Cleveland Corporate Insurance

#18 Oakland, Calif. December 10, 1973

G. A. Lacey

Redacted

Mr. Malone has asked me to write to you in connection with the above Workmen's Compensation file. He indicated that I should respond to several points in your letter of October 17, 1973, expressing concern over the handling of the case by Liberty Mutual. Redacted

With respect to the Application filed with the Division of Industrial Accidents on October 11, 1973, we have noted that this constitutes the first filing of a claim for Workmen's Compensation death benefits by the claimant's widow. Mrs is now requesting that the state of California recognize that her husband's death occurred as a result of a disability arising out of an in the course of his employment with Sherwin-Williams. The specific cause of death is alleged to be exposure to toxic fumes. Therefore, she is requesting recovery of Workmen's Compensation total disability benefits for the period of her husband's alleged occupational disability. She is also requesting that burial expenses be paid as well as the payment of Statutory Workmen's Compensation benefits for herself and two minor children as survivors of the deceased,

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The previous claim was filed by Kaiser Hospital. Under California law, Kaiser is entitled to file a claim for reimbursement of those expenses incurred by the employee upon a determination that Mr. death was, in fact, due to an Industrial disability. Although Kaiser had already filed an application in this claim to cover their interest it obviously follows that the widow must comply with the formal statutory provisions before her entitlement to Workmen's Compensation benefits can be adjudged. That is the purpose of her Application. Redacted

You have pointed out that the deceased employee did receive Company disability benefits as well as California State Disability Benefits. We can anticipate that if the widow's claim for death due to occupational causes is recognized, the state of California will offset any Workmen's Compensation temporary total disability benefits awarded to the deceased employee by the amount of other compensation already paid.

With respect to the initial filing of this claim, you are aware that the basis for Kaiser's filing was the report of January 25 by Dr. Stettner. That medical report was the initial notice that Mr. s hospitalization for over two months might have been due to an exposure in the course and scope of his employment. Dr. Stettner's description of the disability was as follows: Redacted

"Probable injury secondary to inhalation of noxious fumes".

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It should be noted that Dr. Stettner indicates a probability rather than a certainty in his diagnosis. In view of the fact that he had no opportunity to ascertain the facts of Mr. exposure prior to writing this report his opinion may be only a conjecture. The proof of Dr. Stettner's opinion is certainly the predominant issue in this claim at the present time. Redacted

We have received several reports from Liberty Mutual in connection with this matter. According to our file Liberty Mutual did attempt to obtain the opinion of a competent lung specialist following your initial notice to them that an occupational claim might arise out of Mr. unfortunate death. This was Dr. Mannel who, unfortunately, was killed in an automobile accident subsequent to completing his review of the claim, but prior to rendering a written report to Liberty Mutual. In view of the fact that Liberty Mutual was not able to get the report that they had hoped to receive from Dr. Mannel it was their opinion that it would be best to await the filing of a formal claim by Mrs. prior to requesting an opinion from another specialist. Redacted We are reluctant to criticise this handling of the claim. At the time, there had been no application by either the widow or by the Kaiser Hospital. Any unnecessary investigation of this matter by Liberty Mutual raised the possibility of precipitating a claim. You should know that in a meeting with Liberty Mutual's representatives here in Cleveland in June 1973 the possibility of a claim being filed by the Kaiser Hospital was considered. We were aware that such a claim might cause the widow to "get on the bandwagon". In retrospect, there does not seem to be anything which could be done to actually prevent Kaiser from filing their claim.

Dr. Mannel's notes would be of questionable value in the defense of this claim. We have been involved in circumstances similar to this in other claims. It is almost universally the position of legal authorities that the handwritten notes of the deceased physician, which offer no specific conclusions or discussions of the facts, are of minor substantive or interpretive value. Therefore, we do not believe that Liberty Mutual's failure to immediately obtain these notes is fatal to the defense of the claim.

We would anticipate that Liberty Mutual will now attempt to get the opinion of another medical authority to refute that of Dr. Stettner. It is also probable that they will investigate the conditions at the plant in the area where Mr. was employed. It may be necessary to develop a position that the exposure alleged by Dr. Stettner's report did not actually exist and that Mr. death was due to other factors noted in the death certificate. Redacted

We have requested that Liberty Mutual keep this Department and your office apprised of any new developments in this case. We anticipate that they will also advise whether or not there are matters on which we can be of assistance to them in devising a defense of this claim.

JACK D. KULL, JR.

JDK:cnj
cc: RJMalone
RRBruhn