

433 -
NUTTER, McCLENNEN & FISH

LIT
Warren v. VC
6022

ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2699

TELEPHONE: 617 439-2000 FACSIMILE: 617 973-9748

DIRECT DIAL NUMBER:
(617) 439-2382

September 12, 1991
18371-1

Keith Minoff, Esquire
Robinson Donovan Madden & Barry, P.C.
1500 Main Street - Suite No. 1400
Springfield, Massachusetts 01115

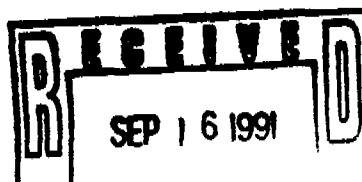
Re: Alice L. Warren v. The Dow Chemical Company, et al.;
U.S.D.C., Civil Action No. 89-30201F

Dear Keith:

Pursuant to our telephone conversation on September 6, 1991, this is to confirm that plaintiff has offered to "dismiss" Union Carbide or Conoco without prejudice, but reserves her right to bring Union Carbide and Conoco back into the case in the event that "new evidence" arises which "implicates" either of these defendants. Plaintiff has placed further restrictions on her proposed "dismissal" of Union Carbide and Conoco by insisting that Union Carbide and Conoco waive any right they may have to raise the applicable statutes of limitation as a defense to any future action against them.

As you correctly predicted, this latest proposed dismissal is not acceptable. Union Carbide and Conoco do not view this most recent "proposal" as a good faith effort towards resolution of this matter - particularly since you waited an inordinate amount of time to propose a stipulation which you knew defendants would never accept and which effectively is designed to hold Union Carbide and Conoco hostage to this case until its final resolution.

This litigation has been ongoing for almost two years, and during this time there has been significant and expensive discovery conducted on the product identification aspects of this case. To date, plaintiff has uncovered no evidence



HYANNIS, MASSACHUSETTS
COUNSEL: AMSTERDAM • LONDON • TOKYO

UCC 081359

Keith Minoff, Esq.
September 12, 1991
Page 2

sufficient to hold Union Carbide or Conoco in as a defendant in this litigation.

Further, it is extraordinary that plaintiff seeks to impose any limitation on the dismissal of Union Carbide or Conoco when Jim Tourtelotte, during the hearing before Magistrate Ponser on July 22, 1991, admitted plaintiff has no evidence to keep these defendants in, and further advised the Court that he was prepared to let them out of the case. (See, e.g., Transcript of Hearing before Magistrate Ponser dated June 25, 1991, p. 7). Any position to the contrary at this point most certainly exceeds the boundaries imposed by Rule 11 of the Federal Rules of Civil Procedure.

In short, your most recent proposal is not a viable alternative to the proposal our clients rejected in early July. Nevertheless, while we believe plaintiff should dismiss Union Carbide and Conoco with prejudice, Union Carbide and Conoco are prepared to accept dismissals without prejudice, provided there are no further stipulations or conditions relating to the dismissals.

We would appreciate your response to this proposal well before the September 27, 1991 hearing scheduled before Magistrate Ponser.

Very truly yours,



Susan P. Ritter

SPR:ncg
37961

bcc:

~~John R. [redacted]~~
Judith Elledge, Esq.
Mary Sundt, Esq.
Ms. Elizabeth Jackson (File No. H105L-76-034969)
Ms. Kelly Tubman (File No. 808 ERBY 225 33J)

bbcc: Sharon R. Burger, Esq.

UCC 081360