

APR 18 1988

BAUM, RUFFOLO & MARZAL, LTD.

ATTORNEYS AT LAW

RICHARD W. BAUM
SAMUEL J. RUFFOLO
V. ANDREW MARZAL

April 14, 1988

SUITE 1000
ONE NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60602
(312) 726-1995

Mr. Tony Colangelo
Sherwin Williams Co.
101 Prospect Ave. N.W.
Cleveland, OH 44175-1075

REDACTED

RE: Estate of
-VS-
Celotex, et. al.
I.C.#: 83 L 2442

Dear Tony:

Enclosed please find a photocopy of my March 29, 1988 letter to you, as this letter apparently never reached your file.

Please be advised that we have had several pre-trial conferences since the letter of March 29, 1988, and our phone conversations the week of April 7, 1988.

As you know, this matter was continued for a pre-trial conference on April 7, 1988; however, it was held one day later to April 8, 1988, at 1:30 p.m. at my request, so that we can firm up our position on this case.

On that occasion, we had an additional pre-trial conference with Judge Dean Trafelet in Room 1606 of the Circuit Court of Cook County, Daley Center, Chicago, Illinois.

Present was John Krivicich of Baker & McKenzie and also attorneys representing Eagle Pritchard Co. and Rider Co.

At that conference, I dropped our position to asserting a 1/3 lien with an indication to the Judge that we would waive our lien in the event this case settled.

At that time, John Krivicich raised his \$25,000.00 offer to \$40,000.00. Rider agreed to contribute \$4,000.00 and Eagle Pritchard contributed \$20,000.00, making the full offer of \$64,000.00.

N40069

Mr. Tony Colangelo
April 14, 1988
Page 2

The plaintiff was represented on that day by Molly Mason of the Law Offices of Burke & Burke instead of John Burke.

She indicated that the widow would meet with Mr. Burke on Monday, April 11, and that Mr. Burke would recommend to her if all parties would contribute \$75,000.00 and we would waive our lien, a complete settlement.

I indicated to the Judge, as we had discussed on Thursday and Friday, that we would only waive our lien in its entirety if we were certain this case would settle and there was no possibility of any third party actions, bring us back into this case.

The pre-trial conference was then again continued to Monday, April 11 at 2:00 p.m.

It was learned on Friday, April 8, the reason for all this urgency was the Eagle Pritchard Co. case was to be argued in the Illinois Appellate Court on Wednesday, April 13, 1988, and if this matter did not settle prior to that time, Eagle Pritchard would either be out of the case or in for considerably more money.

On Monday, April 11, 1988, this matter concluded in a \$75,000.00 settlement to the plaintiff with our waiver of compensation lien.

All documents are being prepared and will be presented to the Judge at a later date.

As you know, our specific concerns were being brought in as the major defendant on this case on a theory of willful and wanton misconduct for permitting a harmful substance, namely, asbestos, to be contained within our Fibrasol gutter paint and further exposing to that asbestos for a number of years as he worked as a paint filler and paint mixer.

Judge Trefalet indicated that if John Krivicich and Owens-Corning third parties us into the case, he would keep us in the case from the facts he was advised of.

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This would mean full discovery, which ultimately would show that was exposed to asbestos in our gutter paint and additionally, that he died from Mesothelioma, which Dr. Van Ordstrand has indicated the only known cause of his asbestos exposure.

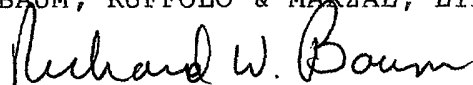
Certainly the value of this individual's life at common law would be extensive, at least in six-figure terms and possibly even seven-figure terms.

We also had a great concern about paint formulas being discovered and the adverse publicity that may accrue to Sherwin Williams Paint Co.

On balance, I feel this was an excellent settlement for all concerned and I will keep you advised of further developments as they occur.

Very truly yours,

BAUM, RUFFOLO & MARZAL, LTD.



Richard W. Baum

RWB/sc
Encl.

cc: Sheryl Carver

EMPLOYEE BENEFITS

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Dear Tony:

Please be advised I attended the pre-trial conference on this case before Judge Dean Traftlet in Rm. 1606 of the Circuit Court of Cook County, Daley Center, Chicago, on March 24, 1988 at 2:00 p.m.

Present was John Burke of Burke & Burke, Ltd., Two First National Plaza, 20 South Clark Street, Suite 2200, Chicago, Illinois, 60603, at phone 726-6630. John Burke represents Beatrice Angio and the Estate as plaintiff in this asbestos case. This is one of John Burke's area of expertise, as he has handled and is handling many asbestos lawsuits.

Also present was John Krivicich, Baker & McKenzie, Prudential Plaza, Chicago, Illinois, 60601, at phone 861-8000, who at one time represented a consortium of eight asbestos manufacturers in this case and still represents two defendants, Owens-Corning of Illinois and Eagle Pritchard Co. The other six defendants he represented have been dismissed by summary judgement. The summary judgement on Eagle Pritchard Co. is presently before the Appellate Court on appeal by one party. It appears Owens-Corning is in the case to stay and they have a \$25,000.00 offer on the table at present and in conference with John Burke outside the Judge's chambers indicated they would offer \$50,000.00, if that would settle the case.

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Mr. Tony Colangelo
March 29, 1988
Page 2

It appears all the asbestos manufacturers, including Owens-Corning, are in the case on the theory that they supplied asbestos coating for the beams in the construction of our new facilities in 1954 and 1956, which at the time was required by the building code. So the alleged exposure occurred during the one year or longer that worked in that building.

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Also present was Greg Roesser who represents Rider Industries from Texas and has a summary judgement pending but is awaiting affidavits to support that summary judgement in order to be dismissed from the case. In a separate conference with him, he indicated his client would be willing to contribute a few thousand dollars or cost of defense to get out of the case.

Also present was Attorney ? (UNKNOWN) who represents Whitfield. She has a summary judgement pending on April 7, 1988 in the a.m. and pending the results of that motion the pre-trial was continued to April 7, 1988 at 2:00 p.m. It is expected that this defendant will be dismissed according to the other interested parties and their representation to the judge.

I know from conversations with the plaintiff's attorney prior to pre-trial that he would accept \$100,000.00 to settle. Since I was excluded from some of the negotiations that afternoon, I don't know if the plaintiff and defendants narrowed their difference in settlement demands and offers.

It is clear from the overview of this litigation that in a short period of time this case will be narrowed down to one or two defendants from an original number of 20 defendants or more. This case is set for trial on June 6, 1988. It is also clear that John Krivicich is looking for a way for Owens-Corning to either avoid liability completely or place the bulk of the liability on another party, namely, Sherwin Williams Co.

We had a mini-conference with the judge, myself and John Krivicich. John Krivicich explained to the judge how we have been resisting his subpoenas and supplying limited information to him. He also told the judge he had sent an investigator to interview a supervisor, ? (UNKNOWN) at the Kensington plant but on Tony's instructions, the supervisor would not speak to the investigator.

John Krivicich told the judge he believes the Fibrasol gutter paint had asbestos or other dangerous chemicals in it to which Frank Angio may have been exposed and this may have been the cause of his death or the major contributant.

At the outset of our mini-conference, I told Judge Trafelet that we had a \$64,600.00 subrogation lien from the worker's compensation case and are, therefore, entitled to \$48,450.00 or 75% of our lien according to Section 5(b) of the Act and a covenant not to sue from the plaintiff. I advised the judge I was generally acquainted with the offers and demands in this case and since the offers and demands were small, I did not know whether we would assert the full lien or be willing to go 1/3, 1/3 & 1/3 with the plaintiff and her attorney.

Then John Krivicich advised me and the judge that if we could provide him voluntarily with proof that didn't work with or around asbestos in our products, he would give us a covenant not to sue, but if we continued to resist his attempts at discovery, he would third party Sherwin Williams into the case and begin formal discovery.

I advised the judge that would immediately lead to our motion for summary judgement based on our employer-employee defense under the Workers' Compensation Act. Judge Trafelet advised me that morning alone had allowed the third partying of two employers based on the theory that asbestos was an unreasonably dangerous substance, known to be dangerous and harmful and if an employer allowed exposure, this constituted reckless disregard and conscious indifference or willful and wanton misconduct, thereby, removing the protection of suing an employer for negligence.

I asked the judge for precedent and he cited the Systems Recovery Inc. case. The Systems Recovery case involved a company that removed silver from x-ray films by using cyanide and resulted in the death of several employees of Systems Recovery Inc. in Illinois. Not only was common law suit allowed against the company for willful and wanton misconduct despite the usual Worker's Compensation bar but the corporate officers and owners were indicted for reckless homicide.

As you probably know, successful discovery will show that worked as a paint filler and paint mixer for us for many years and did mix Fibrasol paint or gutter paint which contained asbestos. Further, died from Mesothelioma or a cancer of the lining of the lung, which is known to be caused by asbestos fibers. Dr. Van Ordstrand

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confirmed this some time ago and that was the basis of our settlement.

Although it was never stated, it was implied that waiver of our lien could make the entire case go away for all parties.

This would essentially mean \$50,000.00 fresh money from Owens-Corning and a waiver of our \$48,450.00 lien from us.

If we are third parties into the case and found guilty of willful and wanton misconduct because we knew an unreasonably dangerous substance, asbestos was in our product and disregarded this knowledge and permitted to receive this exposure which led to his death, our exposure for fresh money could be extreme.

Please call upon receipt of this letter. I await your instructions prior to the April 7, 1988 pre-trial conference.

Very truly yours,

BAUM, RUFFOLO & MARZAL, LTD.

Richard W. Baum

RWB/sc

cc: Sheryl Carver

REDACTED