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March 17, 1988

Alfonso J. Moresi, Esq.
Laughlin, Falbo, Levy & Moresi
151 Union Street
Icehouse II
San Francisco, California 94111-1221

Re: Kaiser Shipyard #3, et al.,
WCAB No. OAK 141 300
Claim No. 918 C 31408 / SMBS No. 144.054

Dear Mr. Moresi:

With regard to the declaration of Dennis Strazulo in support of the order compelling answers to subpoena duces tecum, as I earlier relayed to you, there are several inaccuracies.

First of all, at paragraph 5 of his declaration he indicates that I agreed to provide all records and documents regarding the use of asbestos at the Emeryville plant. That is simply untrue. Although I am not certain of the date, I did first speak with Mr. Strazulo in mid August, 1987. I received a photocopy of the subpoena from our worker's compensation administrator, Tony Colangelo. In that both of us were concerned not only with the subpoena but the nature of information requested, both Tony Colangelo and I telephoned Mr. Strazulo shortly after receipt of the subpoena in our Cleveland office. I informed Mr. Strazulo that I would like to cooperate in the production of records which could be compelled by the use of a subpoena, however, that we had several problems with not only the nature of the documents requested, but the fact that the subpoena was severely overbroad, burdensome and sought information that was not only privileged but also information that may be, trade secret and confidential. Furthermore, I indicated to him that I felt that much of the information was irrelevant and would not be discoverable. He indicated, in response, that he agreed that the subpoena was overbroad and delved into areas that he really didn't need to get into and would be happy if we began to search for some of the information requested. The conversation ended with our agreement to review the worker's compensation records to determine whether or not we had records of asbestos related claims only. We agreed to notify him as to whether or not we had such records, not to carte blanche produce the files (which were kept in Cleveland) of any workers identified. Incidentally, I understand that no such workers were identified.

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Furthermore, we agreed to begin to search our files for records as to asbestos use at the Emeryville plant. I indicated to Mr. Strazulo that I had no idea what information could be readily discovered or how long such a search would take. I did, however, indicate that I was fairly confident that most of the information would be in storage and it would be some time before it would be retrieved. He did not indicate any objection to that and the conversation was ended on a note that we would keep him informed as to our progress and he would not take further action on the subpoena.

With regard to Strazulo's indication in paragraph 6 of his declaration that I indicated that probably all buildings at Emeryville were insulated with asbestos, I did not tell him that was true, rather, in our discussion I indicated that I would not be surprised that such was the case in that the buildings were old and, generally, buildings built early in the century often contained asbestos insulation. Further, with regard to the manufacturing process, I did state that there were asbestos components used in the manufacturing process, however, also indicated that, to my knowledge, such use was limited to a specific area of one building in the plant (the plant has more than one building). Whether I told him I would respond by letter indicating that we were gathering the information, I cannot recall, but I do recall that I did not agree that I would yet send the records.

With regard to the allegations in paragraph 7 of the declaration, again not specifically recalling the dates, I did receive a letter from Major Copy Service that Mr. Strazulo was threatening to file a Motion to Compel Production of the Documents. In response to that letter, I spoke with a gentleman by the name of Rick at Major Copy Service and told him that we were continuing to search for the records, and that I was surprised to receive this type of communication from Mr. Strazulo or one of his representatives. Rick informed me that he was equally surprised to receive this request from Mr. Strazulo. Thereafter, I told Rick that if Mr. Strazulo was intent on pursuing this course of action that we would have no choice but to defend the matter in that I not only felt the request was improper and overbroad, but that since most of the very voluminous records were in Cleveland I felt the proper method for Mr. Strazulo to obtain discovery of those documents would be to venture to Cleveland and take a records deposition here. He indicated that he agreed with me and that he did not feel Mr. Strazulo wanted to pursue that route or that Mr. Strazulo wanted to create a dispute about the discovery of these records, rather, that he simply wanted to hurry us along

by the filing of this motion. I indicated to him that as a

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result of several people leaving our department we were very short staffed at the time and that we were simply overloaded with information requests and we were doing our best to comply with this along with others. He indicated that he would relay the information to Mr. Strazulo and that if there was a problem he would let me know.

Not having received any further telephone calls or letters from Mr. Strazulo or Rick, I assumed that he was content with our efforts as they were being conducted. It was certainly not an exaggeration on our part that we were having a difficult time in that we had lost several members of our litigation section in that time frame and were scrambling to "put out fires" as it were. It was made extremely clear to Mr. Strazulo during our initial conversation that Sherwin-Williams had multiple objections to the subpoena. If there was any waiver of a right, I believe it was Mr. Strazulo's waiver to compel enforcement of the subpoena. Furthermore, in the follow-up by Mr. Strazulo's agent, Major Copy Service, the same conciliatory attitude was taken by Rick and when I indicated my inclination to contest the subpoena, he again agreed that it would not be necessary to do so and that our continuing search for the records was agreeable.

In sum, although I will certainly agree that we did not pursue the matter as diligently as we could have, I don't feel that Mr. Strazulo operated on a fenthright honest basis by proceeding to file a Motion with the court after he had agreed, and his agent had agreed, not to take any action to enforce the subpoena. Indeed, he attempts to give credibility to his argument by alleging that counsel for Sherwin-Williams was involved, however, but when he decided to file a motion with the court to compel production of the documents he did not serve the motion or order on the only lawyer who he had communicated with on the case. Had I received notice of the Motion in a timely fashion, we would have immediately retained counsel and vigorously defended the matter.

Once you have had a chance to consider this letter, please feel free to give me a call so that we can discuss the preparation of a Declaration in response to that of Mr. Strazulo.

Thank you very much for your cooperation.

Very truly yours,

John F. King

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