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January 27, 1989

Tony Colangelo
Sherwin-Williams Company
101 Prospect Avenue, N.W.
Cleveland, OH 44115-1075

REDACTED

Re: A 1, dec'd) v. Kaiser Shipyard
#3, et al.
WCAB Case No: OAK 141300
Claim No: 918 C 31408/SMBS No: 144.054

Dear Mr. Colangelo:

Thank you for your note of January 16, 1989. We hope you do get out here in February, so that we can meet and discuss this claim.

In response to your inquiries of January 16, 1989, at this time it is difficult to determine what exposure there is to Sherwin-Williams. We can tell you that, since was diagnosed as having an endocarcinoma of the lung in April of 1986, the appropriate death benefit for a state workers' compensation claim would be \$70,000 with one total dependent. That is the maximum death benefit exposure; but, there, of course, is, in addition to that, potential exposure for medical benefits and temporary disability. On this latter item, there is a still a question concerning what rate would apply, since id in fact retired. The argument that the defendants in the state case would make is that, since he retired, the rate would be minimum rather than the maximum. The minimum rate would be \$112 per week during the period of disability; and, the maximum rate would be \$224 per week.

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WILLIAM W. WERTZ

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EMPLOYEE BENEFITS

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The period of disability was from the date of the diagnosis on April 1, 1986 to his death on November 12, 1987. That is a significant period of time, and, in and of itself, has a dollar exposure in excess of \$18,000.

Exactly which defendant would be responsible for payment of any finding of injury in the state case is another question that would have to be determined by medical discovery. As we have mentioned in earlier correspondence, the test used by the Workers' Compensation Appeals Board is what period of exposure was in fact the "injurious exposure". In typical asbestos cases, physicians will state that there is usual a latency period following the last exposure before development of the carcinoma. The physicians who have reported for Kaiser Steel felt that the latency period may have been rather long; but, nevertheless, they did not see any other exposure to asbestos, and therefore found a compensable injury against Kaiser.

Kaiser then joined Sherwin-Williams, which was basically a shotgun approach. They felt that, since Mr. McGhee worked in a large plant, one must assume that, since he was there from the late 1940s onward, there was some exposure to asbestos. It is common knowledge that asbestos was used quite extensively in construction and insulation in the 1940s, 1950s, and 1960s. Kaiser's attorneys will then attempt to show that, since Mr. McGhee worked where asbestos was probably used, he was therefore exposed on those premises; and, the latency period would be shorter than the 40-plus years for Kaiser exposure.

Since the allegation has been made by Kaiser, then we are, of course, faced with a proof problem as to whether or not there was in fact asbestos exposure.

Assuming the worst possible case, and that is asbestos exposure at your Emeryville Plant, the next step is then to present this evidence to the doctors, and try to present it in some sort of quantitative basis. Some physicians believe any exposure is harmful, whereas other physicians measure the degree of exposure. In this particular case, we do not have any idea as this time; but, let us assume continuous exposure at the plant through the year, 1970. We then look at the last year of exposure according to Labor Code Section 5500.5; therefore, the insurance carrier on the risk from 1969 to 1970 would be the party responsible to pay any award that may be issued in favor of Kaiser.

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Re:

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As you can see, we are doing a great deal of speculating in our analysis at this stage; but, this is the general process that would have to take place if this matter were to proceed before the Workers' Compensation Appeals Board.

Since there has in fact been a settlement by Ms. McGhee in the federal case and in the state case, counsel for Kaiser has one year from the date of the approval of the Agreement in the state case to Petition for Contribution. The Order Approving Compromise and Release issued on November 2, 1988; and, Kaiser has until November 2, 1989, to Petition for Contribution against the carriers for Sherwin-Williams and Sherwin-Williams during its period of self-insurance.

We cannot imagine counsel for Kaiser not proceeding against Sherwin-Williams since he went through so much trouble to join Sherwin-Williams, and then place the burden on us as your representatives to identify the carriers prior to the period of self-insurance.

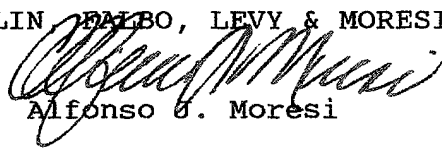
In summary, we still have a long way to go should Kaiser pursue this matter; and, when and if they do, we will, of course, contact you immediately, so that we can begin the discovery process. We would still like an opportunity to meet with you to discuss this case in general terms when you are out here on the West Coast in February or March of this year.

If we can be of any further assistance at this time, please do not hesitate to contact the undersigned.

Very truly yours,

LAUGHLIN, DALBO, LEVY & MORESI

By:


Alfonso G. Moresi

AJM/jm

cc: John F. King, Esq., Sherwin-Williams Company,
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