

Cleveland

Corporate Insurance

#18 Oakland, Calif.

May 30, 1974

R. A. Gienope

Redacted

I am enclosing a report from Liberty Mutual regarding the above Workmen's Compensation death claim. was formerly employed at the Oakland Factory.

Redacted

I suggest you review your file on this claim when you have an opportunity. Gordon Lacey and this office exchanged several letters regarding this claim. Also, the claim has substantial significance due to several unique points.

This claim was initiated by Kaiser Hospitals rather than by decedent's widow. The first physician to review the medical evidence at Liberty Mutual's request, died in an accident before he wrote an opinion. And the widow stated to Gordon Lacey that her husband's death was hastened by his intake of alcoholic beverages; she later changed her tune when Kaiser's action precipitated a claim.

We believe the attached correspondence speaks for itself. We were unable to include a copy of Dr. Consentino's letter, as the copy we received was too poor to reproduce.

We can expect a resolution of this matter at some future time. Liberty Mutual should advise us of the results.

JACK D. KULL, JR.

JDK:hb

Encls.

N40586

May 24, 1974

**LIBERTY
MUTUAL**



Westgate Plaza Building; 20325 Center Ridge Road; Cleveland, Ohio 44116 • Tel. (216) 333-8000

P.F.

Sherwin-Williams Company
101 Prospect Avenue NW
Cleveland, Ohio 44115

Att: Mr. Jack D. Kull, Staff Assistant
Corporate Insurance Department

RE: Redacted vs SHERWIN-WILLIAMS, Redacted

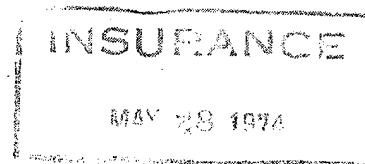
Dear Jack:

Attached is correspondence from our Oakland Office and our attorney, as well as a supplemental report from Dr. Cosentino. The documents are self-explanatory and make it appear that we are now in very good shape to defend this matter.

Very truly yours,

Lee R. Shealy
Claims Manager
MM/enc.

INSURANCE
MAY 28 1974
J.D.K.



N40586.01

LIBERTY MUTUAL INSURANCE COMPANY • LIBERTY MUTUAL FIRE INSURANCE COMPANY • LIBERTY LIFE ASSURANCE COMPANY OF BOSTON
HOME OFFICES: BOSTON

EQUAL OPPORTUNITY EMPLOYERS

0007-SWP-005504010
CONFIDENTIAL

ANTHONY M. COSENTINO, M.D.
INTERNAL MEDICINE
2200 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94117
PHONE 387-5684

RECEIVED
APR 13 1974
FBI - SAN FRANCISCO

March 30, 1974

Sam Meredith, Esq.
Goshkin, Pollatsek & Meredith
Attorneys at Law
22 Battery St., Ste. 810
San Francisco, Ca. 94111

Redacted

Re: **Redacted**, Deceased
vs. Liberty Mutual and
Sherwin Williams Paint Co.

Dear Mr. Meredith:

This will supplement my report of 1/5/73. I have had the opportunity to review **Redacted**'s x-rays and found that the earliest roentgenogram of his chest was dated 11/25/72, at which time there was an enlarged heart and perihilar infiltrates. The infiltrates were fairly dense and the distribution suggested that it might have been something more than just congestive heart failure.

On 12/11/72 there was some clearing of the infiltrates, but still a large heart in spite of treatment for congestive heart failure. By 1/5/73 there was almost complete clearing of the lungs and the heart was as large - and possibly larger. As of 1/24/73 the lungs were essentially clear and the heart was still large. This protracted course of lung infiltrates - that is, the failure to clear promptly with treatment of the heart failure - certainly suggests that some pneumonic process was present in addition to just pulmonary edema secondary to heart failure. Accordingly, a lung biopsy was performed with the documented results, which were commented upon in my previous report. As of 3/5/73 the lung fields were clear and the heart was still large. On 3/22/73 an infiltrate appeared in the left lung which was consistent with the clinical picture of pulmonary infarction. The heart remained large and the lungs otherwise remained clear.

After reviewing the x-rays, I cannot separate the disease processes in the heart and lungs. That is to say, they appeared to have a simultaneous onset and I must therefore conclude that they had a common etiology. This again strongly suggests to me that it was a viral pneumonitis and myocarditis, and that he subsequently died of his viral myocarditis long after his pneumonitis had cleared.

Again, I wish to reiterate that I know of no myocardial pathology related to desquamative interstitial pneumonitis or alveolar proteinosis.

N40586.02

0007-SWP-005504011
CONFIDENTIAL

Redacted

Re:

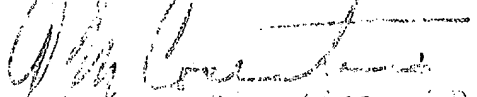
-2-

Mar. 30, 1974

osis, nor am I familiar with any syndromes related to toxic industrial exposure.

In conclusion, then, I feel that Redacted had a viral pneumonitis and myocarditis and expired as a result of his viral myocarditis. I can establish no relationship between his illness and his occupation.

Sincerely yours,



Anthony N. Cosentino, M.D.

MC:sgc

0007-SWP-005504012
CONFIDENTIAL

CLEVELAND CLAIMS
W. WANGLER

May 20, 1974

Goshkin, Pollatsek & Meredith
Attorneys at Law
22 Battery Street
San Francisco, Ca. 94111

Redacted

Redacted

RE: THE SHERWIN-WILLIAMS CO.

Gentlemen:

Thank you for your letter of May 1, 1974, on the deposition of Dr. Stettner; I have subsequently received and reviewed the deposition which I now return to you herewith, since it is your only copy. Your letter reflects an accurate summarization of the deposition concerning the opinions expressed by Dr. Stettner. I am in agreement with you that we do not pursue further discovery with Dr. Klatsky, for the reasons you have stated.

Looking at the overall picture, this case was initiated by the Kaiser application in August 1973 to recover in excess of \$6,000 hospitalization expense incurred by this employee. The widow subsequently filed her own application in October 1973. At the present time the opinions of Dr. Stettner, the Kaiser doctor, would appear to pretty well discredit the Kaiser application. As far as I know, there has been no medical submitted on behalf of the widow.

Rather than to prolong the agony, now that more than six months have passed since the most recent application, I ask that you file a declaration of readiness so that this case can be moved to hearing and disposition made, unless there are other developments of which we are unaware or that such a declaration be contraindicated. While it seems likely that the employee received UCD benefits, I have no indication that any lien has been filed regarding such benefits, likewise an indication that the medical certification for those benefits did not indicate any industrial causation. It would appear accordingly that the employee had no loss in disability benefits, and on the present basis I see no reason to make any compromise settlement on the widow or on Kaiser.

If you are in agreement, please file the declaration.

Very truly yours,

LIBERTY MUTUAL FIRE INSURANCE CO.

H. I. Hermans
Assistant Claims Manager

HIM:f

bcc: Cleveland Claims - W. Wangler
Home Office Claims

N40586.03

0007-SWP-005504013
CONFIDENTIAL

GOSHKIN, POLLATSEK AND MEREDITH

ATTORNEYS AT LAW

JACK E. GOSHKIN
JACK A. POLLATSEK
SAMUEL E. MEREDITH

22 BATTERY STREET
SAN FRANCISCO 94111

TELEPHONE
[415] 981-1400

May 1, 1974

Mr. Don Holst
Liberty Mutual Insurance Company
3505 Broadway
Oakland, California

Re: Redacted vs. Sherwin Williams Paint Co.

Dear Don:

On April 11, 1974 I took the deposition of Joel Stettner at the Kaiser Facilities in Oakland. Prior to that time I had met with Dr. Anthony Cosentino to discuss the case and areas of cross-examination of Dr. Stettner. That proved to be quite beneficial.

First of all, enclosed is a copy of a report of March 30, 1974 from Dr. Cosentino which is the report submitted after he had an opportunity to review the x-rays. You will note that he is even more emphatic now in his belief that the pneumonitis and the myocarditis were due to a viral infection and not in any way related to his employment.

The deposition of Dr. Stettner went extremely well. First of all, Dr. Stettner is a resident in internal medicine at the Kaiser Facility. He obtained his Bachelor's Degree in 1969 from Wayne State University in Detroit and obtained his M.D. Degree from Wayne State in 1971. He has done all of his internship and residency training at the Kaiser Facility in Oakland.

The deposition was quite detailed and I will not burden you with the details but will forward a copy for your review when it is received.

I asked him about the report that he had submitted dated January 25, 1973 wherein he had stated that there was "probable injury secondary to inhalation of noxious fumes or particulate matter". He indicated that that report was not prepared by him

N40586.04

NOT
ATTACHED

WDL: WJS: CLE: COPY
UNTIL WE GET
DR. RST

0007-SWP-005504014
CONFIDENTIAL

Liberty Mutual Insurance Company
Re:

May 1, 1974

Page 2

Redacted

but was prepared by someone in the Industrial Medicine Group and signed by him. He admitted that that was only one of many possibilities as to the etiology of problems and it was on that basis that he signed the report. He indicated that he signed the report because he was the physician most familiar with the overall course of treatment, etc.

Redacted

He testifies that the patient did have pneumonitis and myocarditis. It is his opinion that the cardiomyopathy was due to the patient's alcoholic intake over the years. Therefore, he states that the man's death was not caused by the industrial injury or exposure. Further, as to the etiology of the pneumonitis, he cannot state with any reasonable medical probability, the etiology. Therefore, he cannot implicate the alleged exposures to toxins on the job but only stated it as one of some five or six possibilities.

In addition, it would appear that by the beginning of January, 1973, the patient had completely cleared of the pneumonitis and his problems thereafter were completely related to the cardiomyopathy. Therefore, even assuming that the pneumonitis was in some way related to the exposure to toxins on the job, the industrial liability would have terminated as of the beginning of January, 1973. Dr. Stettner does not in any way implicate the alleged industrial exposure to the man's heart problems.

Redacted

You will note that shortly before died he had numerous pulmonary emboli. However, Dr. Stettner testifies that that is a natural result of the cardiac failure and not due to the previous pneumonitis.

I think that we have an excellent expert witness in Dr. Anthony Cosentino in this matter. Dr. Cosentino is a pulmonary specialist and is quite convinced that the decedent had a viral infection involving both the lung and the heart.

0007-SWP-005504015
CONFIDENTIAL

Liberty Mutual Insurance Company
Re:

May 1, 1974

Page 3

Redacted

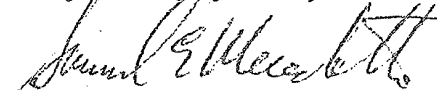
The lung infection cleared up after a couple of months but the heart infection did not and progressed until the patient died.

The attorney representing the widow, is also considering a medical malpractice action to be brought against the Kaiser doctors and there, indeed, might be a basis for it. It is clear that the Kaiser doctors failed to diagnose a viral myocarditis which would be treated with steroids. Dr. Cosentino is quite emphatic in saying that while the Kaiser doctors mis-diagnosed the condition, the treatment would have been the same. It is clear that he does not want to get involved in a medical malpractice action. For that matter, neither do we. At any rate, this does loom in the background in this case.

There is further discovery that could be done, such as deposing Dr. Arthur L. Klatsky of the Department of Cardiology of the Permanente Medical Group. Dr. Klatsky submitted the October 10, 1973 report. However, Dr. Klatsky's report is certainly vague on the possible relationship of any industrial exposure and I am inclined to let it stand. I do not think that it constitutes substantial evidence on which a finding of industrial relationship could be made. We have Dr. Cosentino's report and testimony which is in fact supported by evidence and I am inclined to let the matter proceed on the basis of the present record. Presumably, the applicant will get some other opinion. At the present time there is no opinion that relates the heart condition to the industrial exposure and that is what caused the death of

Redacted

Very truly yours,



Samuel E. Meredith

SEM:la

Encl. - Dr. Cosentino's report of March 30, 1974.

MAY 2 1974

CLERK

0007-SWP-005504016
CONFIDENTIAL