

LEGAL COMMITTEE MEETING

St. Louis Hotel
730 Rue Bienville
New Orleans, Louisiana

RECEIVED

Thursday
December 10, 1987
9:00 a.m.

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Present: Sherry Carr - Certaineed Corporation
Peter de la Cruz - Keller and Heckman
Roy T. Gottesman - Vinyl Institute
William L. McClain - Vista Chemical

I. SELF-INTRODUCTIONS AND APPROVAL OF MINUTES

The meeting was opened at 9:10 a.m. by Roy Gottesman who indicated that Legal Committee Chairman, Robert Luss had to leave on December 9th for a business trip to the Peoples Republic of China and had asked Roy to carry forward with the meeting. Gail Cudak of BFGoodrich Company had called Peter de la Cruz on December 7th and indicated she would not be able to attend and, on the morning of the meeting, it was learned that Beverly Gholson of Georgia Gulf, who had been expected at this meeting, would not be attending. Despite the limited attendance, it was agreed to proceed through the agenda. The minutes of the May 20th meeting held in conjunction with the Vinyl Institute Annual Meeting were approved as received.

II. REGULATORY AGENCY MATTERS

A. Settlement Agreement - SPI v. EPA

Mr. de la Cruz reported that he had more thoroughly reviewed the proposed settlement agreement in our challenge to the 1986 amendments of the vinyl chloride standard and he distributed a letter addressed to Roy Gottesman dated December 8, 1987 in which he included a proposed draft response to Stephen Samuels at the U.S. Department of Justice.

After review by the group, it was agreed that Mr. de la Cruz should proceed with the draft response as proposed and attempt to work out any final details. In this connection, Roy Gottesman suggested that Peter attempt to set-up

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a meeting with EPA attorney Richard Roos-Collins and the EPA scientist most knowledgeable on this issue, Robert Ajax, at Research Triangle Park in order to bring this to completion.

B. OSHA Warning Labels

Peter de la Cruz reviewed the results of the meeting held with OSHA officials on August 24th in which we attempted to get OSHA to agree with our position that compounding and other PVC fabricating operations do not result in significant worker exposure to vinyl chloride and so should not trigger the requirements of the OSHA Hazards Communication Standard. It is our position that PVC is not a hazardous material and that the only labeling requirement is that under the OSHA Vinyl Chloride Standard.

On October 30th, Peter de la Cruz sent a letter to the Vinyl Institute Health, Safety and Environment Committee again requesting industrial hygiene, worker exposure and other pertinent sampling data that could be provided to OSHA to demonstrate the absence of any significant exposure to vinyl chloride for compounding and fabricating workers. This is not a request to develop new information but merely to provide existing information for use with the Agency.

Roy Gottesman reported on the request made at the Executive Board Meeting the previous day by Ed Schiffer of Georgia Gulf that the Legal Committee review OSHA warning label practices within the industry and develop a guidance for use by all Vinyl Institute member companies. He was particularly concerned with label used on railroad hopper cars in terms of size, location and visibility to the general public. Bill McClain noted that DOT has strict requirements regarding placarding of railroad cars with placards other than those required by DOT. He stated that DOT permits stenciling on the railroad car as this is not considered a placard. He further advised that DOT has no problem with a label being inserted inside the dome or underneath a car near the dump valve.

Action Item: Roy Gottesman will send out a questionnaire to the members of the Health, Safety and Environment Committee to determine whether OSHA warning labels are used on in-plant storage containers, bags and containers of both

resin and compound, railroad hopper cars and in shipments of dry blend. HE will also ask for copies of labels used on these various containers.

When received, this material will be provided to the Legal Committee for development of a guideline to be recommended to the Executive Board at its March 9, 1988 meeting.

C. FDA Rulemaking on PVC in Food Contact Applications

Peter de la Cruz reported on the latest information here. A meeting with FDA Commissioner Young was requested in October. At present, it is understood that Commissioner Young will be briefed on potential options at a December 23rd meeting. It is expected that we should learn shortly thereafter whether the requested meeting will be held. If FDA determines that it must proceed with a full environmental impact statement, this could delay the final promulgation by 3-4 years.

D. California Proposition 65

Peter de la Cruz reported that the most recent news was encouraging in that CLU, the Council for Labeling Uniformity is taking the lead on this issue. The process appears to be working well in the state bureaucracy, but most people are concerned about the activity of "bounty hunters". Jerry Heckman met with Drs. Book and Warriner of the California Department of Health and Welfare in a 2-1/2 hour meeting last week in California and gave them an education on federal food and drug statutes. Peter de la Cruz noted that Proposition 65-type amendments were considered in some five other states but none of them had enacted such a regulation.

Action Item: Peter de la Cruz will supply Roy Gottesman with typical response letters that Keller and Heckman has recommended to some of their customers for use in responding to customer inquiries as to the status of products under Proposition 65.

E. California EIR on Plastic Pipe

Peter de la Cruz reported that the California Department of Housing and Community Development had scheduled a briefing on December 17th in

Berkeley to announce the findings of the study of chemical leaching characteristics of polybutylene and chlorinated PVC pipe. Final approval is expected shortly for a contract between California and SRI to complete the Environmental Impact Report (EIR). A draft contract between SPI and California for the next phase of the EIR will be presented to California in late December.

III. LITIGATION MATTERS

A. Dupont Plaza Hotel Fire

Roy Gottesman reported on the latest information provided to him by Robert Luss as follows:

1. One of the principal owners of the parent of the Dupont Plaza Hotel has settled for \$8.5 million. This may mean that additional individuals and corporations associated with the hotel may try to settle out their share.
2. The major insurance carriers are continuing to meet and may form a joint defense group. Rumors are that the insurance carriers may offer a quick \$300 million settlement.
3. The plaintiffs have filed their third party suits and there are no PVC manufacturers named. In addition, there is no concert of action theory alleged. Thus, as to plaintiffs, the PVC industry appears clear.

As the hotel had only two more weeks from the date of Bob Luss' report of December 4th to file its third party actions, Bob indicated that he was optimistic that vinyl producers will not be named in any action by the hotel.

B. New York Toxic Tort Reform

Aside from the Lampe v. BFGoodrich case, there apparently were no other PVC cases filed under the one year period allowed under the New York Toxic Tort Reform statute.

C. Cathedral Hill Hotel, Inc. v. Shelby Williams

A request for extensive production of documents was received by SPI in connection with this California hotel fire. SPI attorneys were able to negotiate a fairly limited production of

documents, largely minutes, and most of these pre-date the establishment of the Vinyl Institute.

IV. "STINGRAY" TV EPISODE

No response has been received from the attorneys representing the producers of this program to Peter de la Cruz' letter of September 2, 1987 in which he advised against any further airings of an episode which inaccurately depicted PVC pipe as being readily flammable and responsible for causing homicidal behavior. The letter threatened a product disparagement action. Since it is difficult to show that the episode caused damage to the PVC pipe industry, especially since resin is in a sold-out position, it was agreed not to pursue this further.

V. NEW BUSINESS

A. New Angiosarcoma Case

Mr. McClain reported that a 29 year old plant worker had died of angiosarcoma and the case was unusual in that the worker had a fairly short latency period, i.e., time from first exposure to onset of disease. Mr. McClain indicated that the case, which has been reported to the Angiosarcoma Registry, was at a Stauffer South Carolina facility.

B. Damage to Immunological Response Cases

Mr. McClain noted that neighbors of the Louisiana Georgia Gulf facility, using the data in the NESHAPS litigation as regards VCM releases, have filed suit against Georgia Gulf and its predecessor company, Georgia Pacific alleging "damage to the immunological response system". In essence, this is a claim that, since the amount of immunological response is finite, the reduction due to exposure to certain chemicals leads to a decreased capacity to fight off diseases. The New Jersey courts have decided that such cases can be brought as stand-alone actions, even though no current illness exists and a separate case can be filed at a later date, when a damaging illness is evident. The law suit has been filed by a Pennsylvania counsel who was co-counsel in the New Jersey and Sedalia, Mo. cases. Mr. McClain expressed concern that we could see a proliferation of such cases.

VI. MISCELLANEOUS

A. Legal Fees

While expenditures at this time are above budget, Peter de la Cruz noted that this was largely due to a Beveridge and Diamond bill involved in the "en banc hearing" which was carried over from the last fiscal year. He indicated that he will shift time into the SPI retainer account for the remainder of the year and believes we will be on track.

B. Publications For Legal Review

A technical "white paper" on reproductive effects from vinyl chloride exposure and four builder brochures are being sent to Counsel for legal approval before issuance.

C. Mutual Assistance Program - VC Tank Car Incidents

Peter de la Cruz will check with ChemTrec to determine that there is a current mechanism to address such potential incidents. The "old system" which is out-of-date and apparently not been useful in recent years has never officially been dissolved and Peter de la Cruz will see that this is accomplished.

The meeting was adjourned at 12:30 p.m.. The next meeting of the Legal Committee will be set by the Chairman, probably in connection with the Annual Meeting.

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