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June 20, 1986

The Honorable Nicholas G. Mandak, A.J.S.C.
Passaic County Courthouse
Paterson, New Jersey 07505

Re: Memice v. PPG Industries, Inc., et al.
Docket No. L-020509-86

Dear Judge Mandak:

This letter memorandum is being respectfully submitted to the Court on behalf of defendant Vista Chemical Company ("Vista") in support of its Motion for Summary Judgment Dismissing the Second Amended Complaint filed against it in the above matter. The within Motion is made returnable July 18, 1986 and oral argument is not requested at this time. The factual basis for Vista's motion for summary judgment is set forth in the Affidavit of W. C. Kolar ("Kolar Affidavit") submitted herewith. The facts set forth therein, together with the pleadings on file, demonstrate that this matter is ripe for summary judgment in favor of the defendant Vista.

Specifically, the Second Amended Complaint filed on behalf of plaintiff, Lottie Memice, in her individual capacity and as Executrix of the Estate of Joseph Memice, alleges that prior to his death, Mr. Memice was exposed to "vinyl chlorides" allegedly manufactured, processed, imported, converted, compounded, distributed, and/or sold by some 30 corporations and supplied to the decedent's employer, Pantasote. According to the plaintiff, Mr. Memice was exposed to these

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vinyl chlorides during his employment and allegedly developed an angiosarcoma of the liver, which ultimately caused his death on June 29, 1984. (Second Amended Complaint, ¶¶1, 34 and 35).

As set forth in the Answer to the Second Amended Complaint filed on behalf of Vista on June 9, 1986, Vista Chemical Company did not manufacture, produce, purchase or sell vinyl chloride monomer, polyvinyl chloride or any other product until July 20, 1984. (See Answer to Second Amended Complaint, Second Separate Defense; see also Kolar Affidavit, ¶10). Further, as set forth in the Kolar Affidavit, Vista did not own any corporate entity which manufactured, produced, purchased or sold vinyl chloride monomer, polyvinyl chloride or any other product until July 20, 1984. (Kolar Affidavit, ¶9).

Moreover, although Vista was incorporated on October 4, 1983 and acquired a portion of the assets of Conoco Chemical Company from E. I. DuPont de Nemours and Conoco Inc. on July 20, 1984, it "conducted no business activities other than those necessary and appropriate to acquire [those] assets during this period." (Kolar Affidavit, ¶¶4, 7 and 8). Further, in connection with this acquisition of assets, "Vista did not assume or in any manner acquire any liabilities of Dupont or Conoco for warranty claims, quality-related claims or product liability claims relating to products produced and shipped prior to July 20, 1984." (Kolar Affidavit, ¶11). Nor did Vista "assume or in any manner acquire any liabilities of Dupont or Conoco arising out of the ownership, use or operation of Conoco Chemical's assets prior to July 20, 1984." (Kolar Affidavit, ¶11).

These facts demonstrate beyond dispute that Vista did not supply or assume responsibility for any of the products in question prior to July 20, 1984. Under these circumstances, Vista could not have contributed in any manner to the injuries allegedly sustained by Mr. Memice, who died on June 29, 1984. As a matter of law, then, Vista is entitled to summary judgment dismissing the Second Amended Complaint, which seeks recovery for those injuries.

Under R.4:46-2, summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact

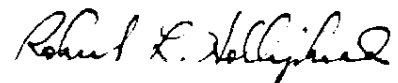
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challenged and that the moving party is entitled to a judgment or order as a matter of law." An examination of the pleadings and the Kolar Affidavit reveals the complete absence of any genuine issue of material fact as to defendant Vista Chemical Company. Where there is no dispute of material fact and judgment on the uncontroverted facts is appropriate as a matter of law -- as demonstrated above -- summary judgment is required. Judson v. People's Bank & Trust Co. of Westfield, 17 N.J. 67 1964).

For the foregoing reasons, it is respectfully requested that the Court enter summary judgment in favor of Vista Chemical Company dismissing the Second Amended Complaint with prejudice.

Respectfully submitted,



ROBERT L. HOLLINGSHEAD

RLH:dm
Enclosure

cc: All Counsel of Record (w/enc.)

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