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The State Insurance Fund v. Industrial Commission of Utah et al : Plaintiff's Brief

Utah Supreme Court

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**IN THE SUPREME COURT OF
THE STATE OF UTAH**

APR 23 1964

THE STATE INSURANCE FUND,

Supreme Court, Utah

Plaintiff,

- vs. -

**THE INDUSTRIAL COMMISSION
OF UTAH, ALFRED LUND, and
UNITED PARK CITY MINES CO.,***Defendants.*Case No.
10095**PLAINTIFF'S BRIEF****CHARLES WELCH, Jr.,**
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APR 29 1964
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- vs. -

THE INDUSTRIAL COMMISSION
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PLAINTIFF'S BRIEF

NATURE OF THE CASE

This case calls for the Supreme Court of Utah to review the Industrial Commission's proceedings and decision awarding benefits to Alfred Lund under the Utah Occupational Disease Law, for the purpose of determining whether the Commission exceeded its powers in making such award, and whether the Commission's findings of fact are supported by substantial, competent evidence having probative value.

DISPOSITION BEFORE THE INDUSTRIAL COMMISSION

On July 31, 1963, the Industrial Commission held a hearing on Alfred Lund's application. On December 4, 1963, the Commission rendered its decision in the form of an Order, in which it held that Alfred Lund is permanently and totally disabled from silicosis and tuberculosis, and is entitled to have the United Park City Mines Company and the State Insurance Fund pay him occupational disease compensation benefits of \$41.75 per week until a total of \$15,415 is paid, plus medical and hospital expenses not to exceed \$1,925.01.

RELIEF SOUGHT IN PETITION

The Plaintiff, the State Insurance Fund, in this review proceeding seeks to have the Supreme Court reverse, vacate and annul the award which the Industrial Commission made to Alfred Lund on Dec. 4, 1963, insofar as it relates to the State Insurance Fund.

STATEMENT OF FACTS

Alfred Lund commenced to work in underground mining at the Silver King Coalition Mines in the Park City area in March, 1913. (R. 19) He worked at underground mining from 1913 to 1931, with the exception of six years during which he was doing work in the shipyards and for an electric light company. (R. 19-20) From 1931 to 1951 he worked on the waste dump of the Silver King, except for a seven months period in 1949

when he was off work due to a hip injury. (R. 22-23) He was off work entirely from Sept. 15, 1951 to June 26, 1956, which disability was also due to the hip injury. (R. 23) He returned to work on June 26, 1956 for the United Park City Mines Company, and from then until Sept. 1, 1956 he was employed tearing down a boarding house. (R. 24) He then worked at the Ontario Loading Station for the same employer from Sept. 1, 1956 to May 1, 1957, when he was transferred to the mining company's Keetley operations, where he worked until Dec. 30, 1961, and was then terminated. (R. 25)

All of the work which Mr. Lund did for the United Park City Mines Company from June 26, 1956 to Dec. 30, 1961, was above ground. He was employed as a tool sharpener in the carpenter shop.

The United Park City Mines Company was a self-insured employer under the Workmen's Compensation and Occupational Disease laws during all of the times above mentioned until December 1, 1961, on which date it was insured under a policy of insurance issued by the State Insurance Fund.

ARGUMENT

POINT 1

ALFRED LUND WAS NOT EXPOSED TO HARMFUL QUANTITIES OF SILICON DIOXIDE DUST FOR FIVE YEARS IN UTAH DURING THE FIFTEEN YEARS IMMEDIATELY PRECEDING HIS DISABLEMENT, AS REQUIRED BY SECTION 35-2-13, U.C.A. 1953.

Section 35-2-13(a), Subsection 3, UCA 1953, reads as follows:

“No compensation shall be paid in case of silicosis unless during the fifteen years immediately preceding the disablement, the injured employee shall have been exposed to harmful quantities of silicon dioxide (SiO_2) dust for a total period of not less than five years in this state * * * *”

In the fifth paragraph of the Industrial Commission's decision and Order dated Dec. 4, 1961, (R. 85), it made a finding that the applicant, Mr. Lund

“was exposed to harmful quantities of silicon dioxide dust for more than five years in this State during the fifteen years immediately preceding his disablement; that he was last exposed to harmful quantities of silicon dioxide dust during a period of thirty days, or more, from December 1st to December 30, 1961, inclusive, in the employ of United Park City Mines Company; that he became totally disabled * * * on May 8, 1962.”

But the Commission did not make any finding as to what dates, or which months or which years were included in the “more than five years” of exposure. It is therefore necessary for us to examine the record to see if we can determine what the Commission meant in that respect.

If Mr. Lund's total disability commenced May 8, 1962, then the fifteen years immediately preceding his disablement would be from May 8, 1947 to May 8, 1962. If he had exposure to harmful quantities of silica dust

in his work on the Silver King dump, (R. 25-33), it could not have exceeded 3 years and 9 months, during the period ending Sept. 15, 1951, inasmuch as he was off work entirely for the period of seven months in 1949 due to a hip injury. (R. 22) Assuming for the purpose of our present discussion that he was harmfully exposed for a period of three years and nine months ending Sept. 15, 1951, he would need at least one year and three months additional of harmful exposure after he returned to work for the United Park City Mines Company on June 26, 1956, (R. 24) in order to satisfy the statutory requirement of five years exposure during "the fifteen years immediately preceding the disablement . . ." Section 35-2-13(3) UCA 1953.

Mr. Lund stated that the first two or three months of his work for United Park City Mines Company commencing June 26, 1956, involved the tearing down of a boarding house. (R. 24, 34) Obviously that would not expose him to silica dust. He also stated that in September, 1956 he went to work at the Ontario Loading Station for the same employer, cutting timber, on the ground floor. (R. 24, 34, 35) Some of that work was outside, and some of it was inside the loading station. He said that there were some dust conditions in and around that building. He worked there approximately 8 months. If that were all considered to be in the category of harmful exposure, adding that 8 months to the 3 years and 9 months that he worked on the Silver King dump, as previously mentioned, produces a total of not ex-

ceeding 4 years and 5 months. He would still need at least another 7 months of harmful exposure in order to satisfy the statutory requirement of "five years," and it would necessarily have to come within the period from May 1, 1957 to December 30, 1961 while he was working for the United Park City Mines Company at Keetley.

The only disinterested witness who testified at the Commission's hearing of this case, relating to the presence or absence of harmful quantities of silica dust in Mr. Lund's working conditions at the United Park City Mines Company from May 1, 1957 to Dec. 30, 1961, was Mr. Robert S. Hyde. (R. 42-57) At the time he testified at the Commission's hearing on July 31, 1963, Mr. Hyde was the master mechanic of United Park City Mines Company, and he had been such for three years. Prior to that, he was the shop foreman directly in charge of Mr. Lund's work from May, 1957 to Dec. 30, 1961.

Mr. Hyde testified that Mr. Lund's duties were: filing saws, sharpening axes, handling picks and sledge hammers and making ladders. (R. 43) Most of the time Mr. Lund was in the sawmill or in the carpenter shop, filing saws and handling different tools. (We understand that to mean: putting new handles in tools.) A smaller part of his time was spent sharpening axes in the steel-sharpening shop where the emery wheel was located.

Mr. Hyde's testimony clearly indicates that Mr.

Lund was not exposed to harmful quantities of silica dust in doing any part of his duties as above mentioned. In the steel-sharpening shop, where he spent a small part of his time sharpening axes, and possibly other tools, he always wore a respirator. The company furnished the respirators and new filters were on hand at all times. (R. 47) It was left to the worker's discretion to change the filter when a new one was needed. The following is some of Mr. Hyde's testimony, (R. 53), in answering the questions of Mr. Lund's attorney on cross examination:

- Q. Now in the work that Mr. Lund was performing in grinding axes on the emery wheel, this operation produces quite a bit of dust from the wheel, as it grinds down, does it not?
- A. It's a resinoid wheel, and Fred wore a respirator in his grinding operations. We took all precautions that we could take there.
- Q. You felt it was prudent and necessary to wear respirators doing that work?
- A. Oh, yes. That is a common practice nowadays, with any grinding of any material at all, to wear respirators, glasses, and take all safety precautions.

and at page R. 54:

- Q. So then it would be your testimony would it now, Mr. Hyde, that you wear these respirators because of dust conditions that do exist in that shop?

A. To eliminate every possible chance of a man breathing dust, yes.

Mr. Hyde also described the relative positions of the shop where Mr. Lund did his work at Keetley from May 1, 1957 to Dec. 30, 1961, and the two haulageways through which the mine cars of ore and the mine cars of waste material were brought out of the mine. (R. 44) He said that each track was covered over by a shed; a regular snow shed. One of those sheds was at least 10 feet from the open end of the sawmill. The other shed was 20 feet away from the open end of the sawmill. The ore cars were dumped into railroad cars about 300 feet away from the open end of the sawmill. The carpenter shop was 25 feet further to the rear. (R. 45, 50, 52) That would make a distance of at least 325 feet from the carpenter ship to the nearest place where ore was dumped.

None of the ore cars ever came into the shop itself. (R. 49) The nearest place to the carpenter shop where any waste material was dumped, was more than 1,000 feet away. (R. 51) The condition of the ore and waste material was described by Mr. Hyde as "wet" or "damp." (R. 47 & 56)

In answer to the question as to whether there was any dust in the area of the carpenter shop, or the sawmill, or the tool-sharpening shop, (R. 48), Mr. Hyde said:

"I wouldn't say so, only when the wind blows. Because then the doors are open on both ends

and you do get a passage of wind. And it would be dust. Sawdust."

On cross examination, Mr. Hyde also stated that the building in which the carpenter shop was located, was built on an old mine dump; but he also explained that at least a foot of dirt had accumulated over the years, on top of the mine material. (R. 49-51)

It can truly be said that Mr. Hyde's testimony was uncontradicted. Applicant's attorney asked him several questions on cross examination, but no witness was called on behalf of the Defendant to dispute or rebut any of Mr. Hyde's testimony. Even the testimony which Mr. Lund had given, was substantially in agreement with that of Mr. Hyde, particularly that part of it relating to the wearing of a respirator by Mr. Lund on the occasions when he was cleaning and sharpening axes and other tools. (R. 40)

Q. You stated you wore a respirator?

A. I did.

Q. Does this respirator have a filter?

A. Yes.

Q. State what you did, relative to changing the filter.

A. Well, you couldn't use a respirator only just so long, and the filter was full of dust and it had to be changed. Put in a fresh filter.

Q. How often would you change the filter?

A. Well, that wasn't uniform. Sometimes every two days, and sometimes once a week.

Q. And did you wear this filter all the time you were sharpening tools?

A. Every time I was grinding axes or brushing axes, and most of the time filing saws, I wore it.

Mr. Lund's attorney at the hearing (R. 39), and also in the reply brief which he filed with the Industrial Commission about Nov. 1, 1963, raised a question concerning the composition of the "resinoid" emery wheel which Mr. Lund used in the operation of sharpening axes. (R. 74) We are not sure whether he meant to imply that the fine dust which is created by the grinding action of an emery wheel, would have any effect in causing silicon dioxide dust which is the basis for a silicosis case. So as to assist in clearing up that question, we refer to Webster's dictionary, in which "emery" is defined as a dark, granular variety of corundum. "Corundum" is defined as native alumina, or aluminum oxide, the chemical formula of which is Al_2O_3 . In other words, the emery wheel and the emery dust which might result from its use, do not contain any silicon in their composition. Emery contains aluminum, which does not cause silicosis, but on the contrary inhibits it.

In the brief which Mr. Lund's attorney, Andrew R. Hurley, wrote and filed with the Industrial Commission in October, 1963, (R. 64), he cited the Kucher case which is entitled *Kennecott Copper Corporation vs. Industrial Commission*, 115 Utah 451, 205 P.2d 829, in support of his argument relating to the matter of the five years exposure required by Section 35-2-13a, subsection 3,

UCA 1953. In that case the employee, John Kucher, had worked in underground mining from 1917 to 1932. Then he worked for Kennecott Copper Corporation from September 30, 1935 to July 15, 1946, when he became totally disabled from silicosis and tuberculosis. His work for Kennecott during that period of time, was all above ground, performing a variety of tasks, such as working on the tracks, as a car repairman both inside the shops and "on the hill," etc. After a hearing, the Industrial Commission awarded occupational disease compensation benefits to Mr. Kucher. The Supreme Court of Utah sustained the Commission's award, saying that there was sufficient evidence to prove his exposure to harmful quantities of silicon dioxide dust in his work above ground the last eleven years he worked, to satisfy the requirement of five years exposure. In the latter part of the Court's opinion, it said:

"This is not a case where the employer sought to be held liable assigned the applicant to a place of work where there was no possible exposure to any quantities of such dust."

In the case now before the court, Defendant Lund was not assigned to work where there was dust. His place of employment was far removed from the area where the ore and waste were dumped. He also wore a protective respirator while he worked at the sharpening and cleaning operation.

POINT 2

ALFRED LUND WAS NOT EXPOSED TO HARMFUL QUANTITIES OF SILICON DIOXIDE DUST IN HIS EMPLOYMENT FOR UNITED PARK CITY

MINES COMPANY IN THE MONTH OF DECEMBER, 1961.

The State Insurance Fund policy of insurance became effective on December 1, 1961. The Defendant, Mr. Lund was employed by United Park City Mines Company until December 30, 1961. During the time the State Insurance Funds policy was in effect Defendant Lund actually worked only twenty days.

Plaintiff contends that during the month of December, 1961, Mr. Lund was in no way exposed to harmful quantities of silicon dioxide dust. At the risk of being somewhat repetitious of the general statements made in connection with Point 1 above the following quotations from the record are given to more fully set forth the defendants working conditions during that time.

Robert S. Hyde, master mechanic with United Park City Mines Company, the only disinterested witness, testified as follows (R. 43) regarding the nature of Defendant's work during the month of December 1961, and earlier while Defendant was working for United Park City Mines Company. (R. 43)

"Q. And what were his duties at the time he commenced working for you?

A. Fred was filing saws, sharpening axes, handling picks, sledge hammers, making ladders, and that was about the extent of his work there.

Q. And where was his place of work?

A. Part time in sharpening axes, he was in the

steel-sharpening shop, where the emery wheel is. The biggest part of the time he was in the sawmill or in the carpenter shop, filing saws and handling different tools.

The place where Defendant worked was located some distance away from the waste and ore haulageways. Again the testimony of Mr. Hyde is enlightening. (R. 44-45):

“Q. Now getting back to the original point. As I understand, you have now described both haulageways — both of the ore car haulageways and of the dump material haulageway — are in covered sheds; is that correct?

A. That's right. They're in a regular snowshed.

Q. Regular snowshed?

A. Yes.

Q. And how close do either one of these covered sheds come to the shop in which Mr. Lund did his work?

A. Now the walkway to come from the ore shed, over to the doorway where you go into the sawmill, is a distance of 20 feet. And that is right out in the open sky. This entrance that way. And from the waste track into the sawmill is, like I say, a distance from the track about ten feet. Ten to eleven feet.

Q. Now these dimensions you have been mentioning, as I understand you, they are the distance from these covered sheds through which these cars went, to the open end of the sawmill?

A. That's right.

- Q. Now where, with respect to this open end of the sawmill, was the room in which Mr. Lund did his work?
- A. After you went in the door to the sawmill, the next door to the carpenter shop was a distance of around 25 feet.
- Q. And I understood you, that is the room in which mostly Mr. Lund did his work?
- A. That's right.
- Q. Now this particular room that you have described, is that a closed room?
- A. It has two doors and two windows in it. It was put there for doing carpenter work, and also for the fellows in the wintertime to come in and get warm. We have it heated, and it gets pretty cold up there, so we have to have something to warm their fingers.
- Q. But it is an enclosed room, except for the two doors and windows you have just mentioned?
- A. Yes. That's right.
- Q. And if I understand you, that room was over in one corner of the sawmill?
- A. That's right. That is in the northeast corner of our sawmill."

Mr. Hyde testified that the Defendant did not go into the mine during December, 1961 nor had he at an earlier time worked in the mine after he entered the employment of United Park City Mines Company. (R. 45-46)

“Q. Now, Mr. Hyde, let me ask you with respect — particularly to the month of December, 1961, did Mr. Lund ever have any occasion to go into the mine itself?

A. No sir. That is something that I gave Fred specific orders, on account of his leg. I didn't want him taking any chances. And I think Fred will verify that.

Q. So that, so far as you know, he did not go into the mine during the month of December, 1961?

A. That's right.

Q. And with respect to that same thing, did he go into the mine for any business prior to that?

A. Not that I know of, no sir.”

The place where Defendant worked was far removed from where the waste and ore was dumped. Mr. Hyde testified on cross examination. (R. 51-52)

“A. We don't dump there anymore at all. The waste dump is, oh, a thousand of twelve hundred feet.

Q. Beyond there?

A. Beyond there.

Q. But the trains are passing daily along this snowshed, and dumping into the railroad cars, 300 feet from the carpentershop?

A. And they go up through a separate shed entirely.

Q. Up on a trestle, and dump down?

A. Yes.”

Under the circumstances of Mr. Hyde's employment it would appear that he was in no way exposed to harmful quantities of silicon dioxide dust during the twenty days that he worked after the policy of insurance issued by the State Insurance Fund went into effect.

POINT 3

EVEN IF ALFRED LUND HAD BEEN EXPOSED TO HARMFUL QUANTITIES OF SILICON DIOXIDE DUST IN DECEMBER, 1961, THERE WAS NOT 30 DAYS EXPOSURE IN THAT MONTH, AS REQUIRED BY SECTION 35-2-14, IN ORDER TO IMPOSE LIABILITY UPON THE STATE INSURANCE FUND.

In proceeding with our discussion of this point, we are not conceding that there was any exposure of Alfred Lund to harmful quantities of silica dust in his work for the United Park City Mines Company at any time from May 1, 1957 to December 30, 1961. But it is also our contention that, even if he had been exposed to harmful quantities of silica dust in December, 1961, he had only 20 working days that month, which would not have satisfied the requirement of the latter part of Section 35-2-14, UCA 1953, which reads:

“* * * in the case of silicosis the only employer liable shall be the employer in whose employment was last exposed to harmful quantities of silicon dioxide (SiO_2) dust during a period of thirty days or more after the effective date of this act.”

At the Industrial Commission hearing, all parties stipulated as to the 20 working days which Mr. Lund

worked for the United Park City Mines Company in the month of December, 1961, (R. 48-49), that being the total amount of time he worked for that employer after the issuance of the State Insurance Fund's workmen's compensation and occupational disease policy covering that employer, the effective date of the policy being December 1, 1961.

The word, "period," was used in both of the sections of the Utah Occupational Disease Disability Law from which we have herein quoted. This word has various meanings, depending upon the way in which it is used in a sentence. In Section 35-2-13a, subsection 3, UCA 1953, which contains the requirement of harmful exposure to silica dust "for a total period of not less than five years," the Legislature apparently used the word, "period," to mean, "amount of time." The apparent meaning of that part of the section therefore is:

"the injured employee shall have been exposed to harmful quantities of silicon dioxide dust for a total *amount of time* of five years or more in Utah * * *."

By the same reasoning, the latter part of Section 35-2-14, UCA 1953, has the meaning:

"that in the case of silicosis the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide dust during *an amount of time* of thirty days or more after July 1, 1941."

In the brief which Mr. Lund's attorney filed with the Industrial Commission, (R. 66), he cited the Sam

Williams case which is entitled, *Commission of Finance vs. Ind. Comm.*, 121 Utah 83, 239 P.2d 185, as authority supporting the argument that exposure during a 30 day period does not mean exposure on 30 working days. That case does not support that argument. At the time involved in that case, the provisions of Section 35-2-14 required an exposure of 60 days. The Supreme Court's opinion at page 86, said that the 60 days exposure "need not be on successive days, but only cumulative after July 1, 1941." But that opinion did not say that the requirement of 60 days exposure would be satisfied by anything less than 60 actual days of exposure.

In the brief which counsel for the Defendant, Lund filed with the Commission, mention is made of the Obradovich case, which is titled, *Uta-Carbon Coal Co. vs. Ind. Comm.*, 104 Utah 567, 140 P.2d 649. In that case, the last seven years which Obradovich worked were in the Uta-Carbon coal mine, ending April 10, 1942. The Industrial Commission and the Supreme Court both held that there was sufficient evidence that Obradovich was exposed to harmful quantities of silica dust in his work in the coal mine during the last nine months of his work from July 1, 1941 to April 10, 1942, to satisfy the "60 days exposure" which Section 14 of the O. D. law then required. The difference between that factual situation and our present case, is readily apparent. The Obradovich case did not turn on whether or not there had been exposure for 60 days, but it turned on the question as to whether or not Obradovich had been ex-

posed to harmful quantities of silica dust while he worked in the coal mine. There was evidence that Carbon County coal mines contained silica dust in harmful quantities.

In his brief filed with the Industrial Commission, (R. 65), Mr. Lund's attorney also cited the case of *Pacific Employers Insurance Co. vs. Ind. Comm.*, 108 Utah 123, 157 P.2d 800, which is known as the Deza case. He contended that the Supreme Court held in that case, that 30 days of exposure to harmful quantities of silica dust is not required in order to charge an insurance carrier with liability for a silicosis case. We do not think that the Supreme Court made any such rule as that in the Deza case.

In that case there was not much dispute about the facts. John Deza worked for the National Tunnel & Mines Company and its predecessor in the same location for 27 years between 1914 and 1944. He was continuously employed as an underground miner for many years until June 7, 1943. At Dr. Richards' advice, he quit working entirely, having become disabled by reason of silicosis and tuberculosis. The State Insurance Fund carried the compensation insurance of the employer mining company for many years until July 1, 1943, when the Pacific Employers Insurance Co. took over the employer's compensation coverage. In the Supreme Court's opinion, certain parts of the Industrial Commission's decision were quoted at page 127 Utah Report.

“* * * the disability occurred after Pacific Em-

ployers Insurance Company became the insurance carrier, the same employer is involved throughout the entire period from 1934 to March 25, 1944 * * .”

“* * * the insurance carrier which happens to be the insurer at the time the total disability occurs must assume liability, although the exposure occurred prior to the effective date of the policy, and although the disease which finally caused total disablement existed prior to the date of the said policy.”

The Supreme Court of Utah affirmed the Industrial Commission’s award against the employer, National Tunnel & Mines Company, but the Court annulled the award which the Commission had made against the Pacific Employers Insurance Company. The Court held that the State Insurance Fund was also liable for payment of the benefits, because the Fund covered the employer’s compensation liability during the period of Mr. Deza’s last exposure, which was of more than twenty years duration. At 108 Utah 127, the Court’s opinion said:

“The statute plainly provides

that in the case of silicosis the only employer liable shall be the employer in whose employment *the employee was last exposed to harmful quantities of silicon dioxide (SiO₂) dust* during a period of sixty days or more after the effective date of this act (July 1, 1941).”

“Under the facts, the statutory requirements were all clearly met and render the National Tunnel & Mines Company liable as such last employer.

* * The insurance carrier at the time of such last exposure was the State Insurance Fund;”

The emphasis which Justice Turner added in his quotation from Section 35-1-14, does not have any effect upon the grammatical construction of that provision. With or without any italics, the phrase quoted on page 127:

“* * * the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide dust during a period of sixty days or more * * *.”

is followed on page 128 by the Court’s statement that:

“The insurance carrier at the time of such last exposure was the State Insurance Fund;”

Those three words, “*such last exposure*,” relate back and refer to the part of the statute which the opinion had just quoted, namely

“* * * last exposed to harmful quantities of silicon dioxide dust during a period of sixty days or more * * *.”

The Deza case did not specifically involve the same question which we have in our present case, that is, whether the silicosis liability attaches to a later insurance carrier in a case where there might have been harmful exposure for some period less than thirty days, (or 60 days as was then required). It was determined that Mr. Deza was not so exposed *at any time* after the later insurance carrier’s insurance policy became effective.

If the parts of the Court's opinion in the Deza case, which were quoted by Mr. Hurley in his briefs filed with the Commission, (R. 65 & 74), could be interpreted to mean that only one day of exposure was enough to make the later insurance carrier liable, it would have been obiter dictum, because that was not the factual situation involved in the Deza case. The only point which was specifically decided by the Supreme Court in the Deza case, was that the liability for payment of benefits in a silicosis case did not attach to a later insurance carrier which covered the employer during a period when the employee first became disabled from silicosis, but after the date when said later insurance carrier's coverage went into effect said employee did not have any harmful exposure while working for said employer.

Without conceding that Mr. Lund had any harmful exposure to silica dust in the month of December, 1961, it is the contention of the State Insurance Fund that it is entitled to stand in the same position as an employer with respect to the provision of Section 35-2-14, which requires 30 days exposure in order to charge the last employer. In other words, when the State Insurance Fund, or any other insurance carrier, issues a policy covering the occupational disease liability of an employer, such insurance carrier does not become liable for payment of benefits in any silicosis case until the employee has been exposed to harmful quantities of silica dust for 30 days in the service of such employer after the insurance policy goes into effect.

An employer who has previously been self-insured, may take out a Workmen's Compensation and Occupational Disease policy with the State Insurance Fund or a private insurance company. By doing so, such employer does not obtain the effect of transferring to the insurance carrier, his liability to pay for his employees' silicosis cases, until after he has continued to expose his employees to harmful quantities of silicon dioxide dust for an additional thirty days.

CONCLUSION

For the foregoing reasons, the decision and order of the Industrial Commission dated December 4, 1963, insofar as it relates to the State Insurance Fund, should be annulled by the Supreme Court of Utah.

Respectfully submitted,

CHARLES WELCH, JR.,
F. A. TROTTIER,
Attorneys for Plaintiff.