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EMPLOYEE REAPPRaisal
AUG 31 1987

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August 26, 1987

Mr. Tony Colangelo
Sherwin Williams Co., Corporate Offices
101 Prospect Avenue, N.W.
Cleveland, Ohio 44115

Dear Mr. Colangelo:

In re: _____, widow of _____, deceased vs. Sherwin Williams
April 15, 1981

This letter follows our telephone conference of Monday, August 17, 1987. You requested that we direct future reports to Self-Insurers Service, 55 East Monroe Street, Chicago. We agreed that my sending a current summary of the case's status would be very useful in our discussing a possible settlement with the widow.

I did learn that the records of the Industrial Commission had been certified to the Circuit Clerk, Montgomery County, Illinois on July 30, 1987. It may take some initiative on the part of petitioner's attorney, or me, to set a time for hearing before one of the local circuit judges there. I talked with the widow's attorney just yesterday, and we agreed to allow some time for negotiation rather than pushing the Court to hear our arguments.

I am sending you the following which should be informative in discerning the present status of the case:

Memorandum of Decision of Arbitrator
Decision and Opinion on Review
Petitioner's Statement of Exceptions and Additions to the Arbitrator's Decision
Respondent's Response to Statement of Exceptions and Additions

I am not sending the transcript of the hearing on arbitration. It is somewhat voluminous, and the medical included is discussed in both petitioner's and respondent's briefs to the Commission. The witnesses at the time of the arbitration hearing were the widow, _____, and the then plant manager, Les Rommelin. There was no additional testimony or evidence offered at a scheduled hearing on review before a commissioner. The Commission then had the record made on arbitration, the briefs of Petitioner and Respondent and the short oral arguments we were allowed in support of our briefs.

The question which the Circuit Court will address is whether the decision of the Industrial Commission is against the manifest weight of the evidence. The Circuit Court is one of review, and no further evidence is admitted, - the record having been completed before the arbitrator and Commission. The entire record of the Industrial Commission will be before the Court, and counsel is given the opportunity

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to argue the case again. It is unusual that a Circuit Court overturn the Industrial Commission on the manifest weight of evidence issue.

The next level is the Appellate Court, Workers' Compensation Division. This court was created by the Supreme Court about three years ago to relieve the Supreme Court of the heavy burden of hearing workers' compensation cases on appeal. As the Appellate Court is presently constituted, my impression is one of affirming the Industrial Commission decisions, and again, particularly in cases involving manifest weight of evidence. The Appellate Court has repeatedly stated that it will not disturb inferences which might have been made by the Industrial Commission, which is indeed the only trier of facts in these proceedings. The Commission, you will have noted, found the death compensable on the theory that pre-existing condition was aggravated by his exposure to a dusty work place. They did not therefore find that zinc oxide powder, or dust, was the cause of death per se.

The attorney for the widow, John Larsen, has made a demand of \$145,000.00. That was conveyed to us in his letter of January 22, 1987, copy of which I attach. At that time, \$46,179.30 had accrued to the widow from the date of death until January 15, 1987. He evaluated the present market value of future payments, beyond January 15, 1987 at \$100,000.00.

Today, by rough estimation, approximately \$50,750.00 has accrued to the widow.

date of birth was November 11, 1923. She will be 64 years of age within 2½ months. At that age, her life expectancy is 18.9 years for a white female. I believe that Mr. Larsen mis-stated the life expectancy at 14 years, which would be that for a white male of the same age. Present value of a 19 year life expectancy at 8% interest is 9.6 years. Applying that to her annual compensation pay-out (\$8,140.08) comes to a present market value of future payments of about \$78,144.76. It is not clear to me how Mr. Larsen arrived at future value of \$100,000.00.

The Illinois Workers' Compensation Act affords the surviving spouse the greater of 20 years of compensation payments or of \$250,000.00. Theoretically we could be paying \$156.45 per week for 30.7 years from the date of her husband's death.

In a very recent telephone conversation with Larsen, he stated he would recommend \$100,000.00 to the widow to settle her case. He recognizes that his risk of losing the case at this level in proceedings is not high. On the otherhand, the health of the widow might be a factor if that were indeed a problem. At the time that she testified at the hearing on arbitration, there appeared no sign of ill health. In the event the widow remarried she would be entitled to only 2 years additional compensation from the date of the remarriage. As far as I am aware there has been no inquiry made as to health, nor whether there may have been a remarriage. The latter is rather doubtful I would say. It occurs to me that Lester Rommelin, if he is still resident in the Hillsboro, Illinois area, might give us some idea as to the woman's health.

I can only speculate that Larsen would recommend less than 6 figures to if we made a substantial settlement offer. The availability of the money now might be an attraction. If the case is appealed from the Circuit Court decision to the Appellate Court, we are looking at another year - plus, more like a year and a half for a finalization. I don't think they would accept \$50,000.00 today, though \$75,000.00 - \$85,000.00 might be attractive.