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May 16, 1991

WORKERS'
COMPENSATION
MAY 20 1991

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

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RE: v. Sherwin-Williams Company
File no.: 487CBBM83392T

Dear Mary Lee:

On May 13, 1991, I attended a hearing in Waterville, Maine. Commissioner Bruce Livingston presided. Sumner Peter Mills, Jr., Esquire appeared with his client,

--- alleges an injury date of January 29, 1990. He claims that he notified his supervisor, Mr. Donakowski, immediately after the August 24, 1989 visit with Stephen Dalton, a physician's assistant at Dr. Kaschub's office, of the connection between the work activities and the allergic reaction (Since 1978, the employee has suffered attacks of fatigue, chest pain, difficulty breathing, blurred vision and memory loss). On that day, the employee spoke with Steve Dalton who had just gotten back from some kind of seminar on toxic exposure. Mr. Dalton apparently told the employee that his symptoms were work related because of the exposure to isocyanates in the course of his employment. He said that he told Mr. Dokowski that his doctor had questioned his occupation as having toxic hazards that were related to his health problems. Hence, the employee claims he gave notice of the work related nature of his disability on or about August 24, 1989.

testified about his various activities. He owns a farm that he purchased sometime in 1987. He raises Clydesdale horses, Angus beef and Shiers, a cousin to the Clydesdales. He also has an active haying operation which he has expanded to other farms. He recently purchased two

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air-conditioned second-hand tractors. Commissioner Livingston took a special interest in this case because he grew up on a potato farm. He and the employee seem to "hit it off." Frankly, the employee is a likeable, sincere straight-shooter. Once the employee realized that his condition was disabling (in March of 1990), he made alternate work plans and made his farming activities into a business. In fact, he has recently investigated the possibility of raising lean beef cattle and he has formed a corporation, albeit a penniless one at this time, to facilitate this end. Additionally, he raises and sells silage corn.

Mr. complained that he suffers ongoing respiratory problems. In high temperatures, humidity causes him to be unable to breath. On cold winter days, the employee also has difficulty breathing. Mr. complained that his symptoms are also exacerbated by some perrumes, household cleaners and other commonly-used products. I presented a copy of a wage statement (enclosed) to the Commission and to Attorney Mills. The employee feels that the average weekly wage of approximately \$600.00 a week is too low because it does not reflect the bonuses that he received. By copy of this letter to Anthony Colangelo, I am asking that he let me know the employee's total earnings including bonuses, so that I may prepare a wage statement and forward it to the Commission.

I cross-examined the employee. M is fifty years old. He has not looked for employment since his disability began on January 29, 1990. Rather, he had worked at his business and he is trying to make ends meet there. I questioned him at length about what notice of injury was given to whom and when it was given. He associated his symptoms with his work activities as far back as 1978 when he first began working at Sherwin-Williams. He said that the company sent around a flyer telling the employees at Sherwin-Williams to take precautions and to be careful when using spray paint because it would cause respiratory problems. He said that this flyer was sent around to company employees sometime in about 1985. He took precautions throughout the 1980's. He wore a face mask, he did not spray in the direction of wind that was blowing at him, he tried to use proper ventilation. On the other hand, he seemed to deny that he understood in the 1980's that his work was causing the symptoms. Rather, he justified that, in hindsight, he now knows that the work activities caused his symptoms. He admitted, however, that his symptom flare-up seemed to appear after he sprayed paint in the course of his employment at Sherwin-Williams. He acknowledged that Dr. Kaschub doubted

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that the condition was due to industrial exposure. He also said that Dr. Hoffman, a physician in Exeter, New Hampshire to whom the employee was referred by Dr. Newkirk, said that the condition is a classic case of isocyanate exposure in the work place.

Mr. complained that his symptoms have included ongoing chest pain, blurred vision, fatigue, loss of breath and loss of memory. He said now he only suffers from loss of breath. He said that he is unable to perform vigorous activities and he has to be careful about the climate in which he works in order to avoid exacerbation of his asthmatic condition.

 acknowledged that he had allergy shots as a youth. He was allergic to household dust and ragweed. Dr. Hanigan, a physician in Auburn, Maine, administered these injections. We will try to solicit records from Dr. Hanigan, but I am not sure he is still practicing. The employee attempted to introduce copies of tax records into evidence. However, Attorney Mills acknowledged that these incorrectly inflated Mr. losses. Accordingly, I objected and Commissioner Livingston refused to admit them into evidence. We will try to find out what the employee's earnings are. He said that his farm debt exceeds \$200,000.00. Furthermore, he acknowledged that his condition became disabling in 1988 when he lost about twenty weeks of work. Unfortunately, Mr. was extremely vague when answering questions about his knowledge of his condition. At one point, he seemed to acknowledge that he knew in the early 1980's that his symptoms were related somehow to his work both because of the symptoms he felt after spraying and because of the bulletin circulated by Sherwin-Williams warning of the hazards of paint. However, he recanted these admissions later on by saying that he knew only after speaking with his doctor in August of 1989 that his symptoms were work related.

It appeared that Commissioner Livingston was favorably impressed with the employee's credibility and with his case. The conference will be held in late June, 1991 at which time the evidence may close. An independent medical examination will be held on May 21, 1991 with Dr. Hurst in Farmington. Finally, depending upon the results of the independent medical examination, we will need to depose Dr. Hoffman, the physician in Exeter, New Hampshire who issued the unfavorable opinion relative to causation.

Very truly yours,

Dick

Richard N. Hewes

RNH/slhc
Enclosure
cc: Anthony Colangelo

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