

sent to Mulcahy
John White, Supervisor, Claim Department (C/R Mulcahy)

Bill Bulsiewicz, Staff Counsel

April 8, 1981

REDACTED v. New Primex Realty Associates v. THE SHERWIN WILLIAMS CO.

Please be advised that an EBT was held in the above-referenced matter on April 3, 1981 here in Syracuse, New York at the Setright Law Offices. Testifying on behalf of the Sherwin Williams Company was a Corporate Director of Industrial Hygiene. indicated that

he was not with the company at the time of the occurrence and that a was the Industrial Hygienist who had preceded him in his job. She is now a Compliance Officer for OSHA in El Paso, Texas. worked for Diamond Shamrock before coming to The Sherwin Williams Company.

indicated that he felt that Benzine was a toxic substance and that it was not in the formulas of Sherwin Williams' paints, although it may have been present as a contaminant. He indicated that the company had a regular policy of checking the safety of the various retail outlets and was requested by the plaintiffs' attorney to produce all written memoranda related to solvent purities in the make-up of the paint and also all written memoranda related to inspections or policies regarding the atmosphere, ventilation, etc. in the company stores.

Also testifying on behalf of The Sherwin Williams Company was He indicated that he was Sherwin Williams' manager from 1976 through April of 1979. He indicated that the stored had a general brochure regarding rules for the storing and mixing of coatings in the store and that he was controlled out of the Albany Office by first the District Manager until May 1977 and later who was the District Manager from May 1977 until they moved to the new store. The latter is now the Boston District Manager and is still with the company. The former is no longer with the company. He indicated that in the summer of 1978 he built a new office space.

was apparently working part-time at the time and was located about 30 feet from the mixing area. It is interesting to note that the Polane, which is the subject of this action, was found in 5 gallon cans which were black in color and in direct discrepancy to

; testimony regarding 1 gallon cans on the prior EBT date. He indicated that he had no prior complaints by until the time of her hospitalization and further indicated that they had cleaned some spray guns and other materials with solvents in the rear portion of the building and mixed paints in the rear portion of the building. I went out to the building with and noticed that the space heaters are located in front of the mixing area and blow away from the mixing area towards the front of the store.

REDACTED

REDACTED

N40521

0007-SWP-005501612
CONFIDENTIAL

RECEIVED

JUN 18 1981

Page -2-
John White (C/R Mulcahy)
April 8, 1981

Also testifying at the EBT was Philip Robbins, who is apparently a principal in New Primex Realty. He indicated that Sherwin Williams was an original tenant in the building and that he became the owner of the building in the early part of January 1965. Apparently Sherwin Williams had been there since 1961. He had no correspondence relative to repairs on the premises and apparently it was his testimony along with the testimony of Robert Nichol, who is the General Supervisor for the management of the property, that they had maintained the space heaters and drained water from the coolant in the air conditioner located in the front of the building during the time period when Sherwin Williams was in possession.

At this point, in light of the medical reports, and the testimony of the parties, I do not feel that the plaintiffs have yet established a strong cause of action against our insured and much of any cause of action against New Primex Realty. You will note that we are a third-party defendant in this action. It is interesting to note that [redacted] indicated in January of 1978 [redacted] returned to the store and asked for her job back. If she really felt that this was the cause of her injuries, this would be an unusual act on her part. He also indicated that [redacted] husband ran some kind of a construction business where he worked with chemicals and that she helped him out on a regular basis, usually working the rest of her daylight hours with her husband's business when she was not in her work area at the Sherwin Williams company. Perhaps this was the cause of her leukemia. We should check out what her husband's business was and perhaps we might even want to depose him. As soon as I receive a copy of the EBT I will advise you so that we may have a further review. In the meantime, we should contact Sherwin Williams and obtain from them copies of all materials related to safety in retail outlets including ventilation, air conditioning, the mixing of paints and solvents and the suppliers of solvents and whether any testing was done as to Benzine or other contaminants regarding those solvents that went into the paints. This may be rather oppressive in nature and we can discuss same as we proceed.

INSURANCE
JUN 18 1981
T.M.L.

Tom,
gae Please see what you
can do concerning this request.
Thanks, John Mulcahy

INSURANCE
JUN 18 1981
T.M.L.

0007-SWP-005501613
CONFIDENTIAL

REDACTED