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Sherwin Williams Co.
I.C.#: 82 OD 000463
D/A: 3-23-81
Our File #: 8211-00003IL

0007-SWP-005805476

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Corp., Risk Mgmt.

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REDACTED

Additionally, as you know, until 1975, the Occupational Disease Act required that the exposure to a toxic chemical such as sulfur dioxide chemical was required to be the cause of the resultant disability or death of the claimant. Since 1975, however, it is clear that an exposure to a toxic chemical such as this need only be shown to aggravate, accelerate or exacerbate a pre-existent condition in order to be held compensable.

This could in fact be the situation in this case.

It is clear from what records we have on this case to date and also from the records you will obtain that Mr. [redacted] did not enjoy good health and in fact, as you have listed his conditions, he had heart palpitations, ventricular tachycardia, pyuria and hematuria, L-131 elevation of hyper thyroid state, L-131 elevation of the thyroid gland, decreased hemoglobin, decreased hematocrit, guaiac positive stools, pneumonitis, possible chemical pneumonitis, upper respiratory infection, acute bronchitis, and graves disease. Our principal focus and probably the claimant's attorney will of course be the lung, respiratory conditions including pneumonitis and bronchitis and the severe chronic obstructive lung disease from which he suffered.

It is clear that this condition was diagnosed on April 16th, 1981 by Dr. C. R. Weiss at Northwestern University as severe chronic obstructive pulmonary disease with asthmatic component and it is further clear that Dr. Weiss indicated that Mr. Smith should not work in or around any irritants as these could exacerbate his condition.

On March 23, 1981 M [redacted] inhaled SO₂ fumes, became dizzy, nauseous and short of breath and was taken to Hennan Clinic where x-rays were negative. This incident occurred while filling a tank with sulfuric acid and when he went to check a valve, discovered an SO₂ leak.

He was also admitted to St. Francis Hospital for the inhaled sulfur dioxide to be washed. He then apparently took a medical leave of absence effective April 13, 1981 and was entitled to his pension on December 31, 1981 for being with the company for 30 years. He then died April 23, 1982

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and the death certificate indicates the cause of death was arterio-sclerotic cardio-vascular disease. The doctor rendering that opinion was Dr. Eupil Choi at Jackson Park Hospital in Chicago. I believe the basis of our defense would form two non-job related causes;

1. The fact that Mr. [REDACTED] smoked for 40 pack years;
2. The fact that Mr. [REDACTED] suffered from graves disease which from my limited research is a hyper-thyroid condition.

It is clear from the medical literature I have consulted that graves disease could have caused some of the problems from which Mr. [REDACTED] suffered, namely the heart palpitations to the ventricular tachycardia and the pyruuria and hematuria. Therefore, if we could establish that his death resulted from graves disease and smoking, we would knock out the possibility of a \$250,000.00 death benefit to the widow. However, this still leaves the lung problem in some respects and could lead to an award for a percentage man as a whole under section 8(e) 19.

Therefore, at present I would recommend a reserve of 1/10 of the death benefit or \$25,000.00.

By way of investigation I would make the following additional recommendations.

1. There is indication in your investigation that there were two types of respirators used, one for emergencies and one on a regular basis. Please obtain all the information you can about the respirator, commonly worn by Mr. Smith and also take statements from co-workers to indicate if he regularly wore the respirator.
2. Please obtain information about the emergency respirator used when there was a found leak.
3. Were annual x-rays taken of [REDACTED] 1 annual check-ups given as recommended by NIOSH?

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4. Were the levels of exposure recorded when there was a leak or emergency and if so, how many leaks or emergencies occurred during the 30 years that Mr. Smith worked with SO₂.
5. Was there ventilation in the SO₂ area and if so what type of ventilation was provided.
6. Please send me medical authorization forms as I believe that will be the only way you will obtain VA records as they will probably not respond to your subpoena since they never do to mine. If you need medical authoriztion forms, please advise me and I will provide Attorney Harriet Lakernick with authorization forms for our use.
7. Were there any other emergency leaks which resulted in treatment or hospitalization for Mr. in years prior to the March 23, 1981 incident.
8. Once we have gathered all the necessary medical records, we will work together to formulate a letter to Dr. VanOrdstrand to determine in his opinion, whether or not the death resulted from graves disease or in the alternative, from the chemical exposure to the SO₂. In the alternative, we will ask Dr. Van Ordstrand whether or not the chronic obstructive pulmonary disease could have been caused or aggravated by exposure to the sulfur dioxide fumes and if so, would this have lead to a permanent partial disability man-as-a-whole for while he was living.

Section 8(e)19 is a little used but dangerous provision in the Illinois Workmen's Compensation Act which could otherwise be called a survivial statute. This means if an individual suffers a permanent partial disability prior to his death and that permanent partial disability can be proven, then the widow is entitled to collect under that section for a percentage man-as-a-whole or a specific loss.

I am certain we will be doing considerably more work on this file but I believe my opening letter covers the major details.

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If you have any questions about my opening memo, please
do not hesitate to call or write.

Very truly yours,

BAUM & RUFFOLO



Richard W. Baum

RWB/ppm

P.S. Steve, I am quite certain Attorney Lakernick will use
Dr. Edwin Levine, a very prominent plaintiff's internist
and lung specialist who frequently causally relates these
conditions to exposure to toxic chemicals at work.