



March 30, 2006

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SEND BY FACSIMILE AND
BY FIRST CLASS MAIL

Ms. Natalie Thompson
SCLC Senior Examiner
Specialized Commercial Liability Claims
Safeco – Central Region
P. O. Box 66769
St. Louis, MO 63166-6769

Re: Dorothy G. Inc. DBA Redi Quick Dry Cleaners
9508 W. Greenfield Ave, West Allis, WI 53214
Claim No. 3327 1486 2009
Policy No. 02-UD-001046

Dear Ms. Thompson:

I am writing as a follow up to our letter to you of March 8, 2006, as well as in response to your letter regarding coverage dated December 23, 2005.

As indicated in your December 23, 2005 letter to us, SafeCo. (American Economy) agreed to defend Dorothy G against the DNR's remediation claim and a third party claim from Susan Dauer, who resides at 1361 South 95th Street, West Allis, Wisconsin. Ms. Dauer is seeking compensation due to the contamination of her property by a plume originating from the Dorothy G. site, which adjoins that of Ms. Dauer.

There has been a significant recent development regarding Ms. Dauer's claim. Within the last few weeks, the Department of Natural Resources has taken indoor air samples at the Dauer home, both upstairs in the living area and in the basement. A

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copy of the test results is enclosed. The test results reflect that there are significant levels of perchloroethylene (PCE), both in the living areas of the home, including the bedroom and kitchen, and the basement. The Department of Natural Resources is utilizing the methodology and screening levels from the U.S. EPA's Guidance document entitled "Draft Guidance for Evaluating Vapor Intrusion to Indoor Air Pathways from Groundwater and Soils" as its standard for determining what are unsafe levels of VOC vapors in indoor air. The test results show levels of PCE at a number of orders of magnitude greater than levels considered safe under the federal guidelines.

For this reason, the DNR has demanded that Dorothy G. immediately install a ventilation system in the Dauer property. Dorothy G. has retained Shaw Environmental to do so, and we anticipate the cost of the installation of the ventilation system and ongoing monitoring will be somewhat less than \$5,000. In addition, the DNR has demanded that Dorothy G. proceed to test the indoor air at the next door neighbor's property located at 1345 North 95th Street and Dorothy G. will immediately proceed to do so through Shaw Environmental.

This is a very significant development because previously Ms. Dauer's only alleged damages were property damage. She now has a potential personal injury claim. **The only way to ultimately control and reduce the risk of such a claim is for Dorothy G. to immediately move forward with remediation of its own site and the Dauer site, i.e. removing the contaminated source materials from both properties.** The anticipated cost of remediation by soil removal is approximately \$350,000 (see information from Shaw previously attached). Dorothy G. does not have the borrowing power to obtain funds to commence the remediation, nor does Dorothy G have assets which would allow it to pay Shaw for such work.

While the DERF program will reimburse the majority of the funds expended for the remediation, minus the statutory deductible, it is up to a site owner, such as Dorothy G., to advance the funds and pay for the remediation and then claim the reimbursement from DERF. This is not possible in this situation. Given the urgency of this situation and in order to reduce the litigation risk posed to both Dorothy G. and SafeCo, we recommend that Safeco make a prudent decision: Set aside the question of coverage, continue to operate under its reservation of rights letter but advance the funds to Dorothy G. to commence and pay for the remediation of this site. Dorothy G. will grant an

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assignment of its DERF reimbursement funds to Safeco such that, when the DERF reimbursement claim is paid, SafeCo will receive DERF funds to repay the funds it has advanced.

Without such prompt action by SafeCo, it is highly unlikely that Dorothy G. will be able to move forward with the necessary remediation in the time frame necessary and as required by the Department of Natural Resources.

Please provide us with a response to this request within ten business days.

The following portion of this letter is a response to the specific items raised in your letter of December 23rd.

Section 1: Property Covered, Special Personal Property Form MP110. As indicated in your letter, this policy covers certain personal property of the insured, personal property of others, and certain indirect physical loss, subject to the provisions of the policy.

Section 1: Buildings Form MP109 includes coverage for contamination cleanup of expense of up to \$1,000. There is also a contamination cleanup expense of \$1,000 for personal property under this section of the policy.

Section II. This is a comprehensive general liability insurance policy. Please note that the date of this policy is 8/1/85 to 8/1/86. Under the comprehensive general liability insuring agreement, the Company agrees to pay, on behalf of the insured, all sums for which the insured shall become legally obligated to pay as damages . . . As we have pointed out in earlier correspondence, under the Johnson Controls case, expenses which the insured has incurred in order to respond to the demands of the Department of Natural Resources are "damages" under the policy.

Under the CGL Exclusions section, you have quoted the language of the policy as follows: "To bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental . . ." As I believe

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we have indicated in earlier correspondence, the controlling case in Wisconsin is Just v. Land Reclamation, 155 Wis 2d 737, 456 NW 570 (1990). Under this case, the sudden and accidental language in this clause has been determined to mean "unknown and unintended" from the standpoint of the insured. This is clearly the case here.

While Dorothy G. has operated at this site for a number of years, it has never had a significant discharge of dry cleaning chemicals during its operations, and thus has had no prior knowledge of the ongoing contamination of its own site or the fact the contamination from its site has migrated via a plume to the Dauer property. Dorothy G became aware of the contamination of the Dauer property only within the last few years when it obtained information as a result of its environmental investigation, and as a result of demands made by Ms. Dauer for the purchase of her property. Thus, this exclusion does not bar or prohibit coverage in this case.

The Insured's Duties in the Event of an Occurrence. "In the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof and the names and addresses of the injured and of available witnesses shall be given by or for the insured to the Company or any of its authorized agents as soon as practicable." Our prior correspondence to you has fulfilled the notice requirement, and the information which is contained at the beginning of this letter is in further fulfillment of the requirement that we keep the insurance company informed of events arising at this site.

We take issue with your contention on page 6 of your December 23rd letter that there has been no "occurrence under the policies or property damage within the American Economy policy". As we have explained in earlier correspondence, the primary source of contamination at this site is from a preexisting underground storage tank, subsequently closed. The PCF contamination has continued on an ongoing basis until the present time. Because of the continuing occurrence, there is a continuing trigger of any policies in effect during this time period, including the SafeCo. policy (See Society Ins. v. Town of Franklin 233 Wis 2d 207, 607 NW 2d 342 (Court App. 2000)).

Dorothy G. has put all of its other relevant carriers on notice of these claims. Dorothy G. has notified Acuity Insurance. It has not yet given notice to Sentry in Zurich,

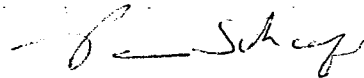
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as their policies contain absolute pollution exclusions. It will undertake to provide notice to them, however, if American Economy takes the position that they must be notified. It is our position that Dorothy G.'s notice to SafeCo. was made promptly and reasonably as soon as it became aware of the extent of the contamination at its site, and that it has complied fully with any duty to notify SafeCo under this policy.

As we have indicated above, there is an urgent need for SafeCo. to make a decision regarding this matter or, alternatively, to work with us to advance funds necessary to commence the remediation subject to an assignment of the DERF reimbursement funds by Dorothy G. to SafeCo. Please respond within 10 business days.

Yours very truly,



Pamela H. Schaefer

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cc: Mr. & Mrs. Sam Gruichich
Thomas Hruz, Esq.
Ms. James Schmidt, Dept. of Natural Resources