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FEB 23 1988

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PLEASE REFER TO: SW-11586

February 16, 1988

Sherwin Williams
101 Prospect Avenue Northwest
Cleveland, OH 44115

ATTENTION: Mr. Anthony Colangelo
Re: ?
ASSURED: CONTRACT TRANSPORTATION SYSTEMS
Claimant: dec'd.

REDACTED

Dear Mr. Colangelo:

I have completed my review of the file material regarding this case.

Please be advised that Referee Henry Willson has scheduled this case for an initial hearing, in Pittsburgh, PA on February 16, 1988. I will be attending the hearing to represent the interests of your company.

In my opinion, Referee Willson is moderate-to-conservative. Consequently, the assignment to him is, in my opinion, a beneficial one.

In addition, since I spoke with you on January 28, 1988, the claimant-widow, has retained attorney Donald Balsley to represent her interests in this case. He has sent me some additional information that I will comment upon below. I do not believe that attorney Balsley regularly handles worker's compensation cases.

Also, as I indicated to you in our discussion on January 28, 1988, the Pennsylvania Workmen's Compensation Act - and existing case law - mandate that an Answer be filed within 15 days of the date of circulation of the Fatal Claim Petition. If an Answer is not filed within 15 days, the allegations of the Fatal Claim Petition can be deemed to be admitted. This can effectively preclude a defense in the case.

In this case, the Answer was not filed within 15 days of the date of circulation of the Fatal Claim Petition.

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However, it is rather unusual for the filing of a last Answer to be raised as an issue in a case. I do not expect it to become an issue in this case. Moreover, the law does suggest that the employer can circumvent this problem if some reasonable cause is established for the filing of the late Answer. In this case, I believe that we can establish reasonable cause because of the confusion surrounding the existence of insurance and the relationship between Contract Transportation Systems and Sherwin Williams Company. In summary, therefore, I do not expect the filing of the late Answer to become an issue in this case, but I did want you to be aware of the potential problem that exists.

REDACTED

REVIEW OF CLAIM DOCUMENTATION

This is, indeed, a fascinating case. It is also a case with substantial potential exposure.

By way of review, the claimant-widow, has filed a Claim Petition (that should be encaptioned as a Fatal Claim Petition) alleging that her deceased husband, died in the course of employment with Contract Transportation Systems on June 5, 1987. The Claim Petition alleges that the decedent died from acute bronchial asthma which was aggravated by his working conditions. The decedent was employed by Contract Transportation Systems as a truck driver.

It appears that the decedent was 32 years of age at the time of his death. However, I do not know the age of the claimant-widow, nor do I know if there are any dependent children. I will attempt to determine this information at the hearing on February 16, 1988. In addition, I would appreciate it if you would provide me with a Wage Statement. Once I have the Wage Statement and can determine the number of dependents, I will be able to provide you with some estimation of the potential exposure in this case. Regardless, it seems to me that it must be substantial.

I understand - from our discussion on January 28, 1988 - that claimant was an employee of Contract Transportation Systems and that there is no issue as to whether or not he was an independent contractor as opposed to an employee. Also, I understand that there is no issue as to whether or not there is jurisdiction in Pennsylvania - even though the death occurred in the State of West Virginia - since the contract of hire was entered into in Pennsylvania. Accordingly, I will not raise these issues at the hearing on February 16, 1988, though they can be raised at a later date if contrary information should