

1965

Colita Williams and Mae Williams, Dependents of Earl Rae Williams, Deceased v. the Industrial Commission of Utah, Mesa Drillers and Employers Casualty Company : Brief of Plaintiff

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Robert E. Froerer and M. Blain Peterson; Attorneys for Appellants

Recommended Citation

Brief of Appellant, *Williams v. Indus Comm'n of Utah*, No. 10273 (1965).
https://digitalcommons.law.byu.edu/uofu_sc2/3519

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 -) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
OF THE
STATE OF UTAH

COLITA WILLIAMS and
MAE WILLIAMS, dependents
of EARL RAE WILLIAMS,
deceased,

Plaintiffs,

vs

THE INDUSTRIAL COMMISSION
OF UTAH, MESA DRILLERS and
EMPLOYERS CASUALTY COMPANY

Defendants.

UNIVERSITY OF UTAH

OCT 15 1965

LAW LIBRARY

Case No.
10273

FILED

MAR 3 1 1965

Clerk, Supreme Court

APPEAL FROM AN ORDER OF THE INDUSTRIAL
COMMISSION OF UTAH

UNIVERSITY OF UTAH

Edward M. Tanner
and Gerber
Attorneys for Defendants,
Respondent
East 4th South
Salt Lake City, Utah

Robert E. Froerer
M. Blaine Peterson
Attorneys for Plaintiffs,
Appellants
200 Kiesel Building
Ogden, Utah

OCT 15 1965

LAW LIBRARY

TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF CASE	1
DISPOSITION IN THE INDUSTRIAL	1
COMMISSION	
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	10
POINT I. THE COMMISSION WAS IN ERROR IN REJECTING THE MEDICAL PANEL REPORT	10
POINT II. THE COMMISSION WAS IN ERROR IN FINDING THAT THERE WAS NOT A SCINTILLA OF COMPETENT EVIDENCE OF EXPOSURE TO PARAFORMALDEHYDE	11
POINT III. THE COMMISSION WAS IN ERROR IN FINDING THAT THERE WAS NO COM- PETENT MEDICAL EVIDENCE THAT EXPOSURE, IF ANY, CAUSED OR CON- TRIBUTED TO THE DEATH OF EARL RAE WILLIAMS	12
POINT IV. THE COMMISSION ACTED IN A CAPRICIOUS, ARBITRARY AND UNUSUAL MANNER	16
CONCLUSION	18
CASES CITED	
Denver and Rio Grande Railroad Co. v. Central Weber Sewer Dist., 287 P. 2d 884	17
Oscar Hackford v. Industrial Commission of Utah, 385 P. 2d 899	17

IN THE SUPREME COURT
OF THE
STATE OF UTAH

COLITA WILLIAMS and
MAE WILLIAMS, dependents
of EARL RAE WILLIAMS,
deceased,

Plaintiffs,

vs

THE INDUSTRIAL COMMISSION
OF UTAH, MESA DRILLERS and
EMPLOYERS CASUALTY COMPANY

Defendants.

Case No.
10273

* * * * *

BRIEF OF PLAINTIFF

* * * * *

STATEMENT OF NATURE OF CASE

This is an Appeal from an Order denying death benefits under the Workmen's Compensation Act and an Order denying a rehearing.

DISPOSITION IN THE INDUSTRIAL COMMISSION

An order was entered by the Industrial Commission denying plaintiff's claim for death benefits and after application for rehearing, this appeal followed.

RELIEF SOUGHT ON APPEAL

Plaintiffs, Colita Williams and Mae Williams, dependents of Earl Rae Williams, deceased, seek reversal of the order of the defendant, the Industrial Commission of Utah, as a matter of law and for an order of this court directing the Industrial Commission of Utah to award the plaintiffs death benefits or for a rehearing.

STATEMENT OF FACTS

Decedent was employed by Mesa Drillers and was working near Blanding, Utah, as a roughneck. On or about July 3, 1957, a driller for Mesa Drillers, a Buster Copeland, ordered decedent to mix a substance known as My-lo-jel preservative into a mudhopper enclosed in a shed near the drilling rig to condition the mud for drilling.

The My-lo-jel preservative contained a substance known as paraformaldehyde, which releases toxic formaldehyde when dissolved in water. (R, 4, 23)

Formaldehyde, depending on the concentration, can cause irritations to the mucus membranes and may, when exposure is extreme, cause chronic bronchitis and may lead to pneumonia. (R, 144)

The substance known as My-lo-jel was delivered to the drilling site on or about July 3, 1957 and the person delivering the substance said, "Not to dump it in a closed building". The driller, Mr. Buster Copeland, asked a LeRoy Ramey to dump the chemical into the drilling mud. Mr. Ramey told the driller, "I'd dump it through my chemical haul out in the open but I wouldn't dump it in the mud house out there". After Mr. Ramey's refusal to dump the substance in the mud house, Mr. Copeland "sent Earl Williams out there to dump it". Mr. Williams subsequently took the substance into the mud house and commenced dumping it into the drilling mud. (R 68, 69, 70, 71)

After remaining in the shed for about an hour, Mr. Earl B. Clark had finished his job on the floor with the motor and testified, "I went down there to the mud house and Mr. Williams was in there mixing that My-lo-jel through the mud hopper and it looked like he was having a pretty hard time in there and I walked in there, see. He didn't have on no mask or nothing, and I seen right away that the fumes were too terrific to even stay in there, so I held my breath and kicked that corrugated arm off the side of the little building there that the hopper was in, and I had to make about three tries at it before I could get it all kicked off."

"By that time, Mr. Copeland, the driller, must have heard the noise down there or something. Anyway, he appeared down there, just as I got it all kicked off and I told Mr. Williams to come on out of there and I washed the stuff off of him, because it looked like he was in pretty bad shape to me." (R 84, 85)

Mr. Clark further testified that decedent, "Had this stuff (My-lo-jel) all over him . . . when I took him up and washed it all off of him". (R, 85) Mr. Clark further stated that, "He seemed to be sick at his stomach . . . looked to me like he was coughing up that stuff". The decedent told Mr. Clark that he was burning and that, "He wanted to get it off his skin". (R, 91) Decedent asked Mr. Clark to wash him off with a water hose, which Mr. Clark did. Both Earl B. Clark and LeRoy Ramey testified that the decedent had a rash (red pimples) over him. (R, 86, 80, 73)

That evening and the next day the decedent complained that, "He didn't feel right", and that "He felt kind of sick from some kind of fumes he had inhaled on the drilling rig". He informed his wife, plaintiff, that, "I am getting some of that stuff out of my nose yet". (R, 95) On July 5 he told Earl B. Clark he was "Awful sick", (R, 87) and that evening he was admitted

to the hospital at Cortez, New Mexico. At this time he was running a high fever. Dr. Charles Massion, after examination, including X-ray, indicated that the decedent has contracted pneumonia. (R, 97)

The decedent was released from the hospital on July 9 and told to stay in bed. On July 13 Dr. Massion released the decedent to travel home to Texas and indicated, "*I think he will be better when he gets back home*". (Italics ours)

Decedent and his wife, Colita Williams, one of the plaintiffs herein, started for Texas on the 13th of July, 1957. During the trip the decedent indicated to Mrs. Williams, "He was sick and he just couldn't get enough water". (R, 100) About noon on the 14th of July, Mrs. Williams testified that, "We just got off the main road out of Clovis, when he just fell over against me and his eyes rolled back . . . but he got his breath and kind of straightened up, and he acted so funny and looked around". (R, 101) She took him to the Memorial Hospital in Clovis, New Mexico, where she had him checked by a doctor; the doctor indicated to her that, "*He couldn't find a thing wrong with his heart and prescribed some cough medicine*". (R, 101) (Italics ours)

The decedent and his wife continued on their way until they reached Levelland, Texas. They rented a cabin to get some rest and that evening, July 14, Mrs. Williams was awakened by the decedent coughing. She called a Dr. Barnes, who came and checked the decedent and indicated, "He is a very sick man . . . he needs quiet and rest for six or seven days". (R, 102)

The decedent died thirty minutes after being admitted to the hospital at Levelland, Texas, by Dr. Barnes on July 14, 1957. Dr. Barnes attributed death to a coronary occlusion. (R, 35)

A claim for death benefits was first made with the Industrial

Accident Board, Austin, Texas, on or about December 23, 1957. It was held that since the decedent was working in Utah at the time of the exposure that the Utah Industrial Commission had jurisdiction over the matter. On or about October 28, 1958, plaintiffs filed an application for hearing, stating that Mr. Williams, while inixing a certain substance in an oilwell drilling mud, a poisonous substance was produced which emitted into the air and was inhaled by Mr. Williams, thereby affecting his heart and causing his death. (R, 2)

The Utah Industrial Commission appointed a Medical Panel consisting of Irving Ershler, M. D., James F. Orme, M. D., and L. E. Viko, M. D., as Chairman on July 19, 1961. (R, 20) The Commission submitted a file to the Medical Panel which included the following:

1. The original employers first report of injury.
2. An application for hearing, signed by Colita Williams, stating that Mr. Williams, while mixing a certain substance in oilwell drilling mud, a poisonous substance was produced which emitted into the air and was inhaled by Mr. Williams, thereby affecting his heart and causing his death.
3. A denial of liability by Douglas S. Sonntag, adjuster for the Employers Casualty Company.
4. A photostat of a death certificate, signed by Dr. E. D. Barnes of Levelland, Texas, giving as the cause of death, coronary occlusion.
5. An analysis of the mud used at the well furnished by the Northern Mud Company, Inc.
6. A report dated June 8, 1959, signed by Dr. Charles C. Massion of Cortez, Colorado.

The Panel submitted the whole file to Dr. Alan K. Done, who is in charge of the poison laboratory at the Utah Medical School at the Salt Lake County Hospital. (R, 40, 41, 42, 43)

The Panel subsequently requested and received a letter from E. D. Barnes, M. D., the attending physician at the time of death. (R, 35)

Subsequently, Dr. Alan K. Done requested a report of premedical history of the deceased if it could be obtained. On September 12, 1961, Travis B. Phelps, M. D., sent a report to the panel of his physical examination of the decedent on April 30, 1957. Dr. Phelps indicated, "*Physical examination at that time was completely within normal limits with nothing unusual found*". (R, 27) (Italics ours)

Dr. Alan K. Done, after reviewing the information furnished, sent a report to the Medical Panel on August 18, 1961. (R, 22) In his report, Dr. Done said:

"In summary, it is my opinion that the medical which was submitted to me is in all respects consistent with the allegation that the decedent's illness and death were a direct result of the described industrial exposure, and that denial or establishment of a causal relationship depends now upon circumstantial information and/or the implication of an unrelated medical problem". (R, 22, 23, 24) (Italics ours)

The Medical Panel, upon instruction from the Commission, assumed an unusual exposure to the fumes of paraformaldehyde and accepted Dr. Maisson's diagnosis of pneumonitis and that such a pneumonitis was consistent with exposure to paraformaldehyde if the concentration of exposure is sufficient and from all information furnished, the panel arrived at three possible causes of death:

1. That the decedent had an acute exacerbation of an incompletely relieved pulmonary process, perhaps aggravated or incited by the fatigue of the long auto trip.
2. That the decedent had a myocardial infarction based

upon coronary thrombosis and that this was independent of the preceding pulmonary illness.

3. That the decedent had a myocardial infarction which was precipitated or aggravated by the preceding pulmonary illness.

The panel stated that of the three possibilities, "*The first is more probable — namely that his death was a result of an aggravation of the previous pulmonary condition.*" (R, 37, 38, 39) (Italics ours)

The defendants, Mesa Drillers and Employers Casualty Company, objected to the Medical Panel findings and the Utah Industrial Commission because of said objection held a hearing on the 5th day of November, 1962. Those testifying at this hearing were Dr. L. E. Viko, LeRoy Ramey, Earl B. Clark, and Colita Williams. The witnesses mentioned were brought from Texas at the expense of the plaintiffs. *The defendants at this hearing did not produce any witnesses, documents or other evidence for the commission's consideration despite the fact that they had requested the hearing in the first instance.*

At the first hearing held November 5, 1962, the following was obtained upon cross-examination by defendants:

"Q. Now considering the first possibility, doctor, wherein it is stated that it is possible, 'That he had an acute exacerbation of an incompletely resolved pulmonary process'. Would you explain just what this means?"

"A. *Well, the man had pneumonia. Then it goes without question.* The reports of Dr. Massion are very complete, and all the data that he submits — such as X-ray, electrocardiograph, physical findings — are all consistent with a diagnosis of pneumonitis,

or pneumonia. Using the word 'synonymous'. He was quite ill, and he started on a trip — a long trip — not too many days after the onset of the pneumonia. *It would not be unusual for such a pneumonia to reoccur under those circumstances.* That is what is meant by the phrase in the report." (Italics ours)

"Q. This word 'exacerbation'. What do you mean by this, doctor?"

"A. Instead of synonymous with the reoccurrence."

'Q. *In other words, your statement is that he had an acute reoccurrence of a pulmonary process which has not been completely cured?*" (Italics ours)

"A. *That is right.*" (Italics ours)

"Q. Then the second possibility is your stating that he had a heart attack that was independent of any previous condition?"

"A. That is correct."

"Q. Then the third possibility is that he had a heart attack which was possibly brought on by the preceding pulmonary illness?"

"A. Not solely brought on by it, but precipitated by it in the face of *pulmonary artery disease.*" (Italics ours)

"Q. And in setting forth these possibilities, you make no determination as to whether they were caused chemically or bacterially?"

"A. *It was the opinion of the panel that if there was a substantial exposure under the conditions described, from paraformaldehyde, that then the pneumonia was chemical,* and the epic on the panel on this is

largely based on the opinion of Dr. Done, who is an expert in the field of toxicology." (R, 64, 65) (Italics ours)

At the conclusion of the hearing on November 5, 1962, Clarence J. Frost, the Referee, stated, "This hearing is now adjourned. We will take the matter under advisement and advise the parties as soon as we can reach a decision. (R, 108)

Thereafter, four months later, on March 8, 1963, the Chairman of the Industrial Commission in a letter to Mrs. Mae Morgan, Kilgore, Texas said, "*The Commission has not reached a decision in the Colita Williams and Mae Williams case. As soon as we receive the Referee's report a decision will be made*". (R, 112) (Italics ours) Subsequently, four (4) days later, on March 12, 1963, the defendant, Employers Casualty Company, through their counsel, Lorin M. Pace, wrote to the Industrial Commission indicating that the plaintiffs "*produced two witnesses that were completely unexpected*. These were the employees who alleged to have been present when the so-called accident occurred." (R, 113) (Italics ours)

The Employers Casualty Company further stated, "*We have also developed some expert testimony concerning the effect of the chemicals inhaled by the deceased*" and requested a rehearing on the plaintiff's claim for the purpose of rebuttal and the presentation of *new evidences*. (R, 113) (Italics ours)

At the rehearing held August 12, 1964, *defendants failed to produce any expert testimony concerning the effect of the chemicals* which were allegedly inhaled by the deceased other than that which had already been furnished to the commission by the Medical Panel.

The only new information furnished to the commission was a statement of the rankest sort of hearsay, purportedly made by Buster Copeland, *not* in his own handwriting, given to one

Doenisthorpe on or about January 20, 1958, prior to the first hearing on November 5, 1962, and a word record, both of which were clearly self-serving, hearsay and inadmissible.

ARGUMENT

Based upon the facts of this case as they appear in the record on appeal, there are a number of conclusions which can be made. They are:

1. That the deceased was exposed to paraformaldehyde while in the course of his employment for Mesa Drillers.

2. That he became sick and required medical attention.

3. That the degree of exposure was sufficient to result in pneumonia and that he did, in fact, develop pneumonia.

4. That he was treated and released by the doctor to return to his home in Texas.

5. That he became ill enroute and received further medical help.

6. That there is no evidence in the record of a pre-existing heart condition.

7. That every reasonable inference is that he died as the result of exposure to the fumes.

I. THE COMMISSION WAS IN ERROR IN REJECTING THE MEDICAL PANEL REPORT.

Plaintiffs challenge the order of the Industrial Commission wherein it held that the findings of the Medical Panel were based upon an unsigned statement from the widow which was not admissible in evidence and that the entire statement was pure hearsay.

The Industrial Commission appointed the Medical Panel on July 19, 1961, and furnished the Medical Panel the commission file as heretofore set out.

The commission states in the Order that the panel based its

decision on the unsigned statement of the widow-claimant. However, on page six of the hearing of November 5, 1962, Dr. Viko stated as follows, "Mr. Wiesley usually presides at these meetings, but it is not for the Medical Panel to determine whether or not there has been an accident, and whether there has been an accident of the type described, *but that we may — as we have in this case — assumed that there was such an accident as described. And then, assuming that, to give a medical opinion on causal relation, and that is what we have done in this case*". (R. 59) (Italics ours) The panel was proper in assuming that there had been an accident and the commission was in error in rejecting the panel's conclusion because it was based on the 'unsigned statement' referred to in this order. In essence then, the commission erred in holding that the findings of the panel were based on an unsigned statement from the widow when in fact the commission had instructed the panel that procedurally they were to assume that the injury had occurred. Whether or not the injury was based on a signed or unsigned statement or any other evidence was not subject matter for the panel to consider and was not taken into consideration by them in arriving at their decision other than indicating that they had assumed, as instructed, that the accident had occurred. The first hearing was requested by the defendants, Mesa Drillers, based upon objections to the medical report. It was developed at the hearing that the accident *had in fact occurred as had been assumed by the panel*.

II. THE COMMISSION WAS IN ERROR IN FINDING THAT THERE WAS NOT A SCINTILLA OF COMPETENT EVIDENCE OF EXPOSURE TO PARAFORMALDEHYDE.

All the evidence in the record is contrary to this finding. There is no question but that the decedent was exposed to paraformaldehyde. Four witnesses appeared in person at the hearing

held November 5, 1962 and were examined and cross-examined by counsel for plaintiffs and defendants and also by the referee. A summary of their testimony appears in the Statement of Facts contained herein.

The two competent witnesses, Ramey and Clark, in testifying that the decedent had been exposed to fumes from mixing drilling mud and that from this exposure he seemed to be sick to his stomach, was coughing up and had a rash of red pimples over him, were not in a position to know the effect of exposure to the fumes nor could they analyze its ultimate effect upon him, nor could they have known the legal effect of their testimony.

There can be no doubt whatsoever that the deceased was exposed to the fumes, that he became ill, that as a result he was taken to a hospital, and that he ultimately died of pneumonia. At the time it was believed by his wife that he had suffered a heart attack. There was no contention made at that time that he died of pneumonia. Even Dr. Massion, according to his own statement, was not qualified to evaluate the effect of exposure to the fumes. There is no evidence at all that the deceased was not exposed to the fumes and we submit that the commission was bound to accept the testimony that the accident happened exactly as described and that the testimony of the witness was competent. There is nothing in the record to disprove it.

III. THE COMMISSION WAS IN ERROR IN FINDING THAT THERE WAS NO COMPETENT MEDICAL EVIDENCE THAT EXPOSURE, IF ANY, CAUSED OR CONTRIBUTED TO THE DEATH OF EARL RAE WILLIAMS.

The medical evidence in this case is most interesting. Mrs. Williams testified that she informed Dr. Massion that her husband had been exposed to the fumes and was very sick but that the doctor paid no attention to her. In his statement he

said "I do not remember if at the time he made any statement with regard to having inhaled any material while at work. I did not enter any comments that he may have made at this time on his hospital record." This confirms Mrs. Williams' testimony. (R, 7) Dr. Massion further stated, "I have been requested by Mrs. Williams and one of her attorneys to state an opinion with regard to whether her husband's death was caused by poisonous fumes or substance. I am unable to state such an opinion, since I have had no experience prior to this with industrial poisons. *It would be obvious to me that Mr. Williams underwent the usual course in evolution of a bacterial lung infection.* In view of the fact that his fever rose to 104°, there must have been such an infection present. *I am unable to deny or confirm that an inhaled intoxicin or poison could have aggravated or even perhaps initiated this process.* I, however, failed to see any connection between the possible poisoning and eventual cause of death". (R, 9) (Italics ours)

Dr. Massion's statement indicates that he was aware that the decedent had been exposed to some poisonous fumes but that he, Dr. Massion, "Failed to see any connection" between the exposure and the eventual cause of death; and that this was due to lack of knowledge or experience with industrial poisons.

At the rehearing held August 12, 1964, counsel for defendants, Mesa Drillers and Employers Casualty Company, again questioned Dr. Viko, who had testified at the first hearing and who we presume had read the transcript of that hearing.

"Q. I see. O.K. Dr. Massion said, "I, however, fail to see any connection between the possible poisoning and eventual cause of death'. Do you agree with that?"

"A. No, we do not agree with that." (Italics ours)

"Q. Well, then, it is more reasonable to assume that you could tell what the patient's problem was without having read the electrocardiogram than could the doctor who actually saw the patient and took care of him for a period of about four days?"

"A. No medically diagnostic conclusion is ever made solely on the basis of an electrocardiogram. You have to take history, physical examination and laboratory findings all into consideration. And considering all of those and assuming exposure to paraformaldehyde, a conclusion was that . . . if that assumption was correct . . . that he had a pneumonitis secondary to paraformaldehyde exposure."

"Q. Then it is really a guess on the part of the panel whether this was a coronary occlusion or not?"

"A. The report of the panel was to the effect that it is not possible for the panel to express a positive opinion as to the final cause of death. *They then named three possibilities and expressed a preference for one of them.*"

Counsel for defense then called Dr. Alan K. Done to testify. In questioning Dr. Done, the following was obtained:

"Q. Now what symptoms actually would one who had so inhaled, what symptoms would they have if they inhaled formaldehyde?"

"A. Well, this, of course, would depend upon the concentration. But it is intensely irritating, and would irritate all mucus membranes — including those of the respiratory tract, the throat, the eyes, the nose — and would be extremely uncomfortable, and acutely so. Above and beyond this, it may leave residual

damage — in terms of damage to trachial bronchial tree, chronic bronchitis. It may lead to pneumonia, but usually does this only under circumstances where the exposure is truly overwhelming or is chronic and repeated.

"Q. Referring back to your previous answer to before that one, would a single exposure — as a hypothetical — or directly related to this case — would an exposure of say an hour to an hour and a half or possibly two hours duration, be as a single instance in your opinion, be sufficient to induce chemically a pneumonitis?"

"A. It could be. It would depend entirely upon the concentration of formaldehyde in the atmosphere."

"Q. Now these symptoms, would they be an immediate reaction? Would they show up the day after, or the third or fourth day? Could you give me, say over a period of three to five days, what from your experience would be the reaction to such a chemical exposure or poison?"

"A. The symptoms involving the eyes, the nose and the upper respiratory tract would be acute ones, that would occur immediately. Whether or not symptoms persisted beyond the first few hours would depend on how much damage was entailed by this initial exposure. If someone had damage to the trachial bronchial tree, or developed pneumonia — chemical pneumonia — as a result of this, then of course the symptoms of this would persist for a matter of several days."

"Q. Do you have an opinion, doctor, as to how soon pneumonitis may develop? Would it be a day or two, or several days, were such the case?"

"A. Well, here you have a problem of definition really. There would be an initial pulmonary reaction, one reaction which you might or might not call pneumonitis, depending on your terminology. I would call it pneumonitis. Then there would be a persistent reaction, resulting from actual damage to the epithelium and so on — that is the lining — of the respiratory tract. Beyond that it is also possible — and indeed not uncommon, for someone who has chemical pneumonia — to develop a superimposed bacterial pneumonia, because of the damaged condition of the lung. So that the sequence of events would depend upon which of these three pneumonia you were talking about. You could start with an acute chemical pneumonitis, which could persist due to actual structural damage to the lung itself, and then you could on top of that have bacterial pneumonia. But the findings of pneumonia should be apparent rather quickly after exposure, I would think." (R, 142, 148) (*Italics ours*)

4. THE COMMISSION ACTED IN A CAPRICIOUS, ARBITRARY AND UNUSUAL MANNER

One of the most disturbing aspects of this case involved the negative attitude of the commission from the beginning. This attitude was first expressed in a letter dated February 24, 1960, addressed to Southwest Memorial Hospital, Cortez, Colorado, stating:

"Please be advised that the case is still pending. Claimant's attorney has not requested a hearing. The medical evidence is decidedly negative."

And in a letter sent to counsel for plaintiffs dated March 25, 1960, stating:

"The medical evidence is almost completely negative. The chemical analysis of the drilling mud is not helpful. The final diagnosis was pneumonitis, moderately severe. The death certificate gives coronary occlusion as the cause of death

"I do not decide cases in advance of a hearing, but I say to you in all sincerity that this case is extremely doubtful." (R 14)

The commission stalled in coming to a decision after the November 5, 1962 hearing until March 12, 1963, at which time it decided to have a further hearing upon the allegation of the defendants Mesa Drillers and Employers Casualty that they had turned up new evidence regarding the effect of the chemical involved. A re-hearing was held August 12, 1964, despite the failure of the defendants Mesa Drillers and Employers Casualty to produce their alleged new experts and over the objection of plaintiff's-applicants and the only new evidence produced does not constitute substantial evidence. (Zion's Cooperative Mercantile Institution, et al. v. Industrial Commission of Utah, et al. 262 P 99).

The commission in arriving at a decision based on completely heresay evidence completely ignored the report from its own medical panel and gave absolutely no credence to the uncontradicted competent substantial testimony presented before it at the November 5, 1962 hearing. The commission must base its decision on some kind of reasonably substantial proof. (Denver & Rio Grande Railroad Co. v. Central Weber Sewer, I Dist., 287 P 2d 884; Oscar Hackford v. Industrial Commission of Utah, 385 P 2d 899).

CONCLUSION

Plaintiff's-applicants respectfully submit their case to this Honorable Court for review and contend that the decision of the Industrial Commission is capricious, arbitrary and contrary to law; that the Industrial Commission acted in excess or without its power; that the Industrial Commission deprived the applicants of their rights to further re-hearing; and request of this Honorable Court that the Industrial Commission should be reversed with instructions to award applicants the benefits to which they are entitled in accordance with the statutes of the State of Utah, as in such cases made and provided.

Respectfully submitted,

M. Blaine Peterson

Robert E. Froerer

Attorneys for Plaintiff's-Applicants