

BAUM & RUFFOLO

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October 21, 1983

Mr. Steve Borgstrom
Raymond Sheakley & Assoc.
18 W 100 22nd Street
Suite #124
Oak Brook Terrace, IL 60181

RE:

-vs-

Sherwin Williams Co.
I.C. 82 OD 463
D/E: 3/23/81 (4-23-82)
File#: 82 11-00003IL

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Dear Steve:

Please be advised I had an extensive conference with Attorney Harriett Lakernick on this case at the Illinois Industrial Commission on October 14th, 1983.

It was originally noted that the date on the Application of April 23, 1982 was actually the date of Mr. Smith's death and the date of his exposure and the date of his last exposure was probably March 23, 1981.

On March 23, 1981 there was a specific incident of an alleged sulfur dioxide leak for which Mr. [redacted] was rushed to St. Francis Hospital for care. It was pointed out to the attorney for the widow that Mr. [redacted] had a history of heart palpitations, tachycardia, had an elevated L-131 test which indicated a hyper-thyroid condition, had decreased hemocrit, and further suffered from asthma, pneumonitis, acute bronchitis and graves disease.

After some initial back and forth, I think I convinced Attorney Lakernick that she would get nowhere in claiming the \$250,000.00 death benefit because it appears the cause of death was arteriosclerotic cardio-vascular disease, or heart failure or complications from the graves disease or thyroid disease.

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On the other hand, the strengths of her case are that there was a specific incident of exposure to sulfur dioxide and also the fact that since 1975 the occupational disease act provides for an aggravation of a pre-existing condition and also provides that employment and exposure need only be a contributing factor as a cause.

It is clear from the many medical records that both parties have that , suffered a pre-existing asthma condition and also a pre-existing chronic acute bronchitis.

It is also clear that several doctors diagnosed chronic obstructive pulmonary disease and pneumonitis. I beleive these last two conditions are where our potential exposure lies. It is also clear from the records that Mr. Smith smoked forty pack years.

It is further clear from these records that pulmonary lung function studies found FEV 60% predicted value and FEV₁ 34-39% of predicted value. It is therefore clear that Mr. Smith had a fairly serious chronic condition.

Ms. Lakernick will rely on Dr. Zeiss as her expert who is on the staff of Northwestern Memorial Hospital.

We have a copy of a report addressed to Dr. Volodka, which, of course, can be put into evidence under the agency theory and the Nolleau Nursuries case as an admission against our interest which does indicate that Mr. Smith should cease working and no longer be exposed to any aggravating chemicals and that there was a causative aggravating factor.

Attorney Lakernick further represented to me that in several phone conversations with Dr. Zeiss, he would testify that the exposure to sulfur dioxide, even on the one incident in question, aggravated, accelerated or exacerbated a pre-existing lung condition.

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Of course, we have the excellent work and report of Dr. Van Ordstrand to rebut that testimony and it would then become a question of credibility between the doctors before the Industrial Commission.

On this basis and considering all these factors, Attorney Lakernick made a demand of 15% man as a whole or \$20,188.50 for purposes of settlement.

I would strongly recommend an offer of approximately one half of that or \$10,000.00, representing 7 1/2% man as a whole. I firmly believe that any offer less than \$10,000.00 would not be accepted by the widow who is extremely emotional, even to this date, over her husband's death and apparently holds our client, Sherwin Williams responsible for his death in her own mind.

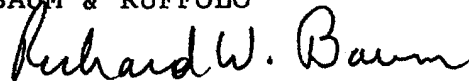
Please understand that once we begin the litigation process, this will be extremely expensive litigation requiring us to either bring Dr. Van Ordstrand to the Commission from Cleveland to testify or requiring my presence in Cleveland to take his evidence deposition in addition to the deposition of Dr. Zeiss and possibly other doctors.

Please advise me, in light of all the facts have outlined, if you are willing to make the settlement offer which I recommend or any offer whatsoever in this case.

Thank you for your cooperation.

Very truly yours,

BAUM & RUFFOLO



Richard W. Baum

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encl.

P.S. Please don't forget that approximately 52 weeks T.T.D. could also be awarded from last date worked to date of death.

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