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January 27, 1989

FORMERLY
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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: vs. Sherwin Williams
Your File No. L9935-1-80
Date of Incident: April 15, 1981

Dear Ms. Nelson:

This letter follows our telephone discussion Thursday afternoon, January 26, 1989. I want to reiterate my recommendation that neither avenue of appeal be attempted.

The opinion of the Appellate Court is rather straight forward. Basically they say that this whole matter is a manifest weight of evidence decision; that the Industrial Commission is the trier of facts; judges credibility of witnesses, and can make reasonable inferences from the evidence. The Appellate tribunal tries not to substitute its judgment for that of the Commission unless, "no rational trier of fact could have agreed with the agencies (Commission's) decision. That rationale is elsewhere stated on page 6:

"A reviewing Court should neither overturn the Commission's findings simply because a different inference could be drawn nor otherwise substitute its judgment for that of the Commission."

This affirming of a Commission decision on a factual determination is seen over and over again.

We have to recognize that the opinion of the Appellate Court, affirming the Industrial Commission's decision, was unanimous. There was no dissent. This gives a clue as to the measure of success in filing a petition for rehearing or seeking leave to appeal to the Supreme Court. In filing for rehearing we are in essence asking the Appellate Court to do what it has already done, or, to pass the case along to the Supreme Court for one of the reasons set forth in Supreme

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