hereinabove mentioned, at their addresses shown, by certified mail, on this the 27 day of February, 1964.

Ward Stephenson
Ward Stephenson

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NO. A-13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	INTERROGATORIES TO BE PROPOUNDED TO GENERAL MANAGER, SABINE INSULATION COMPANY, INC.
VS.	:	
THE TRAVELERS INSURANCE COMPANY	:	

No. 1 Please state your full name and address.

No. 2 By whom are you employed and in what capacity?

No. 3 Please state the date that Claude J. Tomplait was employed by your company.

No. 4 Please state the date that the employment of Claude J. Tomplait with your company ended.

No. 5 Please state the exact location where Mr. Tomplait worked for your company. For example, the Bridge City power house of Gulf States Utilities Company.

No. 6 Please state whether or not Claude J. Tomplait was employed by you as an insulator.

No. 7 If Mr. Tomplait was not employed as an insulator, in what capacity was he employed?

No. 8 Please state exactly what types of insulation was used by Mr. Tomplait in his work for your company, giving the manufacturers' name and address.

No. 9 Please give the full description of what this insulation consisted of, such as fiberglas, rock wool, foam glass, thermabestos, etc.

STEPHENSON, STEPHENSON AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

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NO. A-13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
VS.	:	APPLICATION FOR COMMISSIONS TO TAKE WRITTEN INTERROGATORIES
THE TRAVELERS INSURANCE COMPANY	:	

TO MRS. ETHEL BURTON, CLERK OF THE DISTRICT COURT OF ORANGE COUNTY, TEXAS:

The plaintiff, Claude J. Tomplait, in the above entitled and numbered cause, by and through his attorneys of record, desires to take the depositions of the General Managers of The Aber Company, B & B Engineering & Supply Company, and Sabine Insulation Company, Inc., by written interrogatories, and hereby requests that you issue commissions to take such depositions before a proper official.

STEPHENSON, STEPHENSON AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

Commissions issued 3-6-64 Del. Watts

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NO. A-13,916

CLAUDE J. TOMPLAIT

VS.

QUEENS INSURANCE COMPANY

NOTICE OF INTENTION TO TAKE WRITTEN INTERROGATORIES OF DR. IRVING J. SELIKOFF, M. D.

FILED

22 Day of Nov. 1965

at 4:00 P. M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Dolly Hall Deputy

LAW OFFICES
STEPHENSON, STEPHENSON AND THOMPSON
STEPHENSON BUILDING
ORANGE, TEXAS

Published by AsbestosClaims.Law
asbestosclaims.law/library/24593/195

NO. A-13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT	:	
VS.	:	NOTICE OF INTENTION TO TAKE WRITTEN INTERROGATORIES OF DR. IRVING J. SELIKOFF, M.D.
QUEENS INSURANCE COMPANY	:	

TO: QUEENS INSURANCE COMPANY, and ORGAIN, BELL ANDTTUCKER, First Federal Savings Building, Beaumont, Texas, Attorneys for Defendant:

Notice is hereby given to the defendant in the above entitled and numbered cause, and its attorneys of record, that five (5) days after service of this notice and of the interrogatories hereto attached, the plaintiff Claude J. Tomplait will apply to the clerk of this court for a commission to take the deposition of Dr. Irving J. Selikoff, M. D., Head of the Section of Environmental Health, The Mount Sinai Hospital, New York 29, New York, in accordance with the attached written interrogatories, which deposition will be used as evidence in the above entitled and numbered cause.

STEPHENSON, STEPHENSON AND THOMPSON

By Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

A copy of the foregoing notice and interrogatories were mailed to Orgain, Bell and Tucker, First Federal Savings Bu ilding, Beaumont, Texas, attorneys for defendant, by certified mail on this the 22nd day of November, 1965.

Ward Stephenson
WARD STEPHENSON

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NO. A-13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT :
: WRITTEN INTERROGATORIES TO
VS. : BE PROPOUNDED TO
: DR. IRVING J. SELIKOFF, M. D.
QUEENS INSURANCE COMPANY :

Written interrogatories to be propounded to Dr. Irving J. Selikoff, Head of the Section of Environmental Health, The Mount Sinai Hospital, New York 29, New York, on behalf of the plaintiff:

Interrogatory No. 1	Please state your name, residence and place of business.
Interrogatory No. 2	Please state your profession.
Interrogatory No. 3	Please state how long you have been engaged in the practice of such profession.
Interrogatory No. 4	Please state where you received your preliminary training.
Interrogatory No. 5	Please state where you received your intern training.
Interrogatory No. 6	Please state what additional training you have had.
Interrogatory No. 7	Please state whether or not your license to practice medicine is on record in some county in the State of New York; if so, state which county.
Interrogatory No. 8	Do you practice medicine as a full time occupation?
Interrogatory No. 9	Are you associated with any clinic or medical group? If so, please state the name.
Interrogatory No. 10	Do you belong to any professional society or group? If so, please state which ones.
Interrogatory No. 11	Do you practice in any field of medical specialty? If so, please state in which specialty you engage.

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Interrogatory No. 12	If you have had any specialized medical training, please state what it was and where such specialized medical training was taken.
Interrogatory No. 13	For the benefit of the jury, please state your age and the number of years you have been actively engaged in the practice of medicine.
Interrogatory No. 14	Have you ever written any articles concerning your field of specialty, given any lectures, or received any special awards or citations for service in your field of specialty?
Interrogatory No. 15	Please state where you are presently resi[illegible] and practicing medicine.
Interrogatory No. 16	Please state whether or not you have ever had occasion to see any x-r[illegible]ms of the plaintiff, Claude J. Tomplait.
Interrogatory No. 17	If you have answered "Yes" to Interrogatory No. 16, please state the date of your examination of such x-ray films.
Interrogatory No. 18	In all of your answers to the questions calling for medical opinion and conclusion, please state such based upon reasonable medical certainty.
Interrogatory No. 19	Were the x-ray films that you previously examined sent to you by Orange Memorial Hospital, in Orange, Texas, and did such films bear the appropriate x-ray markings, identifying them as being x-rays taken of Claude J. Tomplait?
Interrogatory No. 20	Please state your diagnosis, based upon your examination of such x-rays, of the condition from which plaintiff is suffering, basing your answers to this question upon reasonable medical certainty.
Interrogatory No. 21	Please state to the jury your background of study and knowledge dealing with the illness of asbestosis, fully explaining to the jury the background of your qualifications so that the jury might be able to judge for themselves your experience in this field and the weight that they might

Tomplait v. The Travelers Insurance Company, Orange County Workers' Compensation Case File (1962–1966) Published by AsbestosClaims.Law
ACL Doc 24593 · Page 198 of 213 asbestosclaims.law/library/24593/198

wish to give to your testimony.

Interrogatory No. 22

As to the inquiry above as to your diagnosis and by that is meant what you in your medical judgment believe the x-rays portray of this patient, please state the detailed basis for your conclusion.

Interrogatory No. 23

It may be contended in this case by some medical witness that the x-ray films portray a case of emphysema as distinguished from that of asbestosis. Will you please state what features of the x-rays, in your opinion, differentiate and distinguish Mr. Tomplait's situation from that of emphysema, non-occupational in origin, if you have in fact answered the previous inquiries to the effect that you believe this patient is suffering from asbestosis.

STEPHENSON, STEPHENSON
AND THOMPSON

By Ward Stephenson
Ward Stephenson
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

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asbestosclaims.law/library/24593/199

NO. 13,916

CLAUDE J. TOMPLAIT

VS.

QUEENS INSURANCE COMPANY

APPLICATION FOR COMMISSION TO TAKE WRITTEN INTERROGATORIES

FILED

28th Day of Mar 1964

at _____ M

Estle Burton

Clerk, District Court, Orange County, Texas

LAW OFFICES
STEPHENSON, STEPHENSON AND THOMPSON
STEPHENSON BUILDING
ORANGE, TEXAS

Published by AsbestosClaims.Law
asbestosclaims.law/library/24593/200

NO. A-13,916

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, TEXAS

CLAUDE J. TOMPLAIT :

VS. : APPLICATION FOR COMMISSION TO TAKE WRITTEN INTERROGATORIES

QUEENS INSURANCE COMPANY :

TO MRS. ETHEL BURTON, CLERK OF THE DISTRICT COURT OF ORANGE COUNTY, TEXAS:

The plaintiff, Claude J. Tomplait, in the above entitled and numbered cause, by and through his attorneys of record, desires to take the deposition of Dr. Irving J. Selikoff, M. D., Head of the Section of Environmental Health, The Mount Sinai Hospital, New York 29, New York, by written interrogatories, and hereby requests that you issue a commission to take such deposition before a proper official in New York, New York.

STEPHENSON, STEPHENSON AND THOMPSON

By _____
Attorneys for Plaintiff
Stephenson Building
Orange, Texas

Published by AsbestosClaims.Law
asbestosclaims.law/library/24593/201

NO. A-13,916

CLAUDE J. TOMPLAIT

VS.

QUEEN INSURANCE COMPANY OF AMERICA

INTERROGATORIES

FILED

26 Day of May 1966

at 10:0 A M.

ETHEL BURTON

Clerk, District Court, Orange County, Texas

By Doris Ham Deputy

ORGAIN, BELL & TUCKER

ATTORNEYS AT LAW

BEAUMONT, TEXAS

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asbestosclaims.law/library/24593/202

CB:fr 5/19/66

NO. A-13,916

CLAUDE J. TOMPLAIT	I	IN THE DISTRICT COURT OF
	I	
VS.	I	ORANGE COUNTY, TEXAS
	I	
QUEEN INSURANCE COMPANY OF AMERICA	I	128TH JUDICIAL DISTRICT

The parties to the above styled and numbered cause, through their attorneys of record, agree that the deposition of the plaintiff, Claude J. Tomplait, may be taken on the original direct and cross interrogatories hereto attached by an officer thereunto duly authorized by law at any place where said witness may be found, hereby waiving notice and service of interrogatories, as well as the filing thereof, and the issuance of commission, and do further agree to waive all statutory requirements in connection with the taking and return of said deposition, except a showing that the answers were given under oath, and agree that when said deposition is taken and returned and filed in such cause, it may be used as evidence by any of the parties, subject to such objections as may be presented at the time of trial.

WARD STEPHENSON

Ward Stephenson

Attorney for Plaintiff

ORGAIN, BELL & TUCKER

By: Steve Tucker

Attorney for Defendant

DIRECT INTERROGATORIES TO BE PROPOUNDED TO CLAUDE J. TOMPLAIT:

Direct Interrogatory No. 1: State your name, age and residence.

To which Interrogatory the witness answers:

Claude J. Tomplait, P. O. Box 507, Bridge City, Texas. Age 45.

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Direct Interrogatory No. 2: Are you the Claude J. Tomplait who sustained injuries in Orange County, Texas, ~~xxxxxxxxx~~ ~~19xxxxxx~~ while employed by The Aber Company?

To which Interrogatory the witness answers: Yes

Direct Interrogatory No. 3: By reason of such injuries have you brought suit No. A-13,916, which suit is pending in the District Court of Orange County, Texas, seeking to recover compensation under the Workmen's Compensation Act of the State of Texas, from Queen Insurance Company of America?

To which Interrogatory the witness answers: Yes

Direct Interrogatory No. 4: Have you made an agreement to compromise and settle such suit, as well as all claims for workmen's compensation insurance benefits, including but not limited to medical aid, hospital services, nursing, chiropractic services, medicines, prosthetic appliances, and treatments for physical rehabilitation, arising out of or in any way connected with your employment by The Aber Company

for the total sum of One Thousand Five Hundred Dollars ($1,500.00)

and costs of court?

To which Interrogatory the witness answers: Yes

Direct Interrogatory No. 5: Is this settlement of all your claims for $ 1,500.00 and costs of court entirely satisfactory with you?

To which Interrogatory the witness answers: Yes

Direct Interrogatory No. 6: Have you received any injury, occupational disease, or other condition while working for The Aber Company

other than the accident and injury you are claiming in this lawsuit?

To which Interrogatory the witness answers: No

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asbestosclaims.law/library/24593/204

#3-

Direct Interrogatory No. 7: If you have answered the foregoing "Yes," then give the details of such other injuries, occupational disease, or any other conditions, and whether you claim any disability from them.

To which Interrogatory the witness answers: - -

Direct Interrogatory No. 8: Do you understand that when the court approves this settlement and the sum of $ 1,500.00 is paid, then any and all claims which you now have or may have in the future against Queen Insurance Company of America because of any and all accidents, injuries, diseases, and conditions while employed by The Aber Company will be forever settled and released?

To which Interrogatory the witness answers: Yes

Direct Interrogatory No. 9: Do you understand that when the sum of $ 1,500.00 is paid in accordance with this settlement agreement you will receive no further workmen's compensation benefits (including but not limited to medical aid, hospital services, nursing, chiropractic services, medicines, prosthetic appliances and treatments for physical rehabilitation) or payments of any kind from Queen Insurance Company of America?

To which Interrogatory the witness answers: Yes

Direct Interrogatory No. 10: Have you employed Ward Stephenson as your attorney to prosecute your claims for all workmen's compensation benefits and agreed to pay him thirty per cent (30%) of the amount recovered in this suit?

To which Interrogatory the witness answers: Yes

Direct Interrogatory No. 11: Has the aforesaid named attorney (Interrogatory No. 10) performed services for you, and is it your desire that the court approve your agreement to pay him such percentage of the amount of this settlement?

To which Interrogatory the witness answers: Yes

#4-

Direct Interrogatory No. 12: Do you understand that $ 1,500.00 is the full and total amount of this compromise and settlement, except that the defendant is to pay costs of court, and that when the court approves this settlement you will have no further claim for workmen's compensation benefits (including but not limited to any claim for medical aid, hospital services, nursing, chiropractic services, medicines, prosthetic appliances, treatments for physical rehabilitation) and other expenses on account of any injury which you may have received while employed by The Aber Company and that all liability of Queen Insurance Company of America will be forever ended and terminated?

To which Interrogatory the witness answers: Yes

Direct Interrogatory No. 13: Do you make this compromise and settlement for the sum of $1,500.00 of your own free will and accord?

To which Interrogatory the witness answers: Yes

Direct Interrogatory No. 14: Is the agreement to pay $1,500.00 and costs of court the full and only consideration which has been promised you in connection with this compromise and settlement?

To which Interrogatory the witness answers: Yes

Direct Interrogatory No. 15: Has anyone made any additional promises or inducements of any kind or character, as an inducement for the making of this compromise and settlement, other than to pay the sum of $1,500.00 and costs of court in this case?

To which Interrogatory the witness answers: No

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#5-

Direct Interrogatory No. 16: If any additional promises or agreements of any kind or character have been made (Interrogatory No. 15), please state in detail what additional promises or agreements have been made, if any.

To which Interrogatory the witness answers: - -

Direct Interrogatory No. 17: Were you hired in the State of Texas and do you swear that you have no further claim and will make no further claim arising out of or in connection with this accident ~~of~~ while employed by The Aber Company, and against The Aber Company and Queen Insurance Company of America under the common law or laws of any other State of the United States, the United States, or other governmental unit, body or agency?

To which Interrogatory the witness answers: Yes

Claude J. Tomplait
CLAUDE J. TOMPLAIT

THE STATE OF TEXAS

COUNTY OF ORANGE

I, Elizabeth P Heard, a Notary Public in and for County, Texas, do hereby certify that the witness, CLAUDE J. TOMPLAIT was sworn by me to tell the truth, the whole truth, and nothing but the truth, and that the foregoing answers represent the true testimony as given by the said witness, and that I have no interest in this case, and I am not in any way employed by the attorneys representing

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 24th day of May, 1966.

Elizabeth P Heard
Notary Public in and for
Orange County, Texas

NO. A-13,916

CLAUDE J. TOMPLAIT

VS.

QUEEN INSURANCE COMPANY OF AMERICA

JUDGMENT

FILED

26 Day of May 1966

at 9:45 A.M.

ETHEL BURTON

Clerk District Court, Orange County, Texas

By Doris Ham Deputy

INDEXED

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COMPARED

ORGAIN, BELL & TUCKER

ATTORNEYS AT LAW

BEAUMONT, TEXAS

CB:fr 5/19/66

NO. A-13,916

CLAUDE J. TOMPLAIT	I	IN THE DISTRICT COURT OF
VS.	I	ORANGE COUNTY, TEXAS
QUEEN INSURANCE COMPANY OF AMERICA	I	128TH JUDICIAL DISTRICT

JUDGMENT

BE IT REMEMBERED that in the above styled and numbered cause, at an agreed setting thereof, came the parties in person, and by and through their attorneys, and announced ready for trial; and a jury having been by all parties expressly waived, the matters of fact, as well as those of law, were thereupon submitted to the court; and the court having heard the pleadings, the evidence offered and the argument of counsel; and it appearing to the court, and the court having found, that the accident and incapacity involved in this suit and controversy was sustained in the course of employment by Claude J. Tomplait, Employee, with The Aber Company, Employer, which injury and incapacity the court finds was sustained at some time while employed by The Aber Company; and it further appearing to the court, and the court having found that all jurisdictional matters had been complied with in accordance with requirements of the law, and the Industrial Accident Board of the State of Texas having jurisdiction of said claim, made and entered its final ruling, order and award in said claim and that thereafter, within the time allowed by law, notice of appeal was given and this suit was instituted; and it appearing to the court, and the court having found, that said injuries and incapacity occurred in the county in which this suit is pending; and this court having determined that it has jurisdiction herein to render a final and binding judgment fully and finally determining all claims and all controversies between the parties;

It is, therefore, ORDERED, ADJUDGED and DECREED by the court that the final order, ruling and award of the Industrial Accident Board of the State of

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Texas, entered in such claim on December 18, 1962, being numbered W 67299, and there styled Claude J. Tomplait, Employee, vs. The Aber Company, Employer, and Queen Insurance Company of America, Insurer, be in all things vacated, set aside and held for naught, except insofar as the making and rendition of said final ruling, order and award was and is necessary to prevent said Industrial Accident Board of the State of Texas from again passing upon, vacating, modifying and determining said claim or any rights thereunder.

And thereafter it was announced to the court that the parties had agreed to a settlement of all controversies and suits, subject to the approval of the court, said settlement to be incorporated in a judgment whereby the plaintiff and plaintiff's attorney should recover of and from the said defendant the total sum of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00), in full, final and complete payment of any and all claims for compensation which are asserted or that could be asserted by plaintiff as a result of or in any way in connection with the injury, disease, or conditions arising or existing while employed by The Aber Company, and involved in this suit, and likewise in full and final compromise, settlement and satisfaction of any and all claims that said plaintiff has or may have in the future under the Workmen's Compensation Law of Texas, for medical aid, hospital services, nursing, chiropractic services, rehabilitation, medicines, prosthetic appliances or other benefits of any kind or character, arising or accruing by reason of the injury, disease or condition arising while employed by The Aber Company, made the basis of this suit; and the court finds that such sum fairly and fully compensates plaintiff and all claiming by, through, and under plaintiff, for any and all compensation and for any and all medical, surgical, hospital and other aforesaid benefits both past, present, and future as a result of the injury in question.

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And it further appearing that plaintiff and plaintiff's attorney had agreed upon an attorney's fee to be paid out of the amount of said settlement for his services in the matter; and it appearing that the said thirty per cent is a just and reasonable attorney's fee and in keeping with the services performed by said attorney and that the plaintiff had received advantages and benefits by and through such representation and that said fee is fair and reasonable, and that such services rendered by said attorney were necessary; and,

The court after hearing the evidence having found the entire settlement fair and reasonable and having approved such settlement and the division of the proceeds between the plaintiff and his attorneys;

It is, therefore, ORDERED, ADJUDGED and DECREED by the court that the said plaintiff do have and recover of and from the defendant in a lump sum the sum of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00), in full satisfaction of all claims for compensation, which are asserted or that could be asserted now or in the future by plaintiff as a result of or in any way in connection with the injury, disease and conditions arising or existing while employed by The Aber Company, and alleged in this suit, and it is further ORDERED, ADJUDGED and DECREED by the court that the said employer and the defendant, their assigns, agents and representatives, be and they are hereby declared to be fully, finally and forever acquitted and discharged of and from all liability for workmen's compensation (including but not limited to medical aid, hospital services, nursing, chiropractic services, rehabilitation, medicines, prosthetic appliances) and from any other claims or causes of action arising or that might arise in the future by reason of said injury, disease and conditions arising or existing while employed by The Aber Company, and all

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effects thereof; and it is further decreed that all benefits of every kind and character accruing or to accrue to said plaintiff under the Workmen's Compensation Law of Texas by reason of such injury, disease and conditions arising or existing while employed by The Aber Company, are in all things fully and finally compromised, settled, paid and satisfied.

It is further ORDERED that said sum of $1,500.00 is to be divided, and of said sum seventy per cent (70%) is to be paid to Claude J. Tomplait, and thirty per cent (30%) to plaintiff's attorney.

It further appearing to the court that prior to the signing and entry of this judgment, the full amount of this judgment has been fully and finally paid as provided in this judgment;

It is further ORDERED, ADJUDGED and DECREED that no execution shall issue herein for the amount of this judgment or any part thereof, except as to costs of court, and that except as to costs of court this judgment shall stand in all things fully and finally paid, satisfied, extinguished and released.

It is further ORDERED, ADJUDGED and DECREED by the court that the defendant pay the costs of court herein, for which let execution issue, if required, as often as may be necessary.

It is further ORDERED that as the plaintiff paid a jury fee deposit of $5.00 in this cause and as this cause was settled without the use of a jury such fee shall be refunded the plaintiff, the clerk is hereby ORDERED to refund such deposit to the plaintiff from the jury fund.

SIGNED this the 26th day of May, A. D., 1966.

James N. Nelly
JUDGE PRESIDING

APPROVED:

Ward McThenia
Attorney for Plaintiff

Plaintiff

ORGAIN, BELL & TUCKER

By Clive Jahnke
Attorney for Defendant

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THE STATE OF TEXAS §
COUNTY OF ORANGE §

I, JOY HAM, District Clerk of Orange County, Texas, do hereby certify that the foregoing is a true and correct microfilmed copy of the Case Papers, Orders and Judgments of the 128th Judicial District Court, 163rd Judicial District Court and the County Court at Law Sitting as a Domestic Relations Court of Orange County, Texas; said records having been microfilmed under the personal supervision of JOY HAM, District Clerk of Orange County, Texas.

GIVEN under my hand and seal of office this _____ day of 3-28-78 A. D., 19 78.

Joy Ham
JOY HAM, DISTRICT CLERK

I certify that I personally microfilmed the above records.

Colleen Gray
Deputy District Clerk

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