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April 24, 1991

Ms. Mary Lee O'Brien
Claims Adjuster
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The Travelers Workers Comp Unit
P.O. Box 5588
Manchester, NH 03108

WORKERS'
COMPENSATION

APR 30 1991

REDACTED

RE: vs. Sherwin-Williams Company
File: 487CBBM83392T

Dear Mary Lee:

I recently received notice that a hearing will be held on Monday, May 13, 1991. Mr. : claims entitlement to workers' compensation benefits on account of asthma that he said was caused by exposure to various paints in the course of his employment at Sherwin-Williams. Dr. Newkirk's April 16, 1990 report states that in about 1978, the employee noticed that he suffered hoarseness, irritation in his throat and wheezing after spraying certain paints in the course of his employment as a sales representative for the automotive services division of Sherwin-Williams. This was associated with chest pain and headaches. The symptoms typically subsided after the following evening. The symptoms became more permanent in January of 1990. Mr. claims that he became disabled from his work as a salesman of automotive paints for Sherwin-Williams after January 29, 1990.

The law of occupational diseases is set forth in §§181-196 the Workers' Compensation Act. Section 184 states that occupational disease is a disease that is due to "causes and conditions which are characteristic of a particular trade, occupation, process or employment and which arises out of and in the course of employment." The employee has alleged that he has contracted asthma through his exposure to paint solvents while servicing auto-body shops for Sherwin-Williams during the last twelve years in his capacity as a salesman.

Dr. Newkirk's report implies that M has recognized the work related connection between his asthmatic condition

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and his employment since 1978. Nevertheless, the injury is not deemed to have occurred until January 30, 1990, the date he became incapacitated from performing his work as a salesman for Sherwin-Williams. See 39 M.R.S.A. §186 and 187. Having defined the date of injury under Section 186, Section 187 instructs that the standard notice provisions under Section 63 of the Workers' Compensation Act shall govern. Hence, the employee must have given notice of his occupational disease to Sherwin-Williams within thirty days of January 30, 1990. By copy of this letter to Anthony Colangelo, the manager of the Workers' Compensation Unit at Sherwin-Williams, I am asking Mr. Colangelo to let me know as soon as possible when and how Mr. [redacted] notified Sherwin-Williams of his occupational illness and the resulting disability, what Mr. [redacted] said, to whom the notice was given, when Mr. [redacted] began to lose time from work and whether or not Mr. [redacted] has returned to work since January 29, 1990. Furthermore, I am asking Mr. Colangelo to let me know what is contained in the solvents with which Mr. [redacted] came in contact during his employment at Sherwin-Williams. Any information that Mr. Colangelo can share relative to the causes of toxic agents, etc. and asthma would be most helpful. Furthermore, any readings or data indicating the levels to which Mr. [redacted] was exposed would also be helpful.

The medical evidence will be very important. As Alison Denham outlined in her correspondence to you dated March 7, 1991, Steve Dalton, a physician's assistant who works for Robert Kaschuv, M.D., apparently first developed the idea that Mr. [redacted]'s respiratory problems were caused by exposure to solvents in the course of his employment. It is my understanding that he referred Mr. [redacted] to Robert Kaschuv, M.D. who opined on March 6, 1990 that the asthmatic complaints were not related to "industrial exposure." In fact, he thought that the condition was a form of bronchitis caused by exposure to bacteria. On February 21, 1990, Dr. Kaschuv apparently thought that Mr. [redacted] should stop biting his nails because this made him more susceptible to viral infections. However, Dr. Newkirk, a physician who practices industrial medicine in Skowhegan, Maine, referred the employee to Benjamin Hoffman, M.D. of the Center for Occupational Health in Exeter, New Hampshire who said that the employee definitely suffers from hexamethylene diisocyanate related asthma. He stated that this is an isocyanate induced respiratory disease and that these types of asthma are due to exposure to "toluene diisocyanate, but methylene and hexamethylene diisocyanate are also potent causes of occupational asthma..."

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By copy of this letter to Anthony Colangelo, I am asking him to contact me at his earliest possible convenience to let me know if Mr. [REDACTED] was exposed to any of these agents. Dr. Hoffman believes that the employee might suffer life-long related respiratory difficulties such as chronic asthmatics. I have scheduled the deposition of Dr. Hoffman. If you do now want me to go through with this deposition, let me know as soon as possible so that it may be cancelled. Since we have a hearing coming up soon, I want to make sure that we take Dr. Hoffman's testimony prior to that time. I am looking for a physician who is competent to examine Mr. [REDACTED]. I want to solicit an opinion as to causation and the nature and extent of Mr. [REDACTED]'s ongoing incapacity. Furthermore, I would like to find out what prognosis applies and whether Mr. [REDACTED] suffers from some chronic bronchial condition that may have been temporarily aggravated by his employment at Sherwin-Williams. If so, I will be most interested to learn if this temporary aggravation has resolved.

Please forward your claims notes to me so that I may determine when you first received notice of this injury. Finally, I note that you mentioned that Peter Mills, Esquire might be willing to agree to a settlement for his client since his client has apparently become a farmer. If so, what amount will you authorize? If Mr. Colangelo has any questions about lump sum settlement, please do not hesitate to contact me about any issues regarding that.

Thank you for your assistance.

Very truly yours,



Richard N. Hewes

RNH/slhc
cc: Anthony Colangelo