

1949

# Pacific States Cast Iron Pipe Company v. Industrial Commission of the State of Utah, and Ida D. Horrocks : Brief of Plaintiff

Utah Supreme Court

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## Recommended Citation

Brief of Appellant, *Pacific States Cast Iron Pipe Co. v. Industrial Comm. Of Utah*, No. 7289 (Utah Supreme Court, 1949).  
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**IN THE SUPREME COURT  
of the  
STATE OF UTAH**

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**PACIFIC STATES CAST IRON PIPE  
COMPANY,**

*Plaintiff,*

**VS**

**INDUSTRIAL COMMISSION OF  
THE STATE OF UTAH, and IDA  
D. HORROCKS,**

*Defendants.*

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**PLAINTIFF'S BRIEF**

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**FILED**

**STEPHENS, BRAYTON & LOWE**

**FEB 28 1949**

*Attorneys for Plaintiff.*

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PACIFIC STATES CAST IRON PIPE  
COMPANY,

*Plaintiff,*

vs

INDUSTRIAL COMMISSION OF  
THE STATE OF UTAH, and IDA  
D. HORROCKS,

*Defendants.*

Case No.  
7289

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Certiorari to review the decision of the Industrial Commission awarding compensation to Ida D. Horrocks, the dependent wife of LeRoy D. Horrocks, Deceased, which compensation was awarded on the grounds that the death of deceased was partially caused by silicosis.

## STATEMENT OF FACTS.

LeRoy D. Horrocks was employed by the plaintiff PACIFIC STATES CAST IRON PIPE COMPANY for the first time from 1927 to 1929. He left that employment and was subsequently reemployed in 1932

and continued in this employment until January 25, 1946. (Tr. 49 OD 69). While so employed he worked in various departments. From 1927 to 1929 and from 1932 to 1935 he worked in the Cleaning Department where his work consisted, among other things, of grinding burrs from pipe. (Tr. 50 OD 69). The grinding operation caused dust to be present in the building. From 1935 until November 1944 he worked in the shipping department. (Tr. 114 OD 69). The shipping department is in open air but Horrocks would occasionally go into the building for a few minutes per day. (Tr. 112 OD69). From November 1944 (Tr. 114 OD 69). to January 25, 1946 (Tr. 1 OD69) he was again employed in the Cleaning Department grinding pipe.

Prior to his employment by the Pipe Company, Horrocks had been employed in the 1920s by a quartz mine and spent approximately three years working underground where silica dust was present (Tr. 61 OD 69).

On January 25, 1946 Horrocks stopped working because he was unable to work. (Tr. 22 OD 77). Thereafter he was not employed by the plaintiff Pipe Company. (Tr. 1 OD 69). On March 8, 1946 Horrocks filed a claim for disability from an occupational disease of silicosis (Tr. 1 OD 69) which was assigned Claim No. OD 69. A hearing was held but no award was made under Claim No. OD 69. Horrocks died on February 10, 1948 (Tr. 42 OD 77) and the Commission found that the cause of death was chronic Bilateral

Glomerulonephritis with contributory pulmonary silicosis; that the silicosis contributed to the decedent's death to the extent of 30%. (Tr. 22 OD 77). Horrocks' death occurred more than two years from the last date upon which he had actually worked for the plaintiff Pipe Company. (Tr. 22 OD 77). No compensation for silicosis has been paid or awarded to Horrocks.

Thereafter, Ida D. Horrocks, the widow of LeRoy D. Horrocks, filed a claim for death benefits under the Occupational Disease Act and benefits were awarded by the Commission. (Tr. 22 OD 77).

## ERRORS UPON WHICH PLAINTIFF RELIES.

Plaintiff relies upon the failure of the Industrial Commission to give effect to Section 42-1a-13(b) 3, Utah Code Annotated 1943.

## ARGUMENT

### HORROCKS DID NOT DIE WITHIN TWO YEARS OF HIS LAST EMPLOYMENT

Section 42-1a-13 (b) 3, Utah Code Annotated provides as follows:

“(b) There is imposed upon every employer a liability for the payment of compensation to the dependents of every employee in cases where death results from an occupational disease, subject to the following conditions:

“(3) No compensation shall be paid for death from silicosis unless the death results

within two years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded, and in such cases compensation shall be paid if such death results within five years from the last day upon which the employee actually worked for the employer against whom compensation is claimed."

The claim filed by LeRoy Horrocks shows his last employment by plaintiff was in January 1946. Furthermore, the findings and conclusions of the Commission on questions of fact are conclusive (42-1a-40 U.S.C.A. 1943) and the Commission found that the deceased stopped work on January 25, 1946. The Commission also found that the deceased died on February 10, 1948. Thus the deceased did not die "within two years from the last day upon which the employee actually worked for the employer against whom compensation is claimed."

#### WHILE LIVING HORROCKS WAS ONLY PARTIALLY DISABLED

Death did not result "during a period of continuous *total* disability from silicosis." The deceased testified he could do light work. (Tr. 56 OD 69). Dr. Richards' statement was that Horrocks was "in no condition to engage in *hard strenuous* work." (Tr. 37 OD 69). Thus Horrocks, while living, was not totally disabled.

## NO COMPENSATION FOR SILICOSIS HAS BEEN PAID OR AWARDED

Even if Horrocks had been totally disabled while living, defendant Ira D. Horrocks cannot bring her claim within the five year period, provided by the exception clause of the limitation statute, because the record in O.D. Claim No. 69, the claim filed by LeRoy D. Horrocks, while living, shows that no compensation was paid. (Tr. 1 OD69) (Tr. 8 OD 77). This complete record also shows that no compensation was awarded inasmuch as it contains no award. Plaintiff submits that the reason no award was made to LeRoy D. Horrocks while living is that he was only partially disabled, and that partial disability from silicosis is not compensable. *Masich v United States Smelting, Refining & Mining Company*, —Utah—, 191 P. 2d 612.

### 42-1a-51 U.C.A. 1943 DOES NOT OBTAIN THE EFFECT OF 42-1a-13 (b) 3, U.C.A. 1943.

The Commission, in its decision relied upon 42-1a-51 U.C.A. 1943 which provides as follows:

“42-1a-51. WHEN OCCUPATIONAL DISEASE AGGRAVATED BY OTHER DISEASE. Where an occupational disease is aggravated by any other disease or infirmity not itself compensable, or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable under this act shall be *reduced* and *limited* to such proportion only of the compensation that would be payable if the occupa-



tional disease were the sole cause of the disability or death, as such occupational disease as a causative factor bears to all the causes of such disability or death." (Emphasis added).

42-1a-13 creates any liability which can exist for silicosis. 42-1a-51 limits whatever liability exists under Section 13. Section 51 does not create any new obligation inasmuch as it provides "the compensation payable under this act shall be reduced and limited." Section 51 limits recovery to a portion of the "compensation that would be payable if the occupational disease were the sole cause of ---- death." Yet in this case, if the sole cause of Horrocks' death had been silicosis, Section 13 provides that no compensation shall be awarded because death did not occur within the time prescribed. Therefore where no liability arises under section 13, Section 51 does not become operative.

## CONCLUSION.

Plaintiff therefore submits that the Commission acted without and in excess of its powers in making an award because LeRoy D. Horrocks did not die within two years after his last employment by defendant, nor did he die during a period of total disability, nor was any compensation paid or awarded for silicosis.

Respectfully submitted,

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