

Opinion No. 42-4128

July 24, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Representative R. E. Daughtry Roswell, New Mexico

{*225} We acknowledge receipt of your letter of July 18, 1942, wherein you have made certain inquiries with regard to our Workmen's Compensation Law, insofar as the same applies to occupational diseases incurred by employees in extra-hazardous occupations.

You are correct in assuming that employees contracting an occupational disease, the approximate cause of which was due to an accident occurring in the course of employment, may hold their employers liable under the Workmen's Compensation Law, Section 156-101 to Section 156-127, New Mexico Statutes Annotated, 1929 Compilation, as amended by Chapter 178, Laws of 1933 and Chapter 92, Laws of 1937. See *Stevenson vs. Lee Moor Contracting Company*, 45 N.M. 354, 115 P. (2d) 342.

You point out that some workmen's compensation insurance carriers are including in their policies a clause exempting the insurance carrier from liability which may arise due to occupational diseases.

You asked whether district judges can legally accept a policy of this nature. In view of the provision in Section 156-103, New Mexico Statutes Annotated, 1929 Compilation, it is my opinion that district judges may legally accept such policies, but that the court record should show that the judge has found the employer is financially solvent, and that he (the employer) is excused from filing an undertaking with regard to the liability to his employees who may contract an occupational disease.

It is well that we point out, however, that when such an exemption is made in the insurance policy, the employees' right to compensation would be limited by the provisions of the Workmen's Compensation Law, for the reason that the employer would not have complied with the provisions of the law regarding insurance. See Section 4, Chapter 92, Laws of 1937, and Section 156-103, New Mexico Statutes Annotated, 1929 Compilation.

Trusting that the foregoing sufficiently answers your inquiries, I am,

By GEO. H. HUNKER, Jr.

Asst. Atty. General