



M E M O R A N D U M

OK
SPM

TO: R. J. Malone

DATE: September 15, 1976

FROM: J. D. Kull

RE:

REDACTED

vs.

Sprayon Products, Inc.
Occupational Disease Claim
Our File WC: 75-3550DC

You may recall that the above file concerns a claim for cancer by an employee at Sprayon's Bedford Heights plant. After consultation with the Corporate Legal Department, I availed myself of an opportunity to discuss this claim briefly with Aubrey Willacy. The opportunity occurred during our travel to Columbus, Ohio on September 13, 1976 to attend a hearing before the Industrial Commission on another workmen's compensation claim.

After brief reflection on the basic facts of this claim, Mr. Willacy has advised that there may be a defense under the Statute of Limitations pertaining to occupational disease claims.

This claim must be brought under Section 4123.68, Paragraph BB which pertains to "all other occupational disease". This section of the statute requires that the employee prove the occupational disease peculiar to an industrial process, trade, or occupation, or that it be due to some hazard or condition to which an employee is not ordinarily subjected or exposed to outside of the employment. That is to say condition must be proven to be due to some exposure in her employment alone, and she must have no similar exposure outside of her employment.

Furthermore, a claim for compensation under this section of this statute

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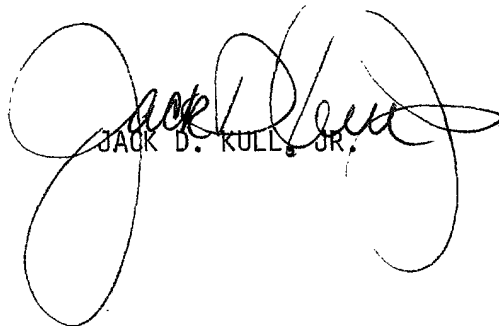
CORPORATE
INSURANCE

is barred unless an application is made to the Commission within one year after total disability began, or within six months after diagnosis of the condition by a licensed physician. In this claim, _____ has a history of cancer dating at least to 1970; it appears her present condition is a progression of that illness.

REDACTED

Although we will have to obtain additional information from Sprayon regarding the possible nature of any exposure to known carcinogens for this employee during her entire period of employment, it does appear that we will have a defense under the Statute of Limitations, initially. Mr. Willacy did emphasize the fact that administrative decisions are not always consistent with the law. This is particularly troublesome in occupational disease cases since there is no appeal to Court under Ohio law. Our only avenue of redress for an unfavorable determination before the Industrial Commission would be a mandamus action.

Under the circumstances I thought it best to ask Mr. Willacy to assist us in preparing for the initial defense of this claim at this time.


JACK D. KULL, JR.

JDK:cnj

cc: REBielek

MEMORANDUM

REDACTED

TO: R. J. Malone

DATE: September 15, 1976

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vs.
Sprayon Products, Inc.
Occupational Disease Claim
Our File WC: 75-3550DC

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After brief reflection on the basic facts of this claim, Mr. Willacy has advised that there may be a defense under the Statute of Limitations pertaining to occupational disease claims.

This claim must be brought under Section 4123.68, Paragraph BB which pertains to "all other occupational disease". This section of the statute requires that the employee prove the occupational disease peculiar to an industrial process, trade, or occupation, or that it be due to some hazard or condition to which an employee is not ordinarily subjected or exposed to outside of the employment. That is to say, Mrs. Portnick's condition must be proven to be due to some exposure in her employment alone, and she must have no similar exposure outside of her employment.

Furthermore, a claim for compensation under this section of this statute

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CONFIDENTIAL

is barred unless an application is made to the Commission within one year after total disability began, or within six months after diagnosis of the condition by a licensed physician. In this claim, has a history of cancer dating at least to 1970; it appears her present condition is a progression of that illness.

REDACTED

Although we will have to obtain additional information from Sprayon regarding the possible nature of any exposure to known carcinogens for this employee during her entire period of employment, it does appear that we will have a defense under the Statute of Limitations, initially. Mr. Willacy did emphasize the fact that administrative decisions are not always consistent with the law. This is particularly troublesome in occupational disease cases since there is no appeal to Court under Ohio law. Our only avenue of redress for an unfavorable determination before the Industrial Commission would be a mandamus action.

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JACK D. KULL, JR.

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