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Warren v. K
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NUTTER, McCLENNEN & FISH

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January 18, 1991
18371-1

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Mary Sundt, Esq.
The Dow Chemical Company
D30 Willard H. Dow Center
Midland, Michigan 48674

Re: Alice L. Warren, Administratrix
v. The Dow Chemical Company, Union Carbide, et al

Dear John, Judy and Mary:

In connection with the Chapter 93A demand letters which were faxed to each of you on Wednesday, January 16, I enclose some additional information which you may wish to consider before fashioning a response:

1. A copy of a Nutter, McClennen & Fish Client Advisory: Massachusetts Consumer Protection Act's Applicability to Products Liability Actions,
2. A copy of relevant portions of Chapter 93A of the Massachusetts General Laws, the Consumer Protection Act, and
3. A copy of Maillet v. ATF-Davidson Co., Inc., 407 Mass. 185 (1990), the recent decision extending Chapter 93A to products liability cases.

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HYANNIS, MASSACHUSETTS
COUNSEL: AMSTERDAM • LONDON • TOKYO

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JAN 22 1991

J. A. MOORE

UCC 081639

John R. Downey, Esq.
Judith Elledge, Esq.
Mary Sundt, Esq.
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You should know that the demand letter to each of you is similar but not identical. However, without your consents, I did not feel free to provide each of you with the others' letters.

We are researching the availability of several defenses to a Chapter 93A claim in this case. They include issues of privity, lack of retroactivity of the statute and a possible interstate commerce exemption (repealed prospectively in 1983). If these defenses have merit, they should be mentioned in any reply letter.

By statute, a reply must be submitted within 30 days of receipt of a proper demand letter. In this case, a reply is due by February 13, 1990.

John Downey asked me to mention that he will call Mary and Judy on Wednesday, January 23, at about 10:00 a.m. to discuss an approach to responding. I shall also be available that date to speak with all of you about fashioning a reply. It is something which must be taken seriously and I expect to have more insights into possible defenses by then.

Best regards.

Very truly yours,



Sharon R. Burger

SRB/jlf
enclosures

cc: Ms. Yolanda Jackson (File No. H105L-76-034969)

[Typed and sent in Ms. Burger's absence.]

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