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April 20, 1988

John F. King, Esq.
Sherwin-Williams Company
101 Prospect Avenue, N.W.
Cleveland, Ohio 44115-1075

REDACTED

Re Kaiser Shipyard #3, et al.
WCAB Case No.: OAK 141300
Claim No.: 918 C 31408/SMBS No.: 144.054

Dear Mr. King:

Enclosed you will find a copy of the Petition for Joinder of Sherwin-Williams as a party defendant. Counsel representing Kaiser Shipyard #3 and Hartford Accident & Indemnity Company has asserted that Sherwin-Williams is self-insured. We believe that information may be incorrect for purposes of workers' compensation. Would you please identify as best you can your workers' compensation carriers, in particular the most recent carriers. The joinder indicates coverage and employment from July of 1962 to December of 1984. We believe that counsel again made a mistake, because Mr. McGhee actually began employment for Sherwin-Williams in 1952 and the appropriate period of joinder is 1952 to December of 1984.

In our earlier conversations, you mentioned to us that your insurance records do not go back as far as 1952. That is certainly understandable and we hope that the WCIRB will be able to provide us with the necessary information in the very near future. However, would you please provide us with whatever information you have concerning insurance coverage.

The matter is going to be returned to the Board's conference calendar for purposes of discussing the subpoena duces tecum. In that regard, we will be contacting you with a declaration concerning your conversations with counsel for Kaiser Shipyard #3 and Hartford Accident & Indemnity Company. You will note in the Petition for Joinder that counsel states that you admitted that

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asbestos was present in the buildings at Sherwin-Williams' plant. It was our understanding that you never made any such admission, but rather stated that since it was an old building there may very well have been asbestos in the building.

It appears as though counsel has done a construction permit search for Sherwin-Williams' Emeryville facility. In paragraph 2 of the Petition for Joinder, he mentions construction permits show that there was substantial construction work done at Sherwin-Williams. This is one of the more recent theories being advanced by attorneys concerning asbestos exposure. The theory is that if an individual is working at a job site where there is construction, destruction or modification of the present job site where asbestos may be present the free floating asbestos in the air through the construction process is inhaled by the worker which then causes, or aggravates, the asbestos condition. There is another theory known as the "plenum" theory which holds that if you are working in a building in which construction is taking place the asbestos fibers are placed into the air circulation of the building and, although you may be quite a distance removed from where the actual work is being performed, you still have an exposure to free floating asbestos which can lead to aggravation or causation of asbestos difficulties.

If the insurance carriers are identified and joined as party defendants, they become the responsible parties for payment of any benefits to the decedent's estate. Sherwin-Williams will probably be dismissed as a party defendant, and all liability is assumed by the carriers. In a situation such as where we are dealing with a 30 year employee, you may have more than one insurance carrier joined as a party defendant and then the dispute arises between the carriers as to which carrier was on the risk when the injurious exposure. At times the periods of injurious exposure becomes next to impossible to prove and then, through lay and expert testimony, there is usually a window period which is identified and the carriers on the risk at that time assume responsibility for defense of the claim. In this particular case, since we know that [redacted] was working at a heavy duty asbestos exposure facility at Kaiser Shipyard #3 the dispute will be between Hartford Accident & Indemnity, Kaiser's carrier, and the carriers for Sherwin-Williams.

In summary, if we can identify the carriers for Sherwin-Williams then the exposure will be with them and hopefully you can close your file. We think, however, there will be continued efforts at discovery of your records and we will continue to assist in limiting that discovery process to a level which is reasonable.

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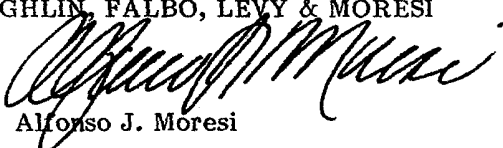
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As always, if you have any questions concerning the status of the claim and the fact that we are moving toward joinder of the carriers, please advise us.

Very truly yours,

LAUGHLIN, FALBO, LEVY & MORESI

By:


Alfonso J. Moresi

AJM/sev
Enclosure

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