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November 6, 1996

SETTLEMENT CORRESPONDENCE - NOT ADMISSIBLE AS EVIDENCE

VIA FAX #(903) 593-3266

AND U.S. MAIL

Mr. Jimmy M. Negem
Negem & Bickham
440 South Vine
Tyler, Texas 75702

Re: Cause No. 96-20410; Samuel M. Brown and wife, Annie Brown
v. Tyler Pipe Industries, Inc., et al; In the 334th
Judicial District Court of Harris County, Texas
Our File No. 118147-001

Dear Mr. Negem:

Please accept this response to your request for an explanation of my position regarding the applicability of the Texas Workers' Compensation bar and other matters related to this case. Please understand that in an attempt to set out our position in a simple, non-legalistic fashion, certain matters may be excluded from this explanation and addressed in later correspondence and/or court filings. Any matters not expressly discussed in this letter should not be considered irrelevant, abandoned or waived. Moreover, since this letter is written at your request and, as I understand it, is an aid in explaining the Comp situation to your client, I trust that you will not seek to have this letter admitted as evidence at a later date for use in this or any other lawsuit. I would ask that you not disclose this letter to anyone not directly involved in this lawsuit. You have indicated your willingness to honor this request and I will let you stand on your word on that issue.

I believe that a brief review of the background facts of this matter clearly indicate that several of the Defendants you have sued are inappropriate Defendants, no longer exist and/or are immune from liability under the Texas Workmen's Compensation Act. You have filed suit against Tyler Pipe Industries, Inc., Tyler Pipe Industries of Texas, Inc., Gustin-Bacon, Inc., and Swan Transportation Company. I have provided you with documents that clearly indicate that at the time of Mr. Brown's accident, April 26, 1994, Mr. Brown was employed by Tyler Pipe Industries, Inc. The information contained in Mr. Brown's personnel file, which has been produced, clearly indicates that Tyler Pipe Industries, Inc.

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was Mr. Brown's employer at the time of the accident and is, therefore, unquestionably barred by the Comp Act. In addition, there was a corporate reorganization effective on or around December 26, 1992, that changed the corporate organization of the companies in the Tyler Corporation family. After December 26, 1992, Tyler Pipe Industries of Texas, Inc. was no longer an ongoing business concern. Likewise, after December 26, 1992, Gustin-Bacon, Inc. ceased to exist as a separate company. Therefore, three of the entities against which Plaintiffs have brought suit are not legitimate Defendants. This corporate reorganization is completely documented, recorded with the Secretary of State of Texas, and occurred approximately one and one-half years prior to Mr. Brown's accident. As a result, I believe that it is appropriate, at this point, to dismiss all claims against Tyler Pipe Industries of Texas, Tyler Pipe Industries, Inc., and Gustin-Bacon, Inc.

The only remaining Tyler Defendant named in this lawsuit is Swan Transportation Company. I have previously provided you with documents on behalf of that company. It is important for your analysis to know that Swan Transportation Company is, as the name suggests, the transportation arm of the Tyler organization. Although Swan Transportation Company does have a terminal located near the Tyler Pipe foundry in Tyler, Texas, it is a building completely separate and apart from the foundry. It is located approximately one-half mile from the area of the foundry where Mr. Brown was injured and had no employees in the area, and probably not in the foundry, at the time of the accident.

You have pointed out that Swan Transportation Company, a Delaware corporation, was formerly known as Tyler Pipe Industries, Inc. (also a Delaware corporation). While this is true, the documents that I have provided to you indicate that this occurred for a period of approximately one day and was essentially a matter of title transfers. This spin-off occurred before December 26, 1992 and, therefore, nothing that was done at that time could have any effect on the acts, omissions, conduct, and/or conditions that allegedly caused the accident made the basis of Mr. Brown's lawsuit. As a result, the relationship between Swan Transportation Company and Tyler Pipe Industries, Inc. (Mr. Brown's employer) is tenuous at best and based on proximity and geography rather than some joint enterprise. Any alleged relationship between Swan Transportation Company and your client is non-existent.

You explained to me that your client is aware of a settlement of another work-related accident and lawsuit filed on behalf of Mr. Castillo. While that accident occurred at the Tyler foundry and the plaintiff was an employee at the foundry, the similarities between the two lawsuits and there

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The most important distinction between this case and the Mario Castillo case is the date of the accident. Mr. Castillo's accident occurred on December 21, 1990, on the Tyler Pipe plant premises in Tyler, Texas. Plaintiff's primary liability theory was against Tyler Pipe Industries for general negligence in failing to enact and enforce sufficient safety procedures (including employee training and equipment inspections) for the protection of its subsidiaries' employees. Plaintiff in that case alleged that the parent undertook the duty to provide safety to TPI Texas employees, including Mr. Castillo.

As I have attempted to point out above, the corporate structure of the Tyler Pipe family of companies was completely different in December 1990 than it was when your client was injured. As you know, the corporate restructuring in 1992 changed the corporate organization of the companies in the Tyler Corporation family and did away with the parent-subsiary relationship that was allegedly the basis of liability in the Castillo case. As discussed above, you have sued two companies that are no longer in existence and one company that employed your client. That situation alone completely distinguishes this case from the Castillo case. *Brooks v. National Convenient Stores*, 897 S.W.2d 898 (Tex. App. -- San Antonio 1995, no writ), is both relevant and instructive on this issue. In that case, the court applied the Tidwell standard and was openly reluctant to impose a strict duty for work place safety upon a non-employer corporate family member. The bottom line is that we have, through a legitimate and appropriately documented corporate restructuring (which I might add was done for reasons that have absolutely nothing to do with the Castillo case) have done away with the only viable theory of liability forwarded by the Plaintiffs in that case.

I hope this letter serves to better explain my clients' position in this matter. As we have discussed on several occasions, my client feels very strongly that this is a case which, despite arguments to the contrary, should be disposed of by the Comp bar. Regardless of your argument about Swan Transportation Company's role in safety in the Tyler foundry, you cannot argue that Tyler Pipe Industries, Inc., Tyler Pipe Industries of Texas, and Gustin-Bacon, Inc. should remain in the lawsuit. In fact, unless there is additional information which you believe is necessary on this issue, I believe that these Defendants should be dismissed from the lawsuit directly. Continued maintenance of this lawsuit against those companies, especially Tyler Pipe Industries, Inc., could support a finding of bad faith.

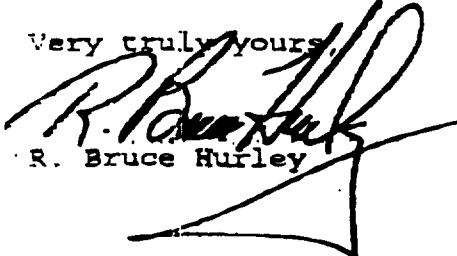
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Please address these issues to your client at your earliest convenience and let me know if there are additional documents that you absolutely need in order to make your determination that dismissal of the above-referenced companies is appropriate. At that point, I believe we should quickly address the issues of Swan Transportation Company's involvement in this case.

I look forward to talking to you soon.

Very truly yours,


R. Bruce Hurley

RBH/klt

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