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July 20, 1994

Mr. Anthony Colangelo
Sherwin Williams Company
101 Prospect Avenue N.W.
Cleveland, Ohio 44115-1075

REDACTED

WORKERS'
COMPENSATION
JUL 22 1994

RE: **Sherwin Williams vs.**

Dear Tony:

As you and I discussed on July 12, 1994, we have tried every possible way to "peacefully" resolve this matter with appears to feel he has no obligation to repay the overpayment to Sherwin Williams. When he receives the enclosed Complaint which will be filed with the Court, perhaps he will be more willing to repay Sherwin Williams out of his weekly workers' compensation checks.

The theory that I am advancing is "Trover and Conversion". I enclose the case of Keyes Fiber Company vs. Lamar, 617 A.2d 213 (Me. 1992), which sets forth and applies the legal theory that I will advance as we pursue

I had originally hoped to file a Petition with the Workers' Compensation Board to obtain a decree ordering to repay Sherwin Williams, on a weekly basis. Unfortunately, that avenue is not available. Under 39 M.R.S.A. § 62-B, the workers' compensation provider takes an offset in the amount the benefits paid to an employee pursuant to an employee benefit plan. §62-B does not entitle an LTD provider to recoup its overpayment.

Sherwin Williams' LTD Policy permits Sherwin Williams to recover benefits made to under Maine's Workers' Compensation Law. Interestingly, on January 1, 1993, § 62-B was amended to permit employers who provide self-insured LTD benefits to employees to offset for workers' compensation benefits paid to disabled workers. That amendment may not be retroactively applied to injuries occurring before January 1, 1993. We are bound by to the wording of the old Workers' Compensation Act. We cannot pursue a remedy before the Workers' Compensation Board because no remedy exists under the old law. The Workers' Compensation Board is a statutory entity and it can only provide remedies permitted by the Workers' Compensation Act.

To prevail in the lawsuit, we must establish:

(1) that Sherwin Williams had a property interest in the long term disability benefits paid to the employee;

(2) that Sherwin Williams had a right to possession of the money at the time of the alleged conversion (the date of the alleged conversion was probably the date that the employee received the retroactive lump sum payment after the Workers' Compensation Commission Decree was issued);

(3) that Sherwin Williams demanded possession of the money converted and refused to surrender that money.

rightfully received Long Term Disability benefits. However, the conversion actually occurred when received the workers' compensation benefits. I understand there was a contract between him and Sherwin Williams binding to repay Sherwin Williams for LTD benefits received while he received workers' compensation benefits.

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I am filing the Complaint in Maine District Court. Jury trials are not heard there. Jury trials are heard in the Superior Court, a court at the next level above the District Court. A Judge of the District Court will be "analytical" rather than emotional as jurors might tend to be. This should enhance the prospects of Sherwin Williams, a large corporation, obtaining a judgment against an obscure farmer from Cornville, Maine. When receives this Complaint, he might be willing to "compromise" and perhaps we will be able to resolve this claim then.

I will continue to keep you apprised of developments.

Very truly yours,

Dick

Richard N. Hewes, Esquire
RNH/asb

Enclosure

sherwin.j24