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TO D.C. BAR

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March 22, 1985

SPENCER, JR.
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JULIS A. BROWN
1910-1982
DORIS B. MCCORMICK
1921-1983

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Aetna Casualty & Surety Company
P. O. Box 4963
Syracuse, New York 13221

Attention: Mr. Joseph Kohl, Supervisor
Mr. John Mulcahy, Senior Claim Representative

Gentlemen:

As per our telephone conversations, the above-captioned matter came on for trial and a jury was drawn on March 19, 1985. At all times prior to March 19, 1985, the only settlement demand which we had was in the sum of \$2 million. We advised the plaintiff that in the light of the outlandish demand no offer would be forthcoming.

In addition, New Primex Realty and its carrier Public Service Mutual took the position that pursuant to its lease with Sherwin Williams, Sherwin Williams was to provide insurance coverage in the sum of \$100,000/\$300,000 which in fact was provided through Underwriters at Lloyds which listed New Primex as "additional named insured". Based upon this designation, New Primex took the position that the policy with Lloyds was primary to the Public Service Mutual policy and accordingly, Public Service Mutual was unwilling to contribute anything toward settlement, at least during the preliminary negotiations.

Subsequent to the pre-trial conference held a couple of weeks ago, we furnished plaintiffs' attorney with a copy of Dr. John Bennett's report on causation dated February 7, 1983 and previously forwarded to you. Pursuant to the local court rules in any death case we are required to furnish the opposing party with the reports of any physicians who will testify on our behalf regardless of whether they were examining or record reviewing physicians. I feel that the service of Dr. Bennett's report close to trial worked to our advantage since up to that

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point the plaintiffs assumed that we were continuing with a reliance on Dr. Bartos who testified at the Workers' Compensation proceedings and who would seem to vacillate in his testimony a great deal when pressed under cross examination.

At a further pre-trial conference held after the drawing of the jury, plaintiffs' demand in settlement was in the sum of \$200,000 "new money", a waiver of the Workers' Compensation lien, and no offset against future entitlements to Workers' Compensation, which are presently being made at the rate of \$42.00 per week.

My evaluation at this time was that the case could be settled in the \$150,000 area, provided there was a waiver of the Workers' Compensation lien to date. I also felt that we should be entitled to an offset or credit toward future payments in the sum representing net proceeds of the settlement to the plaintiffs.

After many conversations with both of your offices, I received total settlement authorization in the sum of \$150,000. On behalf of Sherwin Williams, an offer of \$125,000 was made to which the Aetna would contribute \$50,000 and Sherwin Williams the balance. New Primex agreed to contribute \$15,000 toward this figure, so that the offer made to the plaintiffs was in the sum of \$140,000, a waiver of Workers' Compensation lien to date, and a credit/offset against future Workers' Compensation entitlements in an amount equal to the net proceeds of the settlement received by the plaintiffs. This settlement offer was accepted by the plaintiffs, and a court record was made regarding the settlement and duplicate copies are enclosed.

When I am in receipt of the appropriate Supreme Court Order approving the settlement and the proposed distribution to the decedent's decendants, and after the filing of any necessary papers, I shall forward the same on to each of you with the request that your settlement checks be issued accordingly

of Sherwin Williams **REDACTED**
appeared and assisted me at this trial, and I feel that their presence indicated to the plaintiffs that Sherwin Williams was serious about pursuing its defense and helped to achieve some reasonableness in the amounts sought in settlement of this lawsuit. Please convey my appreciation to each of them for their efforts and contribution.