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TO:	Dr. David Egilman
FIRM OR COMPANY NAME:	
TELEPHONE NUMBER:	
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FROM:	Jan Manning
MESSAGE: Per your request, see attached.	

FILE NO.:

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; 979 285 2235

55/

CAUSE NO. 19785-BH02

KELLY-MOORE PAINT COMPANY INC.	§	IN THE DISTRICT COURT OF
	§	
VS.	§	BRAZORIA COUNTY, TEXAS
	§	
DOW CHEMICAL COMPANY, et al.	§	23RD JUDICIAL DISTRICT

**THE DOW CHEMICAL COMPANY'S RESPONSE
TO PLAINTIFF'S MOTION TO ALLOW PLAINTIFF'S EXPERT ACCESS
TO THE DOW CHEMICAL COMPANY'S ASBESTOS DOCUMENT REPOSITORY**

Defendant, The Dow Chemical Company ("TDCC") respectfully submits this Response to Plaintiff's Motion to Allow Plaintiff's Expert Access to TDCC's Asbestos-Related Document Repository.

PRELIMINARY STATEMENT

TDCC is not seeking to deny plaintiff access to its asbestos-related document repository (the "Repository"). Indeed, plaintiff's counsel in this action has visited the asbestos Repository in the past, copying numerous pages of documents. Further, as counsel for plaintiff, Kelly-Moore Paint Company, Inc. ("Kelly-Moore") concedes in its motion, counsel for TDCC has been working with plaintiff to arrange another visit to the Repository. TDCC has been flexible and has provided plaintiff with several options regarding the times during which the repository may be visited for the review and inspection of documents that are responsive to discovery requests served by plaintiff.

TDCC is, however, wholly opposed to plaintiff's expert Dr. David Egilman, or anyone associated with Dr. Egilman's office, being allowed access to the Repository. Simply put, Dr. Egilman is far from an objective expert and, in fact, his conduct even exceeds the bounds of

zealous advocacy. Dr. Egilman has a practice of posting on documents regarding the corporate defendants against whom he testifies on his Web site, oftentimes accompanied by prejudicial and inaccurate statements and in direct contravention of court orders. He has, within the past several months, utilized his Web site to engage in a smear campaign against TDCC and its wholly-owned subsidiary defendant Union Carbide Corporation ("UCC"). He has posted on his Web site UCC documents which he knew were privileged, even going so far as to expressly label them as such on his website, referring to them as "privileged documents." Dr. Egilman does not "play by the rules," and, in fact, he was recently admonished and sanctioned by a court for deliberately violating an order – designed and intended to afford the parties to that action a right to a fair trial – by posting certain material on his Web site.

Dr. Egilman in the recent past has blatantly ignored a court order, has displayed on his Web site other parties' documents that he was aware were privileged, has harassed and harangued paralegals and attorneys working on behalf of co-defendant UCC during a prior visit to the repository, and has been sanctioned and admonished by a court for the bias, hostility and prejudice he displayed toward a corporate defendant and its defense counsel during trial. Dr. Egilman should not be allowed to utilize TDCC's Repository to advance his personal agenda.

BACKGROUND

At certain points in time during the mid to late 1960's and 1970's, TDCC supplied materials to plaintiff but was not one of the suppliers of raw asbestos fiber to plaintiff, Kelly-Moore.¹ Even though TDCC never sold asbestos to plaintiff, it is named in this action solely

¹ Kelly-Moore, in turn, manufactured various asbestos-containing products and sold them throughout distribution channels it controlled.

because UCC became a wholly-owned subsidiary of TDCC in February 2001, long after the events at issue in this litigation occurred.

The asbestos-related documents that are the subject of discovery in this action are housed in a document Repository maintained at TDCC's headquarters in Midland, Michigan. Dr. Egilman's visits to TDCC's subsidiary's asbestos repository demonstrate what this advocate has in store for TDCC. In November 2001, in a separate action pending in this county, counsel for Kelly-Moore in this action, Mark Lanier, visited the repository during a two-day period to inspect and review documents located therein. See Ex. A, Affidavit of Jonathan Glasser, dated August 8, 2003, at ¶ 3. Mr. Lanier returned to the repository on another occasion and copied several thousand pages of documents. On his first visit, without any prior notice or approval, Mr. Lanier brought with him to the repository his expert witness, Dr. David Egilman, and a person purported to be Dr. Egilman's assistant. On November 5, 2001, Dr. Egilman's assistant spent the entire day reviewing the documents in the repository. The following morning, Dr. Egilman himself visited the repository and engaged in extremely rude and abusive behavior, including shouting at the paralegals and attorney's representing UCC and demanding to see broad categories of documents which had not been requested in discovery or for which objections had been raised. See *id.*, at ¶ 5. In fact, many of the documents that were the focus of Dr. Egilman's ire had nothing whatsoever to do with UCC's asbestos business. See *id.* Nonetheless, Dr. Egilman was indignant and complained bitterly about having traveled a great distance to attend the document production and, without any basis for doing so, accused UCC's counsel of lying to him and wasting his time. See *id.*, at ¶ 7. Dr. Egilman even threatened to somehow obtain a search warrant to have the entire office building searched for the allegedly

"missing documents," many of which, Dr. Egilman touted, were already available to be downloaded from his website. *See id.*

Plaintiff indicates that it intends to designate Dr. David Egilman to testify as an expert witness in this case. Dr. Egilman is a frequent and well-paid expert who has testified in over 150 cases, primarily on behalf of various plaintiffs. He is a fixture in many of the asbestos-related cases in which counsel for Kelly-Moore is involved. Dr. Egilman has also been involved as an expert in other lawsuits in which TDCC has been involved. TDCC has witnessed first hand Dr. Egilman's improper conduct. Kelly-Moore's request that Dr. Egilman be allowed access to TDCC's repository is nothing more than a thinly veiled attempt to further harass TDCC and should not be countenanced by this Court. Plaintiff is in no way prejudiced as their team had been to the repository on several occasions and TDCC will continue to provide access to counsel.

ARGUMENT

A. Plaintiff's Expert Witness, Dr. Egilman, Has a History of Being Out of Control and Should Not Be Allowed To Harass TDCC

Dr. Egilman is not your ordinary independent and objective expert witness. He is well known for "his zealous antipathy for corporate defendants." *High-Tech Hack Attack Case Tests Strength of Legal Ethics in an Electronic World*, WASH. POST, Dec. 16, 2002, at E04. He is an expert, as one judge recently noted, whose behavior goes "far beyond the boundaries of legitimate disagreement as to cast great doubt on his legitimacy and integrity as a witness." *See* Ex. B, 6/22/01 Findings, Conclusions, and Orders Concerning Sanctions, in *Ballinger v. Brush-Wellman*, 96-CV-2532 (Jefferson County, CO). He is an expert who believes that the normal rules of the judicial process do not apply to him. In fact, one court has noted that Dr. Egilman likes to play games, and has described him as "biased," "vindictive" and "out of control in ways

that have a great potential for harming fairness and justice.” Ex. C, 6/18/01 Transcript in *Ballinger v. Brush Wellman, Inc.*, Case No. 96 CV 2532, at 6-7.

Colorado district court Judge Frank Plaut recently experienced first-hand Dr. Egilman’s callous disregard for the judicial process when Dr. Egilman “knowingly, deliberately, intentionally and willfully violated” an order issued by Judge Plaut in the *Ballinger v. Brush-Wellman* case. Ex B, at 1. [6/22/01 Sanctions Order] Concerned with the possibility of juror contamination, Judge Plaut issued an order prohibiting everyone involved in the case, including Dr. Egilman, from making extrajudicial statements about the case – including posting information on any Internet websites – in an effort to prevent outside commentary from influencing present or future jurors. Judge Plaut was forced to exclude Dr. Egilman’s testimony after Dr. Egilman violated the court’s gag order by posting on his website inflammatory material about the trial and judge and threatening to cause a mistrial.² See Ex. C, at 3, 6. [6/18/01 Transcript]. Some of the offensive content on Dr. Egilman’s website included accusations of criminal activity against the defense law firm, references to defendant’s long-time medical director being educated in Nazi Germany, and an implication that the judge had been bribed by defense counsel. See Ex. C at 7-8. [6/18/01 Transcript] Judge Plaut called into question Dr. Egilman’s credibility as a witness and recognized that, without a doubt, Dr. Egilman’s testimony in *Brush Wellman* was motivated by his bias, hostility and prejudice against the corporate defendant and defense counsel. See Ex. C, at 9, 12. [6/18/01 Transcript].

² Judge Plaut issued a sanctions order prohibiting Dr. Egilman from testifying as a witness in the judge’s courtroom in the future. See Ex. B, at 3 [6/22/01 Order]. The Colorado Court of Appeals vacated the sanctions order, to the extent that it affected Dr. Egilman’s ability to appear before the trial court, on procedural due process grounds. On July 21, 2003, the Supreme Court of Colorado denied the Colorado district court’s petition and Dr. Egilman’s cross-petition for Writ of Certiorari.

Dr. Egilman has not limited his intemperate and irrational tactics to the trial process; such behavior has extended to the discovery arena as well. Indeed, Dr. Egilman's antics when he invited himself to UCC's repository in the past confirm that the problems outlined by Judge Plaut are real. Dr. Egilman threatened, harassed and berated UCC's counsel and paralegal staff members and demanded to see documents, some of which had not been requested, and some of which were completely irrelevant to the asbestos litigation at issue. TDCC has every reason to believe that similar treatment awaits it should Dr. Egilman be permitted access to the Repository.

TDCC has serious and legitimate concerns that Dr. Egilman will not abide by any protective order in place in this case, as he has indicated in the recent past that he will not be bound by reasonable limitations imposed in any litigation-related document review. In *Burnett v. Alliedsignal*, No. 2001-36408, a recent asbestos-related lawsuit in Harris County, Texas involving defendant TDCC, and in which Dr. Egilman served as an expert witness, Dr. Egilman once again sought to gain access to TDCC's repository. However, Dr. Egilman would not agree to sign the protective order in that case, presumably because of the limitations placed on his ability to use documents gathered from the repository, and ultimately decided not to visit the repository at that time.

Under Texas law, discoverable information is limited by the legitimate interests of the opposing party to avoid harassment, or disclosure of privileged information. See *In re Am. Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998). Accordingly, the latitude afforded the parties in the discovery process is not unlimited, and the trial court must make an effort to impose reasonable discovery limits. See *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex. 1999). The interests of justice require that Dr. Egilman not be allowed to breach the confidentiality of

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documents produced in this litigation and that TDCC should not be subjected to Dr. Egilman's histrionics, verbal invective and harassment.

B. Dr. Egilman Should Not Be Allowed to Continue His Smear Campaign Against TDCC by Posting on His Website Documents Gathered from the Repository

In April 2003, counsel for Union Carbide became aware that Dr. Egilman had posted on his internet website numerous Union Carbide documents that were subject to the attorney client and/or work-product privileges. Dr. Egilman, apparently aware of the privileged status of the documents, had posted these documents on his website under the heading "Privileged UCC Documents."³ See Ex. D, Index to Asbestos Documents, at http://www.egilman.com/index_to_asbestos_documents.htm (visited Apr. 4, 2003). Counsel for Union Carbide requested that Dr. Egilman immediately delete the privileged documents from his website and return them to Union Carbide, and offered to provide Dr. Egilman with copies of certain documents with the privileged information redacted. Although Dr. Egilman eventually removed the privileged documents from his website, he did not do so without first attempting to make a mockery out of the judicial process. Instead of immediately deleting the privileged documents from his website, from the period April to June 2003, Dr. Egilman engaged in a letter-writing campaign with counsel for Union Carbide. Moreover, under a heading entitled "U.C.C. seeks to hide the truth" Dr. Egilman posted on his website a letter he received from Union Carbide's counsel requesting the removal and return of Union Carbide's privileged documents. Shortly after receipt of that letter, Dr. Egilman also moved the privileged documents at issue to the home page of his website under a heading entitled "See What They Are Trying to Hide Here."

³ A California court has, in fact, ruled that many of the subject documents were inadvertently produced and are indeed privileged. Such privilege issues are being considered in Texas as well.

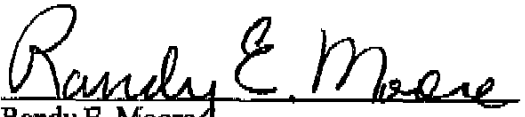
TDCC has a genuine concern that – like he did with the Union Carbide documents – Dr. Egilman will place on his website documents gathered from TDCC's repository if he is allowed free reign to rummage through TDCC's collection of asbestos-related documents. Dr. Egilman has shown in the past that he will use his website to perpetuate his biases against the corporate defendants against which he testifies. Neither TDCC nor its subsidiary defendant, UCC, have been spared in this regard. Numerous TDCC and UCC documents, oftentimes accompanied by scathing and outlandish commentary, have appeared on Dr. Egilman's website. Examples of such recent postings are attached hereto as Ex. B. Dr. Egilman enjoys playing games and has even admitted to advertising on his web site rewards up to \$10,000 to "whistleblowers" turning over documents and information for his use and posting to his web site. See Ex. E, May 19, 2003 Tr. Excerpt in *Burnett v. Alliedsignal*, No. 2001-36408 (Harris County, Tx.), at 245. He has also offered on his website a \$10,000 reward for the receipt of non-asbestos-related Union Carbide documents, and mocked that if he pulled this off, Dow would see to it that he went to jail. See Ex. B [internet postings] Dr. Egilman's antics should not be tolerated in this action.

CONCLUSION

For the reasons set forth above, TDCC respectfully requests that the Court deny plaintiff's motion in its entirety.

Dated: August 8, 2003

Respectfully Submitted,
THE MOORE LAW FIRM


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Attorneys For Defendant,
The Dow Chemical Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **The Dow Chemical Company's Response To Plaintiff's Motion To Allow Plaintiff's Expert Access To The Dow Chemical Company's Asbestos Document Repository** was served via facsimile on August 8, 2003, as follows:

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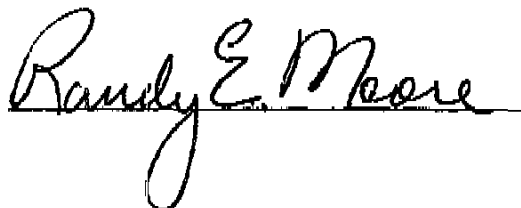
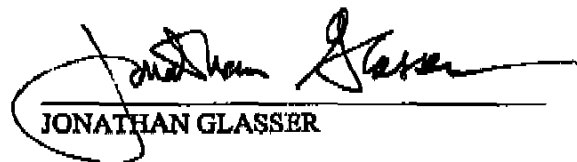


EXHIBIT "A"

relevance, overbreadth, and undue burden. Dr. Egilman proceeded to shout at Kelley Drye's paralegals, and at me, demanding to see broad categories of Union Carbide documents which had not been requested in discovery or for which objections had been raised. The documents which were the focus of Dr. Egilman's ire had nothing whatsoever to do with Union Carbide's Calidria asbestos business.

6. Dr. Egilman complained bitterly that he had traveled a great distance to attend the document production and accused Kelley Drye of lying to him and wasting his time. He even threatened to somehow obtain a search warrant to have the entire office building searched for the allegedly missing documents, many of which, Dr. Egilman volunteered, were already available to be downloaded from his website.

7. Dr. Egilman reviewed documents until 12:30 p.m., and his assistant stayed for the rest of the day.


JONATHAN GLASSER

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 8th day of August, 2003 by Jonathan Glasser

WITNESS my hand and official seal.

My commission expires:

[SEAL]


NOTARY PUBLIC
GLORIA SCHAEFER
Notary Public, State of New York
No. 01SC4761038
Qualified in New York County
Commission Expires 7/ 31/ 2006

EXHIBIT "B"

1 DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO

2 Case No. 96CV2532, Division 5

3 -----

4 REPORTER'S TRANSCRIPT (Excerpt)

5 -----

6 MICHAEL D. BALLINGER, et al,

7 Plaintiffs,

8 vs.

9 BRUSH WELLMAN, INC., an Ohio corporation,

10 Defendant.

11 -----

12 This matter came on for Trial on Monday, June
13 18, 2001, before the HONORABLE FRANK PLAUT, Judge of
14 the District Court, and a Jury of six.

15 A P P E A R A N C E S

16 FOR THE PLAINTIFFS:

17 Steve Jensen, Esq.
18 Al Stewart, Esq.
19 Alicia Butler, Esq.
James Heckbert, Esq.

20 FOR THE DEFENDANTS
21 BRUSH WELLMAN:

22 Sydney McDole, Esq.
23 Roy Atwood, Esq.
Robert Faxon, Esq.
24 Jeff Joyce, Esq.

25

KIMBERLY R. WALLINE, RPR, CRR
(303) 271-6151

1 * * * * *

2 P R O C E E D I N G S

3 THE COURT: Thank you. On March 22nd, this
4 Court reviewed certain material that had appeared on
5 the web site of Dr. David Egilman, one of plaintiffs'
6 endorsed expert witnesses. At that hearing, there was
7 no dispute that the information provided had indeed
8 appeared on Dr. Egilman's web site.

9 The Court expressed concern that if such
10 information were to come to the attention of jurors
11 during the trial, it would likely jeopardize the
12 parties' right to a fair trial.

13 At the conclusion of the May 22nd hearing, and
14 in its later written order signed May 30th, this Court
15 entered certain orders including, but not limited to,
16 the following: Prohibiting the attorneys and their
17 witnesses from making extrajudicial statements
18 concerning this case that can reasonably be expected to
19 be publicly disseminated by the media and that have a
20 substantial likelihood of materially prejudicing the
21 parties' right to a fair trial; prohibiting them, that
22 is the attorneys and their witnesses, from publishing
23 any statements on internet web sites over which they
24 have control concerning the trial proceedings,
25 concerning any opposing party or any opposing parties'

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1 counsel, or concerning any witnesses or evidence in
2 this case. And in this regard, the Court finds that it
3 is, particularly given the context in which this issue
4 was addressed, clear beyond question to the Court and
5 should have been clear beyond question to counsel, that
6 that included the postings of Dr. Egilman about which
7 we are concerned here this morning; and, lastly,
8 prohibiting the attorneys and their witnesses from
9 making any extrajudicial statements on matters that
10 have been excluded in limine or at trial on internet
11 web sites over which they have control, or, and I
12 underline or, that reasonably can be expected to be
13 publicly disseminated by the media and that have a
14 substantial likelihood of materially prejudicing the
15 parties' right to a fair trial.

16 Dr. Egilman had actual knowledge of the
17 Court's order, which after this I will simply refer to
18 as the order, and received a copy of it well before
19 trial began on June the 4th. After being advised of
20 the order, Dr. Egilman knowingly, deliberately,
21 intentionally, and willfully violated that order.

22 As soon as the Court learned that Dr. Egilman
23 may have violated the order, it made inquiry of the
24 jurors in open Court to learn whether any of them were
25 aware of any web site postings concerning the case.

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1 Each juror individually replied in the negative.

2 While these juror responses were reassuring to
3 the Court, it is not possible to be certain that no
4 juror saw any of the offending web site postings either
5 before or after the Court's questioning of the jurors
6 on this issue.

7 There is also no way to know whether the
8 testimony of other witnesses in the case may have been
9 affected by violation of the order. The Court notes
10 that a witness exclusion order had been entered in this
11 case specifically to avoid the risk of the testimony of
12 witnesses being contaminated by statements made by
13 other witnesses.

14 While we can never know whether any actual
15 prejudice has occurred as a result of Dr. Egilman's
16 violations of the order, it's clear that the risk of
17 such prejudice did and does, in fact, exist.

18 Dr. Egilman's hostile, inflammatory and
19 intemperate statements were well-known to all counsel
20 before this trial began. Plaintiffs' counsel,
21 nonetheless, elected to call Dr. Egilman as a witness
22 at trial. And I observed to counsel the other day
23 that, at least in my view, a responsible lawyer and/or
24 law firm knowing of such inflammatory and intemperate
25 public statements on the part of someone they had been

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1 considering to offer as an expert witness would
2 immediately reassess that decision. Not only did that
3 not happen here, but plaintiffs' counsel persisted in
4 trying to justify the behavior of Dr. Egilman.

5 His demeanor at the time of his deposition is
6 only one of several examples of what should have made
7 it very clear to plaintiffs' counsel that they were
8 dealing with somebody who was out of control and who
9 harbored great animosity toward the individual
10 defendant in this case as well as the law firm
11 defending that defendant.

12 Plaintiffs' counsel nonetheless elected to
13 call Dr. Egilman as a witness at trial, and defense
14 counsel elected not to cross-examine him on his prior
15 statements because of the declared intention of
16 plaintiffs' counsel to then question Dr. Egilman on
17 redirect examination about his motivations for making
18 such statements.

19 There's always room for legitimate
20 disagreement between witnesses in a lawsuit, in fact,
21 sorting out such disagreements is a large part of what
22 any lawsuit is all about. However, Dr. Egilman's
23 scurrilous and inflammatory statements posted on his
24 web site, in clear violation of this Court's order, go
25 far beyond the bounds of legitimate disagreement and

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1 cast great doubt on his legitimacy and integrity as a
2 witness.

3 At the time the Court was thinking about this
4 matter over the weekend, it was unaware of more recent
5 developments which make it clear that, over this
6 weekend, Dr. Egilman has threatened to cause a mistrial
7 in this case, and, as a matter of fact, has threatened
8 to sue plaintiffs' counsel. The Court rejects the
9 suggestion of plaintiffs' counsel that this kind of
10 wild, irrational behavior on the part of Dr. Egilman
11 was something they could not have anticipated. It's
12 certainly crystal clear to the Court and has been, at
13 least since March when the issue of Dr. Egilman's
14 behavior at his deposition arose, that he is indeed,
15 and has been, out of control in ways that have great
16 potential for harming fairness and justice in this case
17 and indeed go to the very heart of the system of
18 justice.

19 As I stated last week and have stated for over
20 four decades in this profession, which I cherish, a
21 lawsuit is a contest but it's not a game. And
22 Dr. Egilman has been playing games, and to a lesser
23 extent, so as plaintiffs' counsel, by not only putting
24 up with Dr. Egilman but persisting in offering him as
25 an expert in this case when they knew, as well as

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1 anyone, and certainly all of us knew, that Dr. Egilman
2 was anything but objective. He was hostile, biased,
3 vindictive, both against the individual corporate
4 defendant and against defense counsel.

5 It simply will not do for plaintiffs' counsel
6 to then come in here and say, well, this was
7 Dr. Egilman. It wasn't us, and we were, in the words
8 of the old movie Casablanca, "Shocked, shocked," to
9 learn just how irrational and intemperate Dr. Egilman
10 could be.

11 The Court doesn't want to -- well, I think the
12 Court wants to give some specifics about the
13 intemperate postings on Dr. Egilman's web site. These
14 are from defense Exhibits 2000 and 2001. "Hey, Judge,
15 why not sanction Baron & Budd, they gave me the idea.
16 Give 'em credit. If I could only break into the Jones
17 Day site, would the judge sanction them? Or do lawyers
18 who perform criminal acts get a free pass in Colorado?
19 Maybe Jones Day placed that comment on my site. They
20 have control of my site."

21 Apparently the same day an e-mail from
22 Ms. Butler to Dr. Egilman: "They bit. Copy of your
23 new page showed up in court just now. Alicia Butler."

24 Next Egilman posting the Court will refer to,
25 which covers about a third of the page and is in bold

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1978 285 2235

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1 face, "New formerly secret-Jones Day dirt, criminal
2 activity, it's here for all to see."

3 Next quote, "Jones Day witness Repsher
4 slanders Dr. Newman."

5 "The rules don't apply to Jones Day."

6 He posts four quotes from Brush spokesman
7 respectively dated November 18th, 1957; May 21st, 1947;
8 March 1st, 1948; May 24th, 1991; and a portion of the
9 book by Dr. Preuss of Brush.

10 From Exhibit -- pardon me, Defendants' Exhibit
11 2000, "Colorado judge in Jones Day pocket: what did it
12 cost?"

13 "The rules don't apply to Jones Day."

14 "Brush medical directors-felony? Fraud? And
15 more than 90 percent of the members of Otto Preuss's
16 graduation class were members of the Nazi Party or Nazi
17 Party affiliates."

18 That's probably enough to give the flavor, but
19 there's much more of the same.

20 Dr. Egilman's scurrilous and inflammatory
21 statements posted on his web site, in violation of the
22 order, go far beyond the boundaries of legitimate
23 disagreement and cast great doubt on his legitimacy and
24 integrity as a witness. The jury has already been
25 instructed in this case that part of what they are to

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1 consider in determining the credibility of a witness
2 are that witness's motives, bias and prejudices.

3 It's clear to the Court that Dr. Egilman's
4 testimony was motivated by his hostility toward the
5 defendant and the defendants' law firm by his bias
6 against the defendant and the defendants' law firm, and
7 his prejudice against the defendant and the defendants'
8 law firm. And plaintiffs' counsel, by the device of
9 threatening to ask Dr. Egilman on redirect what his
10 basis was for these scurrilous comments of his,
11 effectively -- and to draw out the trial at great
12 length to allow Dr. Egilman to expound on those points,
13 effectively precluded the defense from revealing his
14 bias while he was on the witness stand.

15 The question, again, becomes one of the
16 appropriate sanction to levy in this case against
17 Dr. Egilman, and, if applicable, plaintiffs' counsel or
18 any of them as individuals.

19 With regard to this case, the Court does not
20 believe that a mistrial is in order. The Court
21 intends, when the jury is brought in this morning, to
22 tell them that as a result of the proceedings we had
23 here this morning, they are instructed to disregard the
24 testimony of Dr. Egilman, and that all such testimony
25 is stricken.

KIMBERLY R. WALLINE, RPR, CRR
(303) 271-6151

1 I'm not going to tell them that plaintiffs
2 have withdrawn Dr. Egilman as a witness because
3 plaintiffs had plenty of chance to do that before this
4 morning, and until they realized just what the results
5 of their faulty judgment were in putting him on in the
6 first place indicated no willingness at all to take
7 such a step. And I fault plaintiffs' counsel for that,
8 and I specifically exclude Mr. Gray and Mr. Heckbert
9 from that observation.

10 It should be abundantly clear, but in case it
11 isn't, Dr. Egilman will not be permitted to testify
12 with regard to the cases of any other plaintiffs in
13 this case, or in any other case before this Court.

14 Contempt is -- pursuing contempt remedies is,
15 in this Court's view, is a useless exercise and will do
16 nothing to forward the interest of justice in this
17 case, and that, after all, is what the Court is
18 concerned with.

19 All of the sanctions which have been mentioned
20 here this morning are sanctions that the Court has
21 considered over the weekend. I am not prepared at this
22 time to decide what to do about sanctions against Baron
23 & Budd or Ms. Butler. I certainly strongly disapprove
24 of their decision to put Dr. Egilman forward in this
25 case and hoped they could get away with it. They

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1 haven't gotten away with it, and what else we do about
2 that, I don't know.

3 Vacating this Court's order, admitting any or
4 all of plaintiffs' out-of-state counsel is something
5 the Court is considering, but I don't want to make that
6 decision now because I feel that maybe upon further
7 reflection I'm going to hear an acknowledgement from
8 plaintiffs' counsel, and Ms. Butler in particular,
9 about the inappropriateness of some of their decisions
10 in this case, and we will revisit that issue later this
11 week.

12 I guess that's all I have to say on that, on
13 the question of counsel. So we will be in recess for
14 10 minutes. By the way, since the Court is keeping
15 time during this trial, the time for dealing with the
16 Egilman issue is assessed to plaintiffs' counsel and
17 the plaintiffs. We'll be in recess for 10 minutes,
18 then we'll bring the jury back in and continue with the
19 trial.

20 MS. McDOLE: Your Honor.

21 THE COURT: Yes.

22 MS. McDOLE: In terms of the instruction
23 that's going to be given to the jury, would the Court
24 instruct the jury then, Dr. Egilman has been found to
25 be biased and to violate the court order.

KIMBERLY R. WALLINE, RFR, CRR
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1 THE COURT: I told you essentially verbatim
2 what I'm going to tell the jury.

3 MS. McDOLE: Thank you.

4 THE COURT: We'll recess until 9:50. Make
5 that 9:55. The jury has been told they didn't have to
6 be back here until then.

7 (Whereupon, a recess was had.)

8 THE COURT: We're back on the record in
9 Ballinger et al versus Brush Wellman.

10 MS. McDole, this is a situation in which the
11 Court wants to sign a formal set of findings,
12 conclusions, and orders, so I'll ask the defense to
13 prepare that, and it shouldn't be any huge problem
14 because I think you're getting daily copy on the
15 transcript anyway.

16 MS. McDOLE: Correct.

17 THE COURT: And the one thing I do want to add
18 after the point where I talk about Dr. Egilman's
19 motives, bias, and prejudice, I want another sentence
20 stating -- because I don't want there to be any
21 question about this Court's view on this matter,
22 another sentence stating, "Dr. Egilman is not a
23 credible witness."

24 (Whereupon, this concludes the excerpt of the
25 trial requested for transcription.)

KIMBERLY R. WALLINE, RPR, CRR
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1 REPORTER'S CERTIFICATE

2 I, Kimberly R. Walline, a Registered
3 Professional Reporter and Certified Shorthand Reporter
4 for the State of Colorado, do hereby certify that the
5 above and foregoing is a true and accurate transcript
6 of my shorthand notes taken at the time and place as
7 stated on page 1 hereof.

8 Dated at Golden, Colorado this 22nd
9 day of June, 2001.

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KIMBERLY R. WALLINE, RPR, CRR, RMR

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EXHIBIT "C"

DISTRICT COURT, JEFFERSON COUNTY,
COLORADO
100 Jefferson County Parkway
Golden, CO 80401-6002

Δ COURT USE ONLY Δ

Case Number: 96-CV-2532

Plaintiff(s): MICHAEL D. BALLINGER,
et al.,
v.
Defendant(s): BRUSH WELLMAN INC., an
Ohio corporation.

Div.: 5

Court:

FINDINGS, CONCLUSIONS, AND ORDERS CONCERNING SANCTIONS

After considering the submitted evidence and the oral argument of the parties at the hearing held June 18, 2001, the Court makes the following specific findings and enters the following Order:

The Court finds that Dr. Egilman knowingly, deliberately, intentionally and willfully violated the Court's 5/30/01 Order Prohibiting Certain Extrajudicial Statements. While there is always room for legitimate disagreement between opposing expert witnesses, the scornful and inflammatory statements posted by Dr. Egilman on his web site go so far beyond the bounds of legitimate disagreement as to cast great doubt on his legitimacy and integrity as a witness. It is clear to the Court that Dr. Egilman's testimony was motivated by his personal agenda and by his

animosity, bias, prejudice, hostility and vindictiveness against defendant and defendant's law firm.

Dr. Egilman is not a credible witness.

The Court finds that Dr. Egilman's hostile, inflammatory and intemperate statements and attitude were well known to plaintiffs' lead counsel ("plaintiffs' counsel") before this trial began. Plaintiffs' counsel nonetheless persisted in trying to justify Dr. Egilman's grossly inappropriate behavior, and elected to call Dr. Egilman as a witness at trial when it must have been obvious to them that he was neither objective nor reliable. Not only has Dr. Egilman been "playing games" but, to a lesser extent, so has plaintiffs' counsel. By calling Dr. Egilman as a witness at trial when plaintiffs' counsel knew he was out of control, said counsel placed in jeopardy the integrity of this entire trial.

The Court rejects the position of plaintiffs' counsel that counsel believed in good faith that the statements on Dr. Egilman's web site did not violate this Court's order. The Court has made it very clear in entering its 5/30/01 Order that it considered Dr. Egilman's vituperative web site statements to be grossly inappropriate and to place at risk the fairness of the trial. The e-mail communications from plaintiffs' counsel to Dr. Egilman cannot reasonably be given any innocent connotation. The Court finds that these communications indicate that plaintiffs' counsel was to some degree complicit with Dr. Egilman in his flagrant violations of this Court's order.

It is therefore ORDERED that:

1. The testimony of Dr. Egilman is stricken.
2. The jury is instructed to disregard Dr. Egilman's testimony in its entirety.

3. Dr. Egilman shall not be permitted to testify with regard to the claims of any other plaintiff in this case, or in any other case which may later come before this Court.

DATED this 22 day of June, 2001.

A handwritten signature in black ink, appearing to read "F. Plant", is written over a horizontal line.

Frank Plant
District Court Judge

EXHIBIT "D"

Index to asbestos documents

Page 1 of 5

Index to asbestos documents**Asbestos brake consulting information to appear here soon!****Hawks Nest Material**

Why would someone agree to pay someone 10 Million dollars for consulting if they thought he was "out of control" .

New Dow Transcripts

Beginning this month David Egilman will begin publication of "The Whistleblower Health News" a bi-monthly journal dedicated to uncovering corporate cover-ups that have resulted in worker and public deaths and injuries. Potential sources should contact Dr. Egilman via email or over secure phone lines. No source names will be disclosed. Rewards will be given ranging from 1-10 thousand dollars. Subscribe by emailing Dr. Egilman. Special reward \$1000.00 for every new Jones Day violation of court rules or fraud finding. All criminal enterprises must be stopped.

Lincoln Electric Privilege Log

Appearing Soon: The Lincoln Electric Welding Rod documents. Some of what they want to hide.

Lincoln Electric Privilege Log

Remember Jones Day is inept at committing fraud by passing key documents past a lawyer to avoid production. They violated the crime fraud exception in Beryllium litigation & Tobacco litigation. Why should asbestos litigation be different? Unfortunately there is no three strikes and you're out for corporate criminals. There is no death penalty for corporations that kill. Unlike citizens who are human beings, corporate felons can continue to obtain government grants after repeat felony convictions. Previous Beryllium Jones Day Fraud Judicial finding. Previous tobacco crime fraud finding. The New World isn't even big enough to accommodate all the negligent conduct Jones Day has planned for this world. Click here for article.

Lincoln Electric False answers to interrogatories Maybe this is why Jones Day want to silence Dr. Longo. To perpetuate another fraud?

Question Number 7 page 3.

Have you conducted any studies concerning the effects of inhalation of asbestos dust or fibers by one using, removing or being exposed to any of the asbestos materials manufactured or distributed by you? In answer to this question, please give the date of your studies, if any, the names of the persons

conducting the studies and their addresses, what the purposes of studies were, and identify any documents reflecting or related to such studies and/or the purposes/objectives thereof.

ANSWER: No.

With respect to Lincoln Electric these studies must have been to defend specific lawsuits or there is no privilege. Could someone ask which lawsuits were involved?

Georgia Law on Consulting Experts

These rules must require that parties disclose the names of and nature of consulting experts otherwise how would a opposing party be able to request a deposition of an opposing expert. In addition since Dr. Longo's tests for Lincoln Electric were never published or disclosed and since no other similar tests on Lincoln electric rods have ever been published by anyone else this information (never mind Dr. Longo's relationship) must be disclosed under Georgia law since "it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means"

This means that Lincoln Electric's only possible objective in keeping the fact and nature of Dr. Longo's consulting for them secret is the initiation or perpetuation of a fraud on the courts of America.

[REDACTED]

[REDACTED]

Well it is no longer secret

VERDICT-47 MILLION PLUS RECKLESSNESS FINDING IN NY CITY ASBESTOS CASE 3-26-03 ON CONED AND LILCO

Jones Day strikes again: attacks another expert

Tell me it isn't so Jim. UCC lied about asbestos disease at their mine.

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

- GM

A Christmas Present For GM - Another Lost Document Lanza worked for GM - 1931

- Chrysler

Chrysler-UCC sampling

Rule 199.5

There are no cases which discuss whether or not reading the deposition transcript is considered "attending" (which Webster's defines as "To be present at:"). There are no rules which bar reading the deposition transcript or a draft after it has been typed. There is no minimum waiting time to read a deposition transcript after it has been typed in any form (internet, paper, digital). Those individuals who participate will not be able to ask questions or make objections or in any other way be noticeable at the deposition. They will therefore "not be present". Like the tree falling in the woods where one can hear sound, they will not make any noise.

The lost Chrysler documents

Another lost study Chrysler Chemical Division, Trenton, MI

84-0262-1734, Friction Division Products, Trenton, NJ

You can always find them here.

Oh yes Chrysler sold raw asbestos fiber too. They generally forget this when they answer interrogatory questions; note the finesse in answer. 27. GM the buyer was a little more forthright. Of course Chrysler went to the 7th Saranac conference. Chrysler made the brake pads for Bendix. do you think they are liable for Bendix exposures after Bendix id fraudulently conveyed to Federal Mogul? Al remember the "Asbestos worker magazines hurt both the plaintiffs and the defendants because they undermine the SOA defense?"

- Science Brief linked
- International harvester
- At your service International Harvester and Brake company discovery Look at all the organizations they forgot they had joined. Their president even chaired many safety and disease committees.

- Ford

Ford undercoating study: If they studied it, did they sell or manufacture it?

Why did Ford put asbestos in its air conditioning ducts?

- GM

On California Interrogatories GM admits it used Crocidolite

- [REDACTED]

[REDACTED]

Can you represent Cain & Abel? If so can you maintain that Cain's sealed documents (from say the SF coverage litigation) can be hidden from Abel?

- UCC/Dow
- UCC warnings policy for their own workers
- UCC promote asbestos paper for cigarettes
- "Privileged UCC documents"
- Dow
- USX Report
- USX Donora Video
- USX Powerpoint

Union Carbide (Now DOW) winner of First Place award in domestic category for murdering the largest number of workers in a single industrial disaster - Hawk's Nest Disaster about 1500 mostly African American tunnel drillers

Index to asbestos documents**Page 5 of 5**

and Winner of first place award international division for murdering the largest number of workers in a non-US plant - Bhopal

Get there asbestos documents here: (Shiss in another abuse of the legal system they claim these documents which were never on any privilege log and which they produced during discovery are privileged. They apparently site the legal theory that documents that reveal immoral, illegal and inhuman conduct that a corporation intentionally injured and killed workers with their products to make money must be privileged so that the victims can suffer without redress and profits can continue to flow endlessly.)

What they don't want you to see must be valuable. Email me to sign up for password access or a set of CD ROMs.

For people with passwords

- Some lawyers lie. Here is Robert Thackston's reviewed by the Dallas Appellate Court
- National Safety Counsel Key articles
- USX Report
- Canadian Tremolite Story: Is It Fraud or Is Incompetent Science?
- Insurance responsibility for the asbestos defense fraud.
- new IHF duty documents
- German compensation statutes

DOW LOST DOCUMENTS PROGRAM

Also I will pay \$10,000 for the trial transcript of the Hawk's Nest Trial in West Virginia in 1933. This is not a joke. Union Carbide's (now DOW) lawyer's in that case have this but do not produce it in litigation because it is "the law firm's" not UC's. If I pulled this, I would go to jail - Dow would see to it. But as George Carlin says, "Republican's are against street crime as long as the street is not named Wall Street."

INFLUENCE OVER ACGIH

Lost CMA asbestos documents

DOW also forgets it used OTTO AMBROS as a consultant. OTTO had a small legal problem; he was convicted of mass murder & slavery at the Nuremberg trials. Thus by law it was illegal for him to travel to this country. (After WWII it was illegal for pre-1945 Nazi war criminals and post 1945 Communists to travel to the US. Dow used its power to get OTTO into this country. (In the interests of full disclosure, it is my official position that corporations should not rely on the advice of convicted war criminals on matters that relate to health & safety.) By the way DOW reopened the Nazi chemical plant at Auschwitz, the site of OTTO's crimes, in the mid-nineties.

Dow Hidden Document Program

DOW Nazi consultant Otto Ambros

Found Documents

Tons of Dow documents

EXHIBIT "E"

5-19-03.txt

1

1 APPELLATE NO.
2 REPORTER'S RECORD
3 VOLUME 1 OF 1 VOLUME
4 TRIAL COURT CAUSE NO. 2001-36408
5 SAM P. BURNETT, ET AL. } IN THE DISTRICT COURT
6 vs. } HARRIS COUNTY, TEXAS
7 ALLIEDSIGNAL, INC., }
8 ET AL. } 269TH JUDICIAL DISTRICT
9

10 REPORTER'S RECORD
11
12

13 On the 19th day of May, 2003, the following
14 proceedings came on to be held in the above-entitled
15 and numbered cause before the Honorable John T.
16 Wooldridge, Judge Presiding, held in Houston, Harris
17 County, Texas.

18 Proceedings reported by computerized stenotype
19 machine.
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LORETTA KORZEB
OFFICIAL COURT REPORTER
269TH DISTRICT COURT

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2

5-19-03.txt

2 Q. Have you ever published any papers on the
3 issue of why contract workers like Mr. Tipp aren't
4 included in this type of study that was done by Dow?

5 A. Yes.

6 Q. And have you concluded that there is a
7 reason that contract workers like Mr. Tipp were not
8 included in that type study?

9 A. Yes.

10 Q. And what is that conclusion?

11 A. It's all about the money with respect to
12 product sales.

13 MR. BLACKWELL: Thank you, Dr.
14 Egilman. I'll pass the witness at this time.

15 THE COURT: Cross?

16 MR. SIMSES: Yes, Your Honor.

17 CROSS-EXAMINATION

18 Q. (BY MR. SIMSES) Good afternoon,
19 Mr. Egilman, Dr. Egilman, you and I have never met
20 before; have we?

21 A. Don't recall.

22 Q. Don't recall.

23 In regards to your opinions, you've
24 never done an investigation and personally went to
25 the Freeport facility; have you?

LORETTA KORZEB
OFFICIAL COURT REPORTER
269TH DISTRICT COURT

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1 A. I've never been at the facility, on the
2 premises of the facility.

3 Q. And you haven't actually gone and spoken to
Page 209

12 5-19-03.txt
13 THE COURT: Overruled.
14 Overruled. Go ahead. Ask your
15 question, let's move on.
16 Q. (BY MR. SIMSES) Did your web site not have
17 on it before you took it down before the deposition
18 an advertisement that you were going to give -- first
19 of all, that you were going to set up a publication
20 called the whistleblower's Health News?
21 A. Correct.
22 Q. And that you were looking for sources and
23 that you were going to give rewards up to one to
24 \$10,000?
25 A. Correct. And, by the way, I forgot, just
to correct my last answer, I did get documents that

LORETTA KORZEB
OFFICIAL COURT REPORTER
269TH DISTRICT COURT

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1 I've relied on in this case through that process as
2 well.
3 Q. And then you had a special reward of a
4 thousand dollars for any new Jones Day violation of
5 the court rules of fraud finding.
6 You're asking for people to give you
7 money they heard of something about a law firm?
8 A. No. I'm asking for them to give me
9 information.
10 Q. Right. You're paying 'em information (sic)
11 about a law firm and you're paying up to a thousand
12 dollars for that?
13 A. That's correct.