

**MCDONOUGH
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PLAINTIFF'S EXHIBIT

BOND-248

MCDONOUGH CAPERTON/CLEVELAND
Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920

January 23, 1981

C
O
P
Y

Jack Randall, Inc.
Attorneys at Law
500 International Bldg.
722 Chestnut Street
St. Louis MO 63101

Dear Mr. Randall:

YOUR FILE: ANDREW MAYBERRY (DECEASED)
EMPLOYER: BONDEX INTERNATIONAL, INC.

My thanks to you for discussing this matter with me on the morning of January 20.

The matter has now been referred to Commercial Union as the information you provided me enabled me to determine that there were other coverages available, and the coverage which seems to be applicable here is with Commercial Union if I have properly interpreted the information we have just received.

If this office can be of any further help in coordinating disposition of this matter, please let me know.

Very truly yours,

Carl Jennings (P.H.)
Carl B. Jennings
Claim Manager

CBJ:dlh

cc: Douglas Wood, Bondex International
cc: R. E. Klar, RPM, Inc.
cc: James D. Lacy, Bondex International
cc: Vernon Hoerath, Commercial Union

BON - 02257

**DONOUGH
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MCDONOUGH CAPERTON/CLEVELAND
Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920

File
January 23, 1981

C
O
P
Y
Mr. Vernon Hoerath, Manager
Claims Department
Commercial Union Associates
No. 10 Broadway
St. Louis MO 63102

Dear Mr. Hoerath:

INSURED: RPM, INC. - BONDEX INTERNATIONAL, INC.
W.C. CLAIMANT: ANDREW MAYBERRY
DATE OF DEATH: 12-30-79
POLICY: CWG 588257 (9-19-77 to 78)
POLICY: CWG 660501 (9-18-78 to 79)

Attached are copies of material correspondence from our file which will be of some assistance to you in setting up your file.

This matter came to our attention on November 17, 1980 by virtue of Mr. Douglas Wood's letter dated November 13.

We had taken the arbitrary date of September 19 from the attorney's letter, but that date is not particularly significant at the moment.

When this matter came to our attention, we attempted to have the file brought up to date by referring it to the Aetna Life & Casualty Company since they have been the carrier for the past two years. We were without a specific date of occurrence and did not really have enough information to know exactly where the file should be referred.

When the Aetna Casualty & Surety compensation claims department declined to accept it on the grounds that they had no coverage as of 9-19-79, we then attempted to obtain some additional information from Attorney Randall. We made several telephone calls to his office, but they were not returned. On the morning of January 20, I did talk to Mr. Randall by telephone and obtained some additional information.

BON - 02258

Mr. Randall informs me that the claimant's last date of work was 8-11-78 and that he was hospitalized at St. Louis University Hospital from August 11, 1978 until October 1978, when he was discharged. Attorney Randall further tells us that in September 1979, Mr. Mayberry's condition was diagnosed as cancer. I do not have copies of any medical information which would support or refute that date. Attorney Randall further stated that the deceased had been in the hospital three times during 1978 prior to August 11, 1978.

Bondex had no knowledge or information of any of this as being work-related. When I talked with Attorney Randall I suggested to him that the employer had no indication that Mr. Mayberry's ill health was work-related. The attorney frankly acknowledged that he did not come into the case until sometime after Mr. Mayberry had passed away and that it was, as expected, at that time that the fact that Mr. Mayberry may have been exposed to asbestos during his employment as a paint mixer with Bondex.

Mr. Mayberry was given weekly paychecks until the latter part of December 1979. These checks were due him because of accumulated vacation, birthdays and holidays, etc.

Mr. Douglas Wood, Vice President of Production at Bondex International, tells me that during January 1980 he had several telephone calls from the widow asking Mr. Wood why Mr. Mayberry's pension checks had not been forthcoming.

Mr. Wood explains to me that any pension due Mr. Mayberry would not have come from Bondex nor from an insurance company with which Bondex was related, but rather would come through facilities sponsored jointly between Bondex and the Teamsters Union. The checks would be issued through the union.

Attorney Randall stated that technically Bondex was in fault and was to be obligated to pay death benefits from 12-30-79 up to the present time. I suggested to Attorney Randall that not all items were set in concrete and there might be extenuating circumstances to consider. He seemed somewhat amenable to that possibility.

I am concerned with whether or not the statute of limitations may have expired on their claim before it was filed as I am not familiar with the date which would trigger the statute of limitations.

In the necessary investigation that will have to be conducted, you should make your contact with Douglas Wood, Vice President of Production, Bondex International, Inc., 3616 Scarlet Oak Boulevard, St. Louis, Missouri 63122. His telephone number is 225-5001.

Mr. Vernon Hoerath

-3-

January 23, 1981

If there is anything that we can do at this end to be of assistance to you, please let us know. We would appreciate very much if you would keep us posted on developments as we are most anxious to know how this will develop.

Very truly yours,

Carl Jennings
Carl E. Jennings (S4)
Claim Manager

CBJ:dlh

Enclosures

cc: Douglas Wood, Bondex International

cc: R. E. Klar, RPM, Inc.

cc: James D. Lacy, Bondex International

BON - 02260

**MCDONOUGH
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MCDONOUGH CAPERTON/CLEVELAND
Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920

January 30, 1981

Mr. Vernon Hoerath
Manager - Claims Dept.
Commercial Union Associates
10 Broadway
St. Louis MO 63102

Dear Mr. Hoerath:

INSURED: RPM, INC. - BONDEX INTERNATIONAL
W.C. CLAIMANT: ANDREW MAYBERRY, DECEASED
DATE OF DEATH: 12-30-79
POLICY NO. CWG 588257 (9-19-77 - 78)
POLICY NO. CWG 660501 (9-18-78 - 79)

You have perhaps not had enough time to acknowledge our letter of January 23 forwarding this matter to you for attention, but hot on the heels of my telephone discussion with Attorney Randall, I received a copy of the letter he addressed to the Division of Workers' Compensation under date of January 23, 1981.

It is apparent that he is considering that we are the insurance carrier for all practical purposes and that by forwarding us a copy of his letter he is now in a position to proceed with a hearing on the date which may be chosen.

I have not informed Attorney Randall of your probable involvement and will not do so. When you have had an opportunity to confirm the coverage and determine that you are in fact involved, you may proceed to contact Mr. Randall at your own discretion.

It will be of great comfort if we can hear from you as quickly as possible so we will know where the matter rests as far as responding to any notice which may issue from the Workers' Bureau.

Very truly yours,

Carl Jennings
(DLH)
Carl B. Jennings
Claim Manager

CBJ:dlh

BON - 02261

cc: James D. Lacy, Bondex International - Brunswick
cc: Douglas Wood, Bondex International - St. Louis
cc: Richard E. Klar, RPM, Inc.

Mr. Vernon Hoerath

-2-

January 30, 1981

B.P.S. Should anyone receive a notice of hearing on this file, please make certain that the information is communicated to this office immediately. Regardless of the merits of the case, our position will be in jeopardy if for any reason we do not have a representative present at the next hearing.

We would anticipate an acknowledgement from Commercial Union rather shortly, and if their response is as affirmative as I trust it will be, we will then ask that you immediately forward any correspondence received or any information obtained relating to this file to that insurance company and to this office.

CBJ

CBJ

BON - 02262

**MCDONOUGH
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MCDONOUGH CAPERTON/CLEVELAND
Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920

February 6, 1981

C
O
P
Y

Jack Randall, Inc.
Attorneys at Law
500 International Bldg.
722 Chestnut Street
St. Louis MO 63101

Dear Mr. Randall:

YOUR FILE: EMPLOYEE - ANDREW MAYBERRY, DECEASED
EMPLOYER: BONDEX INTERNATIONAL, INC.

It is my firm belief that all information has now been made available to the proper parties in St. Louis and that you will in the immediate future receive a communication from the Aetna Casualty & Surety Company and, perhaps, from Commercial Union as to their position with respect to the coverage.

There is some additional work to be done on the part of Mr. Dillon at the Aetna Casualty & Surety Company, and it may take him a little time, but certainly this matter should be resolved as far as the insurance is concerned not later than March 1. The proceedings can then go forward with the question of merit.

My thanks to you for your cooperation, and if there is anything I can do to be of further assistance, please call me.

Very truly yours,

Carl B. Jennings (DLH)
Carl B. Jennings
Claim Manager

CBJ:dlh

cc: Richard Dillon
Aetna Casualty & Surety - St. Louis
cc: Vernon Hoerath
Commercial Union
cc: James D. Lacy ✓
Bondex - Brunswick
cc: Douglas Wood
Bondex - St. Louis
cc: Richard E. Klar
RPM Inc.

BON - 02263

**MCDONOUGH
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GROUP**

MCDONOUGH CAPERTON/CLEVELAND
Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920

February 6, 1981

Mr. Vernon Hoerath
Claims Manager
Commercial Union Insurance
10 Broadway
St. Louis MO 63102

Dear Mr. Hoerath:

RPM, INC. - BONDEX INTERNATIONAL
W.C. CLAIMANT: ANDREW MAYBERRY, DECEASED
DATE OF DEATH: 12-30-79
POLICY NO. CWG 660501 (9-18-78 to 79)
588257 (9-19-77 to 78)

Unfortunately I did not reach you by phone on the afternoon of February 5. I had talked at some length with Superintendent Dick Dillon at the Aetna claim office and provided him with the latest and complete coverage on their policies relating to the Bondex matter.

It is respectfully suggested that you discuss this with Mr. Dillon and see if between you, you can agree on who should bear the laboring oar if both companies are involved; or if possible, resolve the question down to the point where only one company may have the responsibility.

The reason for my vacillation is that we are confronted with various dates germane to the file, and I'm not certain what the law is in Missouri with respect to fixing dates of responsibility when various possible dates are produced. We start with the fact that this man worked for the company over twenty years and his last date of employment was August 11, 1978. We are informed that he was hospitalized on August 11, 1978 and that he had been hospitalized three different times during the year of 1978.

Claimant's attorney has informed me that the deceased's condition was diagnosed as cancer in September 1979, but I do not know the exact date.

Mr. Vernon Hoerath

-2-

February 6, 1981

I'm sure that Attorney Randall will be glad to have some definite comment from either of you two gentlemen and that we must not anticipate his patient to extend too long since he has made his second filing in this matter.

I thank you very much for your demonstrated cooperation and perhaps we'll have occasion to talk with you before the time you receive this letter; but I'm very anxious we resolve these loose ends as soon as possible.

Very truly yours,

Carl B. Jennings
Carl B. Jennings
Claim Manager

CBJ:dlh

cc: James D. Lacy ✓
Bondex International - Brunswick

cc: Douglas Wood
Bondex International - St. Louis

cc: Richard E. Klar
RPM, Inc.

cc: Richard Dillon
Aetna Life & Casualty - St. Louis

BON - 02265

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MCDONOUGH CAPERTON/CLEVELAND
Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920

February 6, 1981

Mr. Richard Dillon, Claims Supt.
Aetna Life & Casualty Company
940 Westport Plaza
St. Louis MO 62141

Dear Dick:

RPM, INC. - BONDEX INTERNATIONAL
CLAIMANT: ANDREW MAYBERRY, DECEASED
DATE OF DEATH: 12-30-79
AETNA POLICIES: ASSIGNED RISK 94 C 51718 CAA
(9-23-78 to 9-23-79)
ENDORSEMENT EFF. 9-19 on POLICY 94 C 51718 CAA
POLICY NO. 94 C 205832 CAA (9-23-80 to 9-23-81)

Mr. Hoerath was not available on the afternoon of February 5 when I tried to call him at the St. Louis claims department of the Commercial Union Insurance Company.

The Commercial Union policy does not seem to be involved. They had a policy in effect from 9-19-77 to 78. The Aetna's policy picked up at 9-19-78 after the endorsement was on to correct the date. Aetna also had a policy on the account from 9-23-80 to 9-23-81.

It will depend a great deal on what the law in Missouri provides as to the effective dates of the policy as related to the date of occurrence. Bear in mind the deceased was employed for over twenty years with Bondex. His last date of employment was 8-11-78. We are told by Attorney Randall that Mr. Mayberry entered the hospital on 8-11-78 and that he had been hospitalized three times during the year of 1978.

Attorney Randall also tells me that Mr. Mayberry's condition was diagnosed as cancer in September 1979, but I do not have a date.

It was my hope that with the familiarity of your people and the knowledge of the Commercial Union people, you would be able to

Mr. Richard Dillon

-2-

February 6, 1981

reach a clear-cut decision in a few moments as to what would determine the policy and policy period involved.

As I mentioned in our telephone conversation of Thursday, February 5, the attorney representing the widow has filed this claim for a second time, and I am sure he is not going to be very patient as far as allowing additional time. I will write to him and suggest that all questions should be resolved by the first of March, but in the meantime, I would respectfully suggest it might be well for you to make personal contact with him to reassure him that something is being done to resolve the question and prepare to go ahead on merit.

I still think it is unfortunate that someone did not make a casualty inspection of the file to see whether or not there was anything of interest.

Please keep me posted and let me know very shortly that this matter is under control so I can give it a generous diary and report to the policyholder that their interests are being properly and adequately protected.

Very truly yours,

(Carl B. Jennings)
Carl B. Jennings
Claim Manager

CEJ:dlh

cc: James D. Lacy ✓
Bondex International - Brunswick

cc: Douglas Wood
Bondex International - St. Louis

cc: Richard E. Klar
RPM, Inc.

BON - 02267

MCDONOUGH CAPERTON/CLEVELAND

Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920 • Telex: 985665

February 23, 1981

Mr. Richard Dillon, Supt.
Claims Department
Aetna Casualty & Surety Co.
940 West Port Plaza
St. Louis MO 62141

Dear Dick:

RPM, INC. - BONDEX INTERNATIONAL
CLAIMANT: ANDREW MAYBERRY, DECEASED
DATE OF DEATH: 12-30-79
DATE OF DIAGNOSIS: 9-9-79
POLICY: 94 C 5178 CAA and 94 C 205832

In view of the confusion and lost motion in the beginning of this file, I am somewhat concerned as to where it may stand at the present time. Bear with me and try to get the information I need so that I can put this to rest with the assurance it is having your professional attention.

I would like to know whether or not you or someone from your office has had a chance to discuss this with Mr. Hoerath at Commercial Union to reassure him you have accepted responsibility for handling the file, if that is the case. Have you talked to Attorney Randall? Has someone had an opportunity to look at the file in the Workers' Comp. Bureau? If so, what is the present status, and what is scheduled for upcoming developments? Do you have someone scheduled to appear at hearings?

I am concerned to know what would be used as the date of occurrence, although I think the entire incident is sufficiently well bracketed that the actual date will be of very little consequence.

Douglas Wood, Vice-President - Bondex International, St. Louis, has not heard from anyone on this matter, and we ask that you please extend him the courtesy of keeping him posted since this is a matter which will affect his records.

Attached is a notice of workers' compensation news, and it is of interest although not necessarily good news.

Very truly yours,

CBJ:dlh
Enclosure

Carl B. Jennings
Claim Manager

cc: James B. Lacy, Bondex - Brunswick
cc: Richard E. Klar, RPM

BON - 02268

**MCDONOUGH
CAPERTON
CLEVELAND**

SUITE 106
3733 PARK EAST
CLEVELAND, OHIO 44122
(216) 464-6820
TELEX 985685

From:

To:

Subject:

O.B. J. Mmmg
Richard Dillon, St. Louis Claims
claim O.S.

Date:

Clamont-Mayberry
R.P.M. - Bonded Intl - W.C.

2-24-81

The attached letter of 2/23 should have gone
yesterday despite our phone conversation of 2-20-81 -
since the questions are still germane -
Please look carefully at the attached
the sheet on Pal 74-C-205 832CAA for R.P.M. and
specifically the endorsement - while the body is a
very poor copy - fortunately the portion of report
is quite clear and I am fully convinced it can be
read any one way - on either language says -
effective 9-19-79 as Port of entry number 90C 51718CAA
issued to R.P.M. - Please let us get on with the
minutes of the case - further delay would only
harm

Please Reply Below

Date:

BON - 02269

**MCDONOUGH
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GROUP**

MCDONOUGH CAPERTON/CLEVELAND
Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920

February 25, 1981

C
O
P
Y

Mr. Richard Dillon
Claim Superintendent
Aetna Life & Casualty Co.
940 Westport Plaza
St. Louis MO 62141

Dear Dick:

RPM, INC. - BONDEX INTERNATIONAL, INC.
CLAIMANT: ANDREW MAYBERRY, DECEASED
AETNA POLICY NO. ASSIGNED RISK 94 C 51718 (9-23-78/79)
POLICY NO. 94 C 54215 (9-23-79/80)
POLICY NO. 95 C 205832 (9-23-80/81)

Thanks very much for your patience in our telephone conversation on the morning of February 25. From that conversation, I obtained enough information to pursue the coverage further, and I think I now have it clearly in mind and hope my explanation will coincide with your conclusions.

The endorsement put on Policy 94 C 51718 for the period 9-23-78/79 was for the purpose of affording Missouri coverage on that policy which had not given coverage in Missouri. It was also to afford coverage in Missouri effective 9-19-79, which was the expiration date of the Commercial Union Policy No. 660501, 9-19-78/79. Up to that point, the Commercial Union policy afforded workers' compensation coverage for the State of Missouri only. When that policy expired, there was no coverage for workers' compensation in Missouri until Policy 51718 was endorsed effective 9-19-79.

Policy No. 51718 was an all state coverage policy, but that was not a literal explanation for the coverage since it did cover only those states which had been listed on the policy, and prior to the endorsement the coverage had not been listed.

While this clears up the question of the effective date of the endorsement and where the coverage rested during the terms for these various policies, we still do not know which policy will have to bear the burden since we are without any specific information as to the date of manifestation, which I understand is the determining factor as to coverage in Missouri.

Mr. Richard Dillon

-2-

February 25, 1981

I expect to be in telephone contact with Attorney Randall this evening as I missed him earlier today, but left word with his office that I would call him this evening. I have requested copies of the documentation which he submitted and which purports to establish the date of the loss. Whether or not he is going to make that available to me, I do not know.

That is the one thing I had hoped someone in St. Louis would accomplish by a brief visit and examination of the file. The workers' compensation file number as I have it is 78-142-715.

There is a strong possibility that Commercial Union will be involved in this matter again and, in fact, could possibly be the only carrier involved. Would you be good enough to call Vernon Hoerath, Manager, Commercial Union Associates, #10 Broadway, St. Louis MO 63102, and explain this situation as it now stands. I would call him, but I do not have his telephone number. I will write to him as soon as I have a conversation with the attorney or get some idea what the claim date is actually going to be.

I am still somewhat concerned that no one has taken the time or trouble to notify Douglas Wood at Bondex in St. Louis that this matter is not being neglected, but that there simply were some questions which had to be answered before it could be determined who would bear the burden of looking after this case to conclusion.

As I have stated before and at the risk of being redundant, someone must get into this case as far as determining the merits, and we must make every effort to avoid the spectacle of two insurance companies engaging in a rock-throwing contest while a member of the public with a claim stands on the sidelines, hat in hand. I will be grateful to you for any help you can give me in trying to get this case to that point.

Very truly yours,

Carl Jennings
Carl B. Jennings
Claim Manager

CBJ:dlh

cc: Douglas Wood, Bondex - St. Louis
cc: James D. Lacy, Bondex - Brunswick ✓
cc: Richard E. Klar, RPM - Medina

BON - 02271

**MCDONOUGH
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GROUP**

MCDONOUGH CAPERTON/CLEVELAND
Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920

February 25, 1981

C
O
P
Y

Mr. Vernon Hoerath
Manager, Claims Dept.
Commercial Union Associates
#10 Broadway
St. Louis MO 63102

Dear Mr. Hoerath:

POLICY NOS. CWG 588257 (9-19-77/78)
CWG 660501 (9-19-78/79)
INSURED: RPM, INC. - BONDEX INTERNATIONAL
W.C. CLAIMANT: ANDREW MAYBERRY, DECEASED
DATE OF DEATH: 12-30-79
DATE OF MANIFESTATION: NOT DETERMINED

It appears there is still a possibility your coverage will be involved here, and I am still trying to get some physical evidence to indicate what the date of manifestation was.

It is my understanding that the date of manifestation is the determining factor as to which policy would be applicable in cases of this nature. If this is not in line with your understanding, would you please give me the benefit of your thinking as to what would determine the policy period involved.

I am expecting to talk to Attorney Randall by telephone within the next 24 hours and explain to him my reason for requesting such documentation and hope he will make it available.

I cannot avoid commenting again that if someone had visited the Compensation Bureau, it might have resolved this question some time ago, but that is water over the dam and we must now do what we can to get the matter straightened out without further delay and look forward to some effort to resolve the matter on merit.

Mr. Vernon Hoerath

-2-

February 25, 1981

We have done our best to alert both Commercial Union and Aetna Casualty & Surety Company as to possible exposure and certainly very definite exposure to one or the other of the carriers, but somehow it seems to be taking considerably more time than it should.

Anything you can do to help clear away the veil of uncertainty so that the responsible party can proceed with the merits of the case, it would be very much appreciated.

Very truly yours,

Carl B. Jennings
Carl B. Jennings (B.C.A.)
Claim Manager

CBJ:dlh

cc: Richard Dillon, Aetna - St. Louis
cc: James D. Lacy, Bondex - Brunswick ✓
cc: Douglas Wood, Bondex - St. Louis
cc: Richard E. Klar, RPM

BON - 02273

JACK RANDALL, INC.

ATTORNEYS AT LAW

JACK RANDALL
JOHN J. LARSEN
FRANK B. GREEN
JOHN J. LARSEN, JR.

INTERNATIONAL BUILDING
SUITE 500
722 CHESTNUT STREET
ST. LOUIS, MISSOURI 63101
(314) 241-7243

ILLINOIS OFFICE:
45 ARROWHEAD ROAD
LITCHFIELD, ILLINOIS 62556

February 28, 1981

Mr. Carl B. Jennings
Claim Manager
McDonough Caperton/Cleveland
Suite 106 - 3733 Park East
Cleveland, Ohio 44122

Re: Employee: Andrew Mayberry, Deceased
Employer: Bondex International, Inc.
D/A: 8/11/78

RECEIVED
MAR 04 1981
McDONOUGH CAPERTON
CLEVELAND

Dear Mr. Jennings:

I have your letter of February 6, 1981.

I apologize for the delay in answering your letter but I have been quite busy and cases such as this are one of the reasons.

Certainly Bondex International, Inc. would know exactly the last period of time Andrew Mayberry worked for them. He worked for them for 34 years and for the last 20 years he was employed was exposed to asbestos.

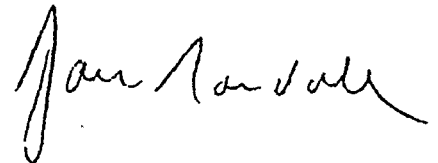
Bondex International was formerly known as Reardon Paint Company and as a powder paint mixer, he was exposed to asbestos.

I do not know how you could have any problem as to which insurance company is responsible for all you have to do is find out the name of the insurance company who had the coverage during the last ninety days Mr. Mayberry was employed for Bondex International, Inc.

Please have them check the payroll records and give me the last ninety days of his employment and we can take it from there. Also, please advise where these employment records are kept.

Very truly yours,

JR:lg



BON - 02274

File

MCDONOUGH CAPERTON/CLEVELAND
Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920 • Telex: 985665

March 5, 1981

Mr. James D. Lacy
President
Bondex International, Inc.
P.O. Box 88
Brunswick OH 44212

Dear Mr. Lacy:

RPM, INC. - BONDEX INTERNATIONAL, INC.
CLAIMANT: ANDREW MAYBERRY, DECEASED
COMMERCIAL UNION POLICY: CWG 588257 (9-19-77 to 78)
or CWG 660501 (9-19-78 to 79)
AETNA CASUALTY & SURETY: 94 C 51718 (9-23-78 to 79)
(Endorsed to be effective 9-19-79)
94 C 54215 (9-23-79 to 80)
94 C 205832 (9-23-80 to 81)
W.C. FILE: WCB 78-142-715

Subsequent to my letters of February 25, 1981 to Richard Dillon, Aetna Casualty & Surety Claims Department - St. Louis, and Vernon Hoerath, Claims Manager - Commercial Union Associates, I was in telephone conversation with both of those gentlemen several times on the 26th of February. The end result was that Messrs. Dillon and Hoerath promised to get together and accompany the Aetna Casualty & Surety Company's counsel to the Workers' Compensation Bureau where they will attempt to discuss this situation with the hearing officer or referee and arrive at a decision as to which policy would be applicable.

You will recall there was confusion as to what would be considered date of occurrence. Originally I took the only date available to me which was a date in the body of the letter from claimant's attorney, Mr. Randall. That proved to be less than accurate, and we are now trying to resolve the question of whether the date of manifestation, last date of employment or date of demise will be controlling.

I had two telephone conversations with claimant's attorney. On February 25, Mr. Randall told me it was his opinion that the controlling factor would be the last day of employment, which was

BON - 02275

Mr. James D. Lacy

-2-

March 5, 1981

the last exposure to possible asbestosis. The attorney further pointed out his conclusion was predicated on Missouri Statute Section 287.063 of the Occupational Disease Act of the State of Missouri. Messrs. Hoerath and Dillon are not in agreement with that conclusion.

My primary interest from the beginning of this file has been to try to avoid any possible default being entered on the record and at the same time try to keep Attorney Randall convinced that we were making a sincere effort to get this matter on track and not to push him into a position where he would disregard the workers' compensation and start some activity on the liability premise.

It is my hope that I will be hearing from both Richard Dillon and Vernon Hoerath within the next day or so and that we should have more conclusive information at the time of our next conversation.

Very truly yours,

Carl B. Jennings
Carl B. Jennings (DLH)
Claim Manager

CBJ:dlh

cc: Douglas Wood, Bondex - St. Louis

cc: Richard E. Klar - RPM

cc: Richard Dillon - Aetna C & S - St. Louis

cc: Vernon Hoerath - Commercial Union - St. Louis

P.S. The attached arrived after dictation of the above. We are aware that this is his position.

CBJ
CBJ

BON - 02276

MCDONOUGH CAPERTON/CLEVELAND
Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920 • Telex: 985665

March 11, 1981

Mr. James D. Lacy
President
Bondex International, Inc.
P.O. Box 88
Brunswick OH 44212

Dear Mr. Lacy:

W.C. CLAIMANT: ANDREW MAYBERRY, DECEASED
D/O: 8-11-78 (SUBJECT TO REVISION)

It is with considerable relief that I inform you that in telephone conversation with Superintendent Richard Dillon of the St. Louis claims department of Aetna Casualty & Surety Company, they have filed an answer to the claim presented by Attorney Randall in behalf of the widow of Andrew Mayberry.

As reported previously, representatives of the Aetna Casualty & Surety Company, together with representatives of Commercial Union, went to the Workers' Comp. Bureau in St. Louis and attempted to obtain sufficient information to resolve the question of whose policy would be applicable.

While there is not a definitive decision, it was Mr. Dillon's decision that in the interests of all concerned an answer be filed without further delay while they will continue to resolve the still unanswered question as to what will determine the applicable policy coverage.

Inasmuch as Attorney Randall has specifically based his case on the Missouri statute under Occupational Disease Act Section 287.063, that specific question must be resolved as quickly as possible.

Mr. Hoerath of Commercial Union is still not convinced he is involved and, perhaps, will not be so persuaded until after the above question has been resolved.

This case may also be defensible on the grounds of a non-work-related condition. Mr. Dillon is aware of that possibility, and

BON - 02277

James D. Lacy

-2-

March 11, 1981

it is predicated on the fact that a goodly portion of medical and hospital expenses were picked up by the union benefit program that covers only non-workers' compensation related items. This fund is a joint venture with contributions from both employer and the union.

Mr. Dillon has promised to keep us, and all concerned, informed of developments.

I am very appreciative of Mr. Dillon's cooperation and his participation and look forward to the early dissolution of any remaining problems.

Should you have any questions on this matter, please let us know. Mr. Dillon is keeping in touch with Mr. Wood on this file.

Very truly yours,

Carl B. Jennings
Carl B. Jennings
Claim Manager

CBJ:dlh

cc: Douglas Wood, Bondex International - St. Louis

cc: Richard E. Klar, RPM

BON - 02278

**MC DONOUGH
CAPERTON
SHERD
UP**

MC DONOUGH CAPERTON/CLEVELAND
Suite 106 • 3733 Park East, Cleveland, Ohio 44122 • (216) 464-6920

March 11, 1981

C
O
P
Y

Mr. Jack Randall
Jack Randall, Inc.
International Bldg., Suite 500
722 Chestnut Street
St. Louis MO 63101

Dear Mr. Randall:

YOUR W.C. FILE: 78-142715
EMPLOYER: BONDEX INTERNATIONAL, INC.
EMPLOYEE: ANDREW MAYBERRY, DECEASED

This will acknowledge receipt of your letter of February 28.

It is my understanding this matter is now being attended and that an answer has been filed.

Please accept my thanks and appreciation for your patience in this matter, and if it should fail to move forward, please let me know and I will be very happy to be of any assistance possible.

Very truly yours,

Carl Jennings
Carl B. Jennings (dlh)
Claim Manager

CBJ:dlh

cc: James D. Lacy, Bondex - Brunswick
cc: Douglas Wood, Bondex - St. Louis

BON - 02279

BONDEX

INTERNATIONAL, INC.

BOX 88 • BRUNSWICK, OHIO 44212 • 216/225-3169 • TELEX 985418

An  Company

June 7, 1982

McDonough Caperton
3733 Park East
Suite 106
Cleveland, OH 44122

ATTN: Carl Jennings

RE: Claimant: Andrew Mayberry
D/O: 8-11-78

Dear Carl:

Your letter dated March 11, 1981, a copy of which is enclosed, is the last that I have on file for this matter. If your files show that this is still an open case will you please bring me up-to-date. Thank you.

Very truly yours,

BONDEX INTERNATIONAL, INC.

John A. Fleming
Treasurer

JAF/kmy

BON - 02280

McDonough Caperton / Cleveland
SUITE 100
3733 Park East Drive
Cleveland, Ohio 44122

July 1, 1982

Mr. Vernon Hoerath
Claims Manager
Commercial Union Insurance Co.
10 Broadway
St. Louis MO 63102

Dear Mr. Hoerath:

INSURED: RPM, INC. - BONDEX INTERNATIONAL, INC.
W.C. CLAIMANT: ANDREW MAYBERRY (DECEASED)
YOUR POLICY: CWG 588257 (9-19-77 to 78)
CWG 660501 (9-19-78 to 79)

Please refer to my letter to you under date of April 8, 1982 inquiring as to the status and possible disposition of this claim.

Your file should indicate that I was in telephone conversation with your office on several occasions during my efforts to find out just where the coverage might rest.

Now that it has apparently been resolved, we are very anxious to keep this valued policyholder posted on material developments and final disposition.

Very truly yours,

Carl B. Jennings
Claim Manager

CBJ:dld

cc: Richard E. Klar
RPM, Inc. - Medina, Ohio

cc: Douglas Wood
Bondex International - St. Louis, Missouri

cc: John A. Fleming
Bondex International - Brunswick, Ohio

THIS COPY FOR

BON - 02281

McDonough Caperton / Cleveland
SUITE 106
3733 Park East Drive
Cleveland, Ohio 44122

July 26, 1982

Mr. Douglas Wood
Vice President - Production
Bondex International, Inc.
3616 Scarlet Oak Boulevard
St. Louis MO 63122

Dear Doug:

W.C. CLAIMANT: ANDREW MAYBERRY (DECEASED)
D/O (DATE OF DEMISE): 12-30-79

As you know, there have been many months of correspondence between this office and Aetna Casualty & Surety Company and Commercial Union Insurance Company to resolve the question of coverage.

We have now received the first report from Commercial Union indicating a specific effort to make a determination of the merits of this case.

Commercial Union informs us they are in the process of defending the case under the Missouri law.

The matter has not as yet been set on the docket for further hearings.

Commercial Union has taken depositions of several doctors and has learned that Mr. Mayberry's body was donated to the Logan Chiropractic College. At the present time, copies of all records concerning autopsies and medical history are being processed. They have yet to determine whether or not these records will be of any material benefit to them.

We do hope that this file will receive continued attention and move forward to some definitive resolution without further delay.

Very truly yours,

Carl B. Jennings
Claim Manager

CBJ:dld

cc: John Fleming, Treasurer, Bondex International
cc: Richard E. Klar, RPM

THIS COPY FOR

BON - 02282

McDonough Caperton / Cleveland
SUITE 106
3733 Park East Drive
Cleveland, Ohio 44122

September 7, 1982

Ms. Jean Hipp
Workers' Compensation Specialist
Commercial Union Insurance Co.
10 Broadway
St. Louis MO 63102

Dear Ms. Hipp:

INSURED: BONDEX INTERNATIONAL, INC. (RPM)
W.C. CLAIMANT: ANDREW MAYBERRY (DECEASED)

In your letter to us under date of July 12, 1982, you informed us that this deceased claimant's body had been given to the Logan Chiropractic College and that efforts were being made to process and copy records which would enable us to determine the official cause of death.

It would seem there must be an official certificate of death on record in St. Louis County or the City of St. Louis. If he died in some other jurisdiction, then the locus of his death should also have a record of the attending physician at time of death or a coroner's report in the event he died under circumstances which did not provide for an attending physician's report.

We are very anxious to find out just which way this matter is going, and I am sure that in light of the present activity in asbestos litigation you can appreciate this policyholder's concern.

Anything you can do in the immediate future to clear the air will be greatly appreciated.

Very truly yours,

Carl B. Jennings
Claim Manager

CBJ:dld

cc: Douglas Wood
cc: James Fleming
cc: Richard Klar

THIS COPY FOR



BON - 02283

McDonough Caperton / Cleveland
SUITE 106
3733 Park East Drive
Cleveland, Ohio 44122

September 7, 1982

Mr. Douglas Wood
Vice President - Production
Bondex International, Inc.
3616 Scarlet Oak Boulevard
St. Louis MO 63122

Dear Doug:

EMPLOYEE: ANDREW MAYBERRY (DECEASED)
D/O (DATE OF DEMISE): 12-30-79

Attached is a copy of my letter of July 26, 1982 to you which I assume you received, but if not I'm sorry it went astray.

In our telephone conversation on the morning of September 3, I was a little overly optimistic in my thinking and was attempting to recall details without having the benefit of a fresh look at the file. You will not from the letter of July 26 that they have not yet had the benefit of a decision from the death certificate.

It would seem there has been enough time lapse since the July report that we should now have some definitive information based on the various records, and I am asking that the Commercial Union Insurance Companies give us a current report and make information available to you.

In looking back over notes that I made as a result of a phone conversation with Aetna Casualty & Surety Company on March 22, it was then thought that the deceased had died of cirrhosis of the liver, but whether or not there was any cancer involved had not been resolved, nor was it known definitely one way or the other. I'm sorry if I gave you the impression I had something definite when in fact I did not and still have not seen any official records which we hope will shortly be available.

Very truly yours,

Carl B. Jennings
Claim Manager

CBJ:dld
Enclosure

cc: John Fleming, Bondex International
cc: Richard E. Klar, RPM

THIS COPY FOR

BON - 02284

McDonough Caperton / Cleveland
SUITE 106
3733 Park East Drive
Cleveland, Ohio 44122

September 24, 1982

twist
Jack - set up
permanent file
Kim see folder in
insurance
probably "closed"

Ms. Jean Hipp
Workers' Compensation Specialist
Commercial Union Insurance Co.
10 Broadway
St. Louis MO 63102

Dear Ms. Hipp:

INSURED: RPM - BONDEX INTERNATIONAL, INC.
CLAIMANT: ANDREW MAYBERRY (DECEASED)
DATE OF DEMISE: 12-30-79

Thank you very much for your letter of September 14 to which you attached a copy of the official certificate of death and a copy of a letter from defense attorney Vokoun under date of September 13, 1982. I write at this time just to be certain that in your files you have some information which may be of assistance.

During the course of discussing the question of coverages, we continued to try to get as much information as we could on the facts related to Andrew Mayberry's employment record. As you perhaps know, his last date of employment was August 11, 1978. We are also informed, without official verification, that he entered St. Louis University Hospital on August 11, 1978 and that he had a diagnosis of cancer on 9-79 according to the claimant's attorney. Claimant was discharged from the hospital October 1978 and had been hospitalized on three different occasions during the year of 1978.

Perhaps the most interesting information that may be of possible help is the fact that during his employment at Bondex, he was hospitalized and treated medically under a union membership health benefit program. That program, of course, was designed to take care of non-work-related illnesses and incidental medical expenses.

Mr. Douglas Wood, Vice President of Production at Bondex, will be able to identify the proper union contact through which you and/or the defense attorney may be able to obtain medical records covering benefits paid under the union program. It is just possible that those medical records will reflect conditions existing prior to the diagnosis of cancer. Maybe that medical information obtained through the union program would be of some defense benefit.

BON - 02285

Ms. Jean Hipp

-2-

Sept. 24, 1982

My thanks to you for the informative report, and we look forward to hearing from you at intervals when there are material developments to report.

Very truly yours,

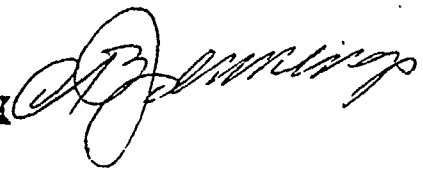
Carl B. Jennings
Claim Manager

CBJ:dld

cc: Douglas Wood
Vice President - Production
Bondex International, Inc.
3616 Scarlet Oak Blvd.
St. Louis MO 63122

cc: Charles W. Buell, President
Bondex International
P.O. Box 88
Brunswick OH 44212

THIS COPY FOR



cc: Richard E. Klar
Vice President - Finance
RPM, Inc.
P.O. Box 777
Medina OH 44258

BON - 02286

McDonough Caperton / Cleveland
SUITE 106
3733 Park East Drive
Cleveland, Ohio 44122

April 26, 1984

Ms. Jean Hipp
Workers' Compensation Specialist
Commercial Union Insurance Co.
10 Broadway
St. Louis MO 63102

Dear Ms. Hipp:

INSURED: RPM, INC. - BONDEX INTERNATIONAL
CLAIMANT: ANDREW MAYBERRY (DECEASED)
DATE OF DEATH: 12-30-79

You gave us a longhand footnote to your report of March 16, 1983 to the effect that "continued, claimant's attorney did not show up". Has anything happened to this in the past year?

I know this is a difficult file to evaluate, but I would like your best educated guess as to where you think this will ultimately end.

Very truly yours,

Carl B. Jennings
Claim Manager

CBJ:dld

cc: John A. Fleming < [Stamp: THIS COPY FOR] >
Bondex International

cc: Julius K. Nemeth
RPM, Inc.

BON - 02287

McDonough Caperton / Cleveland
SUITE 106
3733 Park East Drive
Cleveland, Ohio 44122

June 7, 1984

*Swiss
Jack
file*

Mr. Julius K. Nemeth
Vice President
RPM, Inc.
P.O. Box 777
Medina OH 44258

Dear Julius:

RPM - BONDEX
CLAIMANT: ANDREW MAYBERRY (DECEASED)
DATE OF DEATH: 12-30-79

Our inquiry of April 26 went unanswered until today, and we received word that this case was closed on May 30, 1984 for \$10,000. This information comes to us from the workers' compensation specialist of the Commercial Union Insurance Company in St. Louis, Missouri.

I would hope they have kept Mr. Wood fully informed on a current basis, and it may be that if you contact him, he can fill you in and give you a better idea as to why it became necessary to pay \$10,000 on this item.

I have no reluctance to go back to Commercial Union for such information, but their luke warm response to previous inquiries leads me to believe that in the interest of time, Mr. Wood may already have that information. They have not provided me with their claim file number, but the matter was apparently handled by a Ms. Jean Hipp. Her telephone number in St. Louis is 621-8131, and by copy of this to Mr. Wood, will alert him so he can call her if need be.

Very truly yours,

Carl B. Jennings
Claim Manager

CBJ:dld

cc: Charles W. Buell
Bondex International
P.O. Box 88
Brunswick OH 44212
cc: Douglas Wood
Bondex International
3616 Scarlet Oak Boulevard
St. Louis MO 63122

THIS COPY FOR

BON - 02288