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EMPLOYEE BENEFITS

MAR 03 1988

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PLEASE REFER TO: SW-11586

February 26, 1988

Sherwin Williams
101 Prospect Avenue Northwest
Cleveland, OH 44115

ATTENTION: Mr. Anthony Colangelo
Re: ?
ASSURED: CONTRACT TRANSPORTATION SYSTEMS
Claimant: dec'd.

REDACTED

Dear Mr. Colangelo:

I appeared for the hearing in the above matter before Referee Kelsey, in Pittsburgh, PA, on February 16, 1988. The claimant-widow, appeared for the hearing and was represented by attorney Donald Balsley.

I am enclosing copies of the exhibits submitted by claimant's counsel. They are as follows:

1. A memorandum of law;
2. A copy of the decedent's last pay stub;
3. A copy of decedent's pay stub for incentive pay;
4. A copy of decedent's W-2 form for 1987;
5. A copy of the reports of the ICC physical examinations performed by Dr. Walter Greissinger;
6. Copies of Dr. Greissinger's office records;
7. A copy of the report from EmergiCenter dated January 15, 1988;
8. A copy of the death certificate and autopsy protocol;

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9. A copy of the letter from Sargent Morris dated July 24, 1987; and
10. Copies of two daily logs completed by the decedent on 10/23/86 and 6/5/87.

I did not object to the admission of any of the documents with the exception of the Death Certificate, autopsy protocol and the letter from Sargent Morris. Frankly, I think we should probably agree to withdraw the objection to the Death Certificate and autopsy protocol because they are not adverse to the defense of this case. I did not object to the remaining items - with the exception of the letter from Sargent Morris - because I do not believe that any of those exhibits are adverse to the defense of this case.

In my opinion, there is a fatal flaw in claimant's case - namely, I do not believe that she can prove that there is a causal relationship between the decedent's employment and his death from acute bronchial asthma. In fact, I believe that I have convinced claimant's counsel that he cannot prove a prima facie case on the issue of medical causation. I will comment upon this in further detail below.

Claimant's counsel presented testimony. It was a very emotional hearing. cried throughout a majority of the hearing. However, unlike many situations that I have encountered in the past, it strongly appeared to me that her grief was genuine. In fact, this was probably the most difficult hearing - from an emotional standpoint - in which I have ever been involved. Mrs. Hallam testified that she is 32 years of age and has two dependent children - namely, two sons the ages of 9 and 6. She says that she was married to the decedent for 12 years. She was familiar with his occupation, as she was essentially the recordkeeper in the operation.

A substantial portion of her testimony focused upon the decedent's employment relationship with Contract Transportation Systems. In my opinion, much of this testimony was superfluous since we are not contesting that the decedent was an employee of Contract Transportation Systems, nor are we contesting that he died in the course of employment. Consequently, I will focus upon her testimony regarding the circumstances leading to the decedent's death.

indicated that the decedent's family physician was Dr. Walter Greissinger. In addition to his role as the family physician, Dr. Greissinger performed annual ICC

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physicians. She stated that the decedent had been treated by Dr. Greissinger for nine years for asthma problems and, in recent years, had also been treated for hypertension.

Apparently, he did not begin to take medication for his asthma problem until the spring of 1986. At the time of his death, he was taking Prednisone and inhalers. He was also taking Inderal for his high blood pressure.

She testified that the decedent had an acute asthmatic attack when he was in Allentown, PA in October of 1986. At that time, he was treated at EmergiCenter.

Although she indicated that the decedent worked regularly, he did have difficulty breathing. Apparently, this had also begun to depress him: When he last saw Dr. Greissinger on May 16, 1987, he had also complained of depression.

During the week preceding his death, the decedent worked primarily as a local driver. According to he worked locally on 6/1/87 (Monday); 6/2/87 (Tuesday); and 6/3/87 (Wednesday). Consequently, he was home each evening. She stated that he had extreme difficulty breathing on 6/1/87 (Monday) and 6/3/87 (Wednesday). On 6/2/87 (Tuesday), his breathing situation was better and he rested rather comfortably that evening.

On June 4, 1987 (Thursday), the decedent departed for Kentucky at approximately 2:00 a.m. She received a telephone call from him at approximately 4:00 p.m. indicating that he was commencing his return trip. Unfortunately, on Friday, June 5, 1987, she received a telephone call indicating that the decedent had been found dead at a rest stop in West Virginia.

I do not believe that the testimony and exhibits establish anything other than the fact that the decedent died in the course of employment from acute bronchial asthma. The testimony indicates a rather substantial past history of asthmatic problems and there is simply no evidence to establish a causal relationship between the decedent's work activities and his death.

As I indicated earlier, I believe that I have convinced claimant's counsel that he cannot prove a prima facie case on the issue of causation. Consequently, it might be prudent to pay a nominal sum of money to resolve this case in return for a stipulation of non-compensability. I make this

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