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RECEIVED
APR 08 1986
Corp. Risk Mgmt.

April 3, 1986

Mr. Tony Colangelo
Contract Transportation/
The Sherwin Williams Company
101 Prospect Avenue, N.W.
Cleveland, Ohio, 44115-1075

RE: v. Contract Transportation/
The Sherwin Williams Company and INA/Aetna Insurance
Claim No.
Date of Accident: 12/06/85

REDACTED

Dear Tony:

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As we discussed, the hearing in the above-styled workers' compensation claim was held on March 28, 1986, at the State Board of Workers' Compensation in Atlanta. The issue for determination was whether or not stroke is compensable as an accident arising out of and in the course of his employment. There is no question that stroke symptoms began while he was driving a truck from Texas to Chicago. He first began feeling weak around the Arkansas/Missouri state line. When he arrived in Chicago, he had to unload some cans of paint that had spilled. He claims that this exertion aggravated the symptoms.

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has an extensive medical history. He had a prior stroke in 1974 and has been treated over the past several years for cardiovascular diseases. did not produce any medical report that specifically stated that his stroke was caused by his employment. This is certainly a plus on our side. However, we do not have any medical evidence yet to show that the stroke probably began while was either simply driving or before he even left on the trip from Jonesboro, Georgia, to Texas. It is the opinion of our firm's medical researcher, who is a registered nurse specializing in critical care, that the stroke probably began (the clot began moving) long before the stroke actually occurred. The record has been left open at the request of the claimant's attorney for additional medical evidence. We are planning to try to talk to the treating physician on the phone to determine what

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RE:)

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he would say if we proceeded with his deposition. If he indicates that he would testify that the claimant's job at least contributed to the stroke, we will, of course, not take the deposition. I will keep you apprised of all additional developments. If you have any questions in the interim, please do not hesitate to contact me.

I am enclosing a copy of my deposition summary which was sent to Flo Ann Davis at INA.

Very truly yours,

DREW, ECKL & FARNHAM



David A. Smith

DAS:pmw

Enclosure

CC: Ms. Flo Ann Davis, File No. 130C459452-4

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February 18, 1986

Ms. Flo Ann Davis
INA/AETNA INSURANCE COMPANY
P. O. Box 720001
Atlanta, Georgia 30328-2001

REDACTED

RE: v. Contract Transportation/
Sherwin-Williams and INA
Your File No. 130C459452-4

Dear Flo Ann:

Due to a conflict in Ann's schedule, I appeared in your behalf at the deposition of the claimant at the office of his attorney, C. C. Perkins.

CLAIMANT'S TESTIMONY

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is fifty-nine years old, married, and has been a cross-country truck driver for most of his life. He was pretty effective regarding the details of his alleged on-the-job accident. Moreover, he makes an impressive witness since he is still experiencing residual effects from his December 6, 1985, stroke.

Before he began working for Contract Transportation, was a truck driver for Southern Bonded, Glen McClendon Trucking, and Mizell Brothers in Atlanta. He only worked for Southern Bonded and Glen McClendon for a short time. However, he was at Mizell Brothers for approximately twelve (12) years. When the company merged with another company, they wanted him to begin driving on Sundays. However, he was the pastor of the Golgotha Baptist Church in Newnan at the time. Therefore, he left Mizell Brothers.

After the claimant told me he was a pastor, I was quite surprised when he described a "stroke" in 1974. According to him, the stroke was a result of his excessive drinking. He was "coming off a drunk" at the time of the stroke. His right arm and leg were paralyzed, and he was unable to speak. He was out of work

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REDACTED approximately eighteen (18) months. No workers' compensation claim was filed. He was initially treated by Dr. Barron in Newnan and later saw three (3) doctors in Atlanta on Peachtree Street. However, he could not remember the names of those doctors. maintains that the three (3) Atlanta doctors told him they could see no evidence of a stroke. This was the only stroke he had experienced before December, 1985. Apparently, the 1974 stroke was a sufficient impetus for him to quit drinking. He claims to have not touched the stuff since that time.

REDACTED began working for Contract Transportation on June 18, 1984. He was employed as a cross-country driver and delivered paint to various Sherwin Williams facilities. In the course of these deliveries, he was required to use a fork lift to move cases of paint on pallets, but he also had to unload individual cans of paint by hand. According to him, some of the five-gallon buckets of paint weighed up to ninety (90) pounds. He had to unload cases of pallets on almost every trip.

At Contract Transportation, the claimant was paid twenty-five cents (25¢) per mile and Ten Dollars and Twenty Five Cents (\$10.25) per hour for time that he was not driving but held up at a job. He confirmed that he averaged Six Hundred Twenty Five Dollars (\$625.00) per week, as was indicated on the Form WC-1.

Other than the 1974 stroke, the claimant has had only minor medical problems in the past. In 1981, he was hospitalized in Newnan by Dr. MacNabb for hemorrhoids. He had previously been hospitalized in Newnan for a hernia.

The claimant testified that he was on no medication in December, 1985. However, the Newnan Hospital reports for December 8, 1985 indicate that the claimant was on medication for his nerve paralysis problem.

DESCRIPTION OF ACCIDENT

REDACTED On December 3, 1985, the claimant left Jonesboro to make a delivery to Garland, Texas. He arrived in Garland on December 4, 1985 and did not unload any paint. He picked up a loaded trailer in Garland and drove that to Chicago. On the afternoon of December 5, 1985, he was in Arkansas. He noticed that he started "feeling bad" and called Dave, the dispatcher, in Jonesboro. described his condition as "feeling like he was coming down with something." When he called Dave, he was

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instructed to be in Chicago before daylight on December 6, 1985. Chicago was four hundred (400) miles away. The conversation with Dave was at 4:30 P.M.

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On December 6, 1985, called Dave approximately fifty (50) miles from Chicago, around 9:00 A.M. He told Dave that he "felt so bad" that he needed a driver from the plant in Chicago to meet him. Dave told him not to worry and that he was sure he could make it to Chicago. He then drove on to the Chicago plant and turned his bills in at the office. The manager asked him why he was late, and s responded that he was sick.

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It was very difficult to get an accurate description of exactly how was feeling by this time. He testified that he was not really in pain and did not exactly feel weak.

When he began to unload the paint in Chicago, it was noticed that some of the paint had spilled en route. Sixteen (16) five-gallon buckets had turned over, and the paint had spilled out. The manager in Chicago told him to get in the truck and pick up any full buckets. He claims that he had to pick up approximately fifteen (15) cans of paint weighing ninety (90) pounds each, and he moved them closer to the front of the truck.

After he moved the paint, he went back to the office and asked to call his dispatcher in Jonesboro. The manager told him that he could not use the phone in the office, and he would have to go to the warehouse where he was supposed to pick up his next load. Claimant then drove the tractor around to the warehouse. The temperature was approximately 17°, and there was snow on the ground. He received no help from anyone at the Chicago plant in moving the tractor or picking up the new trailer.

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backed the trailer up to an empty spot, and when he got out of the truck, everything "drained out." Even though he felt like he was dying, he managed to hook the new trailer up to the tractor. He then called Dave from the warehouse telephone and told him that "something serious had happened." He claims to have lost all strength at this point. Dave told him he needed bed rest. However, he had to bring the new trailer back down to Georgia. He got to a truck stop outside Chicago and stopped there for a while. During the afternoon of December 6, 1985, he called Dave concerning the weekend dispatch for trucks. Perry Norman at the Atlanta office got on the phone and "blessed him out" about the

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five gallons of paint that had spilled. He told Norman that he was "real bad off." Norman responded that he should do the best he could and get the truck home safely. told Norman he would "bring his blame truck home."

finally got back to Jonesboro on December 7, 1985, at approximately 9:00 P.M. He was "completely shook up, give out, and his nerves were gone." When he got back to the plant, he went to the drivers' room and wrote up his reports. His wife and son met him at the plant. He did not want to go to the hospital that night since he had not bathed since he left Garland, Texas. He stayed at home that night and went to the emergency room at Newnan Hospital on the morning of December 8, 1985. He was placed in ICU for three (3) days and then moved to a room for seven (7) days.

Since his hospitalization, he has noticed no real improvement. The strength on his right side is about the same as it was. He also has discomfort in the muscles on his left side when the weather changes. Moreover, maintains that his left eye is getting smaller and the vision is worse in that eye.

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According to , Dr. MacNabb told him that the stroke could have been caused by excessive driving. In the course of this trip, he drove two thousand six hundred (2,600) miles. It was eight hundred and thirty seven (837) miles from Jonesboro to Garland, Texas. It was then an additional one thousand twenty-eight (1,028) miles to Chicago, and seven hundred seventy three (773) miles back to Jonesboro. When he began "feeling bad," he was only driving. He had never had any similar feelings before. I think he was probably too drunk during the 1974 stroke to remember how he felt.

SUMMARY AND RECOMMENDATIONS

Naturally, the claimant has not returned to work since the accident. I sincerely doubt if he will ever be able to return to any sort of gainful employment at which he could make as much as he did with Contract Transportation.

Fortunately, his union insurance has paid his Newnan Hospital bill (\$4,700.00). The union insurance took over payment after Doug Higsby at Contract Transportation told him that workers' compensation would not pay for any of his medical treatment. At the present time, he owes the hospital One Hundred Sixty Five Dollars (\$165.00). Dr. MacNabb's bill is approximately Five Hundred Dollars

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(\$500.00), and there is an outstanding bill from Radiology Associates of Newnan for Six Hundred Ninety One Dollars (\$691.00). His prescription bills total approximately One Hundred Thirty Dollars (\$130.00).

The claimant has applied for Social Security disability. He has not yet received any indication as to whether or not they will accept his claim. It will be approximately sixty (60) days before he hears anything. At the present time, the claimant's wife does not work and they have no source of income. He is getting food stamps and the Red Cross has arranged to provide gas for his heat.

If this claim is found compensable, it will probably be a life-long claim. Fortunately, the case will be heard by Judge Belk. That is one good point in our favor. A hearing has not yet been scheduled, but Judge Belk has been notorious about sending out hearing notices one (1) week before the hearing. Therefore, we need to prepare for this case as quickly as possible.

I am sure you are well aware with the line of cases dealing with heart attacks and similar problems. The employee's work activities must only be "sufficiently strenuous" so that the alleged exertion contributed toward the precipitation of the stroke. If Dr. MacNabb actually feels that excessive driving was at least a factor, then Judge Belk would be more inclined to find the claim compensable.

We need to get all of the claimant's prior medical records to determine whether or not he had any continuing problems after the 1974 stroke. Moreover, I will try to find out from Mizell Brothers to whom the claimant was sent after the prior stroke.

Hopefully, we will be able to settle this case based on the claimant's probable entitlement to Social Security disability benefits. I am unaware if Dr. MacNabb has certified the claimant as disabled.

From December 4, 1985, until April 22, 1986, the approximate date upon which the claimant will learn if he is entitled to Social Security, is twenty (20) weeks. Based on a comp rate of One Hundred Fifty Five Dollars (\$155.00), that translates into Three Thousand One Hundred Dollars (\$3,100.00). Beyond this, I am sure the claimant will have some type of permanent

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partial disability. A fifteen percent (15%) rating to the body as a whole is Six Thousand Nine Hundred Seventy-five Dollars (\$6,975.00). In addition, is a likely permanent total. It would certainly be extremely time-consuming and expensive to even hope to retrain this man to work in any sort of light-duty capacity. We could certainly anticipate at least two (2) years of temporary total benefits. This amounts to in excess of Sixteen Thousand Dollars (\$16,000) at his comp rate. In addition, the likelihood of returning him to any job where he will make Six to Seven Hundred Dollars (\$600-\$700) per week is remote. We would then be faced with certain temporary partial benefits. This case could certainly wind up costing us Fifty Thousand Dollars (\$50,000) in the not too distant future. Happily, does have access to other sources of payment for his rather large medical bills. I would recommend attempting to settle this case on a no-liability basis thereby taking advantage of the fact that the union insurance has already paid the bulk of the Four Thousand Seven Hundred Dollar (\$4,700) hospital bill. If we could settle this case for up to \$15,000 on a no-liability basis, I think we would be getting quite a bargain. Actually, we might want to go even higher than that depending upon what the medical records show.

Please give me a call so that we can discuss this. This case has been set for hearing on March 28. I have discussed the foregoing recommendations with Ann and she concurs that this case does have significant value. Please give Ann or me a call.

Very truly yours,

DREW, ECKL & FARNHAM



David A. Smith

DAS/pmw

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