

ROBERT L. MUELLER
ROBERT E. DAVLIN
DENNIS S. O'BRIEN
L. ROBERT MUELLER
KEVIN J. DAVLIN
ALLEN C. MUELLER
THOMAS MARK SCHMIDT

LIVINGSTONE, MUELLER, O'BRIEN & DAVLIN, P.C.
Attorneys at Law
620 EAST EDWARDS STREET • POST OFFICE BOX 335
SPRINGFIELD, ILLINOIS 62705

TELEPHONE (217) 525-1070

January 20, 1989

EMPLOYEE BENEFITS
FORMERLY
LIVINGSTONE, MUELLER,
JAN 26 1989
DRAKE AND DAVLIN
LIVINGSTONE, MUELLER,
GUNNING, O'BRIEN
& DAVLIN, P.C.

C. A. LIVINGSTONE
1896-1982

LESLIE V. DRAKE
1895-1971

Ms. Christine Nelson
Senior Claims Administrator
Self-Insurers Service, Inc.
111 East Wacker Drive
Chicago, Illinois 60601

In re: Widow of _____ Deceased vs.
Sherwin Williams
Your File No. L9935-1-80
Date of Incident: April 15, 1981

Dear Ms. Nelson:

The argument on the appeal of the widow, from
the decision of the Circuit Court, Montgomery County,
Illinois proceeded before the Appellate Court of Illinois,
Industrial Commission Division, on the morning of December
14, 1988. At that point, the Court took the case under
advisement.

We now have the decision of the Appellate Court which
reverses that of the Circuit Court. The Appellate Court has
therefore reaffirmed the decision of the Industrial Commis-
sion of Illinois finding the death of Melvin Beeler compen-
sable. I am submitting a copy of the decision and opinion.

There are two avenues open to request additional considera-
tion. One is a Petition for Rehearing to the same Appellate
Court, - the other, a Petition for Leave to Appeal to the
Supreme Court. By Supreme Court Rule, the latter is granted
only as a matter of sound judicial discretion for one of
four reasons: the general importance of the question
presented; existence of conflict between the decision and a
decision of the Supreme Court, or another division of the
Appellate Court; need for the exercise of the Supreme
Court's supervisory authority; and, the final or interlocu-
tory character of the judgment sought to be reviewed. No
Petition for Leave to Appeal from the Industrial Commission
division can be filed unless at least one judge from that
panel issues a statement that the case involves a substan-
tial question warranting the Supreme Court's attention.

In view of the fact that the decision of this Appellate

N40340

0007-SWP-005801377

REDACTED

Court was unanimous, I perceive no hope that we would be allowed back in before the Appellate Court, nor indeed certified to the Supreme Court. The decision simply supports the Industrial Commission decision, which so many of the Appellate Court decisions do. The Industrial Commission, they rule, can draw inferences from the evidence, and can reasonably rely upon the treating physician's opinion, in this case, rejecting that of our pulmonary expert. The Appellate Court finds therefore that the decision of the Industrial Commission is not against the manifest weight of the evidence. JAN 26 1989

I do not recommend any further proceedings, which as I have indicated would not bear fruit. I think then we should get on with either attempting to reach a settlement agreement with the widow, or pay her the compensation accrued to date, and then begin regular payments at the weekly rate found by the Industrial Commission (\$156.54). Annual compensation is therefore \$8,140.08. April 15, 1989 will be the 8th anniversary of the death of On that date the widow would have accrued benefits of \$65,120.64.

The widow is now 65 years of age and has an approximate life expectancy of 18 years. Benefits for that period of time capitalized at 8% has a present value based upon 9.37 years.

One possibility is her living beyond expectancy. The Workers' Compensation Act awards the surviving spouse benefits for 20 years, or \$250,000.00, whichever is the greater.

I ask that you or Mr. Colangelo, or both, call me to discuss this. My recommendation is that we approach the attorney for Helen Beeler for a settlement figure. We obviously are not required to settle this case if we decide to pay the accrued compensation, then the benefits regularly at the rate above mentioned.

Very truly yours,

Robert L. Mueller
RLM:ph

cc: Mr. Tony Colangelo
Sherwin Williams Company
101 Prospect Avenue, N.W.
Cleveland, Ohio 44115