J. RAY GAYLE III
JUDGE, 239TH JUDICIAL DISTRICT COURT
BRAZORIA COUNTY COURTHOUSE
ANGLETON, TEXAS 77515

September 10, 2002

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Re: Cause No. 15642*JG01

Joe Mims, et al
Vs. Union Carbide, et al

Dear Counsel:

The plaintiffs' motion in the above case to have certain documents declared not privileged is granted.

However, to allow Union Carbide a reasonable time to appeal my order, these documents will not be allowed to be used by plaintiffs in depositions or otherwise until 30 days after I sign an appropriate order.

The reasons for my rulings are as follows.

In my opinion Texas law, not California law is applicable, and the provisions of Rule 93.3 govern.

Although plaintiffs' counsels have never stated to this court how the documents in question came into their possession, and although Union Carbide has established circumstantially a prima facia case that these documents were inadvertently produced, nevertheless, the ten day requirement of Rule 93.3, Texas Rules of Civil Procedure was not met. This is because Union Carbide discovered the production and release of these documents in the Baruch vs. Bondex International case. Therefore, Union Carbide's claim of inadvertent production of claimed privilege documents has been waived.

In addition to the general waiver, I reviewed specifically documents 5031, 5215, 5237, 5378, 5490, and 5697 (the California documents), which were produced.

In my opinion, any claimed privilege to 5490 was also waived when not objected to in the Latham case.

I also do not believe 5031, 5215 and 5378 are privileged. 5031 was generated by the Department of Health, Education and Welfare and 5215—i.e. the 7 pages of asbestos dust counts—is not the work product of any legal department. 5378 is an explanation of interrogatories, and qualifies as a supplemental response, in my opinion.

Regarding the eleven documents 5062, 5178, 5208, 5432, 5462, 5463, 5681, 5686, 5687, 5393, and 5484, I have never reviewed these documents—only an excerpt in Union Carbide's response—and am not prepared to rule on their "privilege" status, without actually reviewing their content.

Nevertheless, any claimed privilege is waived because the ten day requirement of 93.3 was not complied with.

Ms. Katz is requested to submit to me a proposed order for my signature.

Yours truly,

J. Ray Gayle, III
239th District Court