

CMA REDACTION DOCUMENTS

(Continued)

1/11/82 (CMA 12762 - 63 & 39467 - 39528) - Executive Committee Meeting Minutes: The CMA concealed all items relating to its budget, including "expected lower expenditures for outside consulting due primarily to slower than anticipated implementation of TSCA Regulations." This clearly implies that the recognition that CMA is in the business of employing "outside consulting only in response to the "implementation of TSCA regulations. Since "slower than anticipated implementation of TSCA" means "lower expenditures," it follows that *higher* expenditures from CMA would be anticipated if there were a "*higher* than anticipated implementation of TSCA" (At CMA 39468)

Consistent with CMA's pattern of concealing any information not directly relating to the specific committees identified in Plaintiffs' Petition and Interrogatories, CMA concealed all references to the existence of its "Communications Program" financed to the tune of \$3,500,200 (CMA 39469).

(One page)
Communications Policy Review Special Committee

CMA concealed reference to "a wide-ranging discussion by the EC Executive Committee during which practically all aspects of the communication program were touched on. The program was established and "having serving the purpose for which it was established, this is ~~the~~ Communications Policy Review Special Committee is terminated."

Consistent with this prior practice and notwithstanding the fact that the Case Management Order CMO's express statement that discovery should proceed primarily through document production, CMA concealed all references to "CMA coordination of U. S. Chemical Industry participation with the International Labor Organization (ILO)" and "the need for a mechanism to participate with the ILO and express the views of the U.S. Chemical Industry as they relate to developing standards for international labor and so social practice." (At CMA 39470).

The mechanism for interjecting CMA into the ILO is described: "CMA will request the U.S. Counsel For International Business to establish a chemical industry subcommittee of the Industrial Relations Committee... Through this organization, the desired participation in ILO activities can get effected. CMA will undertake to solicit the nominees for such a committee... (at CMA 39470).

Although the activities of CMA General Counsel Edmund B. Frost have been at issue in this case since the very beginning (it was Mr. Frost, Esq. who presided over the discussion of CMA lawyers "going through the files" looking for documents which might "sink the CMA" (March, 1980, I think). Consistent with its prior practice of concealing all information in these minutes which might allow

the plaintiffs to understand the way the CMA really works in general and the specific methods and details of its operation, CMA concealed the resignation of "General Counsel Edmond B. Frost, " who – for the first time, maybe I have not been paying attention or maybe the CMA has consistently concealed this information) is revealed to have been not only CMA's "General Counsel" but also its "Vice President" !!:

"Six Association Activities

- a. Report of the President Mr. Roland R. announced the resignation of Vice President and General Counsel Edmond B. Frost, and the appointment of David F. Zolls as Vice President and General Counsel, subject to the approval of the Executive Committee. Mr. Roland further recommended that Mr. Frost be continued on staff as a vice president through April 30, 1982, at which his employment will terminated." (at CMA 39470).

- b. CMA redacted extremely relevant to Plaintiffs conspiracy and concert of action claims at CMA 39471 and 39495 - 495) when it redacted all references to the CMA's position on a "legislative veto" provision in the pending Regan Regulatory Reform Bill: "Following discussion of Exhibit "H" [which includes redactions in an exhibit to these minutes which was clearly disseminated along with the minutes:

"Congress 's ability to veto Federal Agency Regulations as currently an issue in the courts and Congress. It is also an issue of considerable concern to the Regan Administration which has asked CMA and other business groups to assist the administration in the opposing legislative veto in general and specifically, in keeping legislative veto amendments off the Regulatory Form Act, "S.1080... (at CMA 39495) scheduled for floor action the week of 3/8/82. There have now been four separate versions of this document produced. CMA stipulated these documents weren't confidential from the very beginning. CMA's redaction and assertion of privilege as to these non-confidential documents should be severely sanctioned.

Although the entire discussion of the CMA's reasoning in opposing "Congress's ~~obsessive~~ ability to veto Federal Agency Regulations" issued under the Regan Administration is "redacted" as privileged in this non-confidential document, the only portion of pages 39495-39496 that CMA hasn't continued to conceal just as much as it concealed the rest of the page in the prior three productions of this document which CMA stipulated was not confidential is the CMA's concluding "recommendation" that "CMA adopt a policy position in opposition in legislation veto in any form..." (CMA 39496).

Until the most recent production, CMA concealed not only its position upon legislative veto ("following discussion of Exhibit H, it was agreed that CMA will act to keep legislative veto out of the pending regulatory reform bill..." (CMA 39471). CMA concealed the very existence of the "Government Relations Department and Government Relations Committee" which were an integral part of the CMA's activities with regard to toxic substances which are the subject of plaintiff's allegations and discovery, and -- of the court's prior orders with regard to privilege and redaction.

Considering CMA's prior stipulation that this document is not confidential (or at least that the scraps which remained after CMA redacted all of the other pertinent information from these very same documents was not "confidential". There has been no showing and there is unlikely to be any showing that the "redacted portions" were any more confidential than the portions the CMA originally chose, then chose again, then chose again, to producing this case, prior to be ordered to produce the entire document. Under the circumstances, CMA's assertion of privilege on these "4th generation redacted" documents as to which no prior assertion of either confidentiality or privilege was ever made, is outrageous and contemptuous, especially in view of the most recent case master meetings, CMA's prior stipulation with regard confidentiality, and the Special Master's prior rulings with regard "portions" of Meeting Minutes.

GRD
62 C
all
os. auth

CMA concealed and may continue to conceal Exhibit "K" to these minutes in their entirety, consisting of "the report of General Counsel". Ed Frost, whose retirement was announced at this meeting (and concealed by CMA three times) [THERE IS NO EXHIBIT "K" ATTACHED FOLLOWING THE END OF EXHIBIT "I" AT CMA 39528!?!]

Being consistent with its prior practice, CMA concealed its entire budge and funding for fiscal year 1981, beginning June 1. CMA certainly concealed that there had been a "communications program assessment @ 40%" and its approved budge of over 5 million dollars, dwarfing everything else, including the \$750,000.00 each for general counsel and government relations activities (CMA 39477).

The CMA concealed that "as directed by the Financing Executive Committees, the expenses, revenue, and personnel of the special programs area have been costed and presented as a separate operating activity" with details as "per 20 of this document." (At CMA 39478) However, there is no tab 20! CMA concealed the resignation of the Great American Chemical Corporation (GAC) (at CMA 39479).

CMA concealed its "recommended policy statement" on Regan's 1982 Tax Program, especially concerned about the very idea of a "minimum tax".

CMA concealed its "CMA Staff Training Program" which, for example, allowed defendant conspirator Union Carbide to train CMA staff on "controlling the risks of technology" on November 15, 16, 1981 including "product safety" and "personal safety and occupational health" as well as pollution control, including waste disposal, and transportation safety." (At CMA 39490). The CMA also concealed its detailed training programs on such matters as "Community and Plant Relations"... "Toxicity testing facilities and procedures..." etc.

Consistent with its efforts to conceal its systematic concealments of relevant activities pertaining to chemical hazards, CMA redacted not only the report of the technical director (CMA 39497 - 514), but concealed the very existence of such report, including such relevant activities as "media tours and interview", presentations to various Chambers of Commerce and governmental agencies (CMA 39497), etc., but its environmental programs, including "an information exchange in Atlanta on the topic of Environmental Reviews/Audits. 80 - 5 individuals participated in this highly successful educational program. Response to the seminar encourages CMA to conduct similar low-cost educational programs for member companies." (AT CMA 39502).

The CMA concealed its testimony before the HSEHC House Subcommittee on Health and the Environment of the Committee on Energy and Commerce on Section 112 of the Clean Air Act. The only statements were made by representatives of defendants in this case: Diamond Shamrock Corporation and Monsanto Corporation. (The CMA 39502) and other relevant matter. (CMA 39502 - 39503). CMA also additionally redacted irrelevant information from the report of its Health, Safety, and Chemical Regulations Division (CMA 39506 - 39510) including its Chemical Regulations Advisory Committee (See its Hazard Communications Special Committee "continuing to develop the right-to-know information packet for use by Chemical Industry representatives and lobbyist at state and local levels." At 39508). The activities and even existence of the CMA Occupational Safety and Health Committee (OSHC), including its "Worker Education Task Group" (At 39505), The Regulatory Impact Special Committee (RISC), including its "Public Acceptance of Risk/Cost/Benefit Analysis Work Group". (At CMA 39509).

HSCRD
CR
OSHC
water education
RISC

The only section of the "Bio-Medical and Environmental Special Programs Sections" which the CMA didn't redact related to VDC, concealing the broad range and activities with regard to other relevant chemicals such as arsenic, ethylene dibromide, ethylene oxide, phthalate esters, and other additives. The CMA concealed its report of the Regan administrations "fulfillment of a campaign promise" to "abolish the Department of Energy (DOE)..." (CMA 39519). The CMA redacted the entire discussion of the Proposed Clean Air Act Amendments (39520 - 21).

The CMA concealed its out and out gloating over Regan Administration EPA activities (CMA 39522 - 39523) and identification of specific "Senate Aspirants" who might be "expected to keep his house subcommittee on the oversight tract, badgering EPA for catering to industry, closed door meetings, PCB's, possibly MCB's, etc."

Similarly, CMA concealed its gloating over CMA's "oversight only" role under the Regan Administration. CMA concealed its reference to its efforts to influence EPA to modify TSCA, referring to limiting information gathering under Section 8 to a specific "need-to-know" rather than some possible future "nice-to-know" basis.

CMA concealed its assistance "in the development of S.1080, the Regulatory Reform Act, introduced by Senator Paul Laxalt's (R-NEV) [who was convicted or something, wasn't he?] The focus of CMA's effort has been to secure amendments which provide that 'good science' be considered a principal factor in the regulatory reform decision - making process." (AT 39525).

Consistent with its pattern of concealment of CMA's involvement in "state of affairs", CMA deleted all references to the activities and the very existence of its "state of affairs" special committee," including specifically, a CMA state network" concerned with "Hazardous Communications" and right-to-know" and other relevant matter. CMA concealed the existence and activities of its "network Task Group" which "personally contacted and confirmed the participation of designated individuals to serve in 41 states as CMA's official network contact for the purpose of disseminating policy positions and related materials on Chemical Industry issues and providing feedback and intelligence on state developments." (39526).

SASC
↓
network
right to
know
must state
secret report

The CMA concealed the existence of a monthly "state-of-affairs" report, which "addresses legislative and regulatory issues of priority to the Chemical Industry" and tracks those issues throughout the legislative and regulatory process at the state levels. CMA specifically concealed its participation in combating "worker and public right-to-know activity" which continued at a high level" in 1982 and the preparation of "an information packet on right-to-know" to be "distributed to member company personnel and appropriate state industry groups."

1/10/83 (CMA 12764 - 65) - CMA Executive Committee Meeting Minutes.

SPAC

Consistent with its pattern, CMA concealed relevant matter such as the Charter for the SPAC (Special Projects Advisory Committee) which governed the activities of the CMA Task Groups at issue in this case. (CMA 39537 and 39545 - 546).

The CMA concealed all reference to the activities of its "strategic options work group" whose existence was itself concealed) with regard to "public compensation" which was recognized to be a "problem" insofar as it sought "compensation for people harmed by hazardous substances" which had become a "growing and public legislative issue" which could "endanger" what it refers to as "industry" in general if it provided "excessive compensation in the mistaken belief industrial resources are unlimited." (CMA 39551) The CMA redacted references to its concern for proposals "in the Congress and State Legislature to compensate people resulting from exposures to hazardous substances" and courts which "have allowed large awards to people claiming damages" which could rapidly and... quickly become a danger to the continued vitality of the chemical industry..." giving, as an example, the recent bankruptcy of Johns Manville ("one major corporation outside the chemical industry has already claimed bankruptcy because of compensation suits filed against it.") The CMA Executive Committee established the Strategic Options Work Group to examine the compensation issue, study proposals already submitted, undetermined options and priorities available for dealing with this issue. (CMA 39551 - 553).

Strategic
Options
Work
Group
SOWG

The CMA concealed its "efforts to prioritize the work of CMA as an advocacy organization ... " (39537). The CMA concealed its recognition of the subject of hazardous waste as a dark cloud looming over the industry and adversely impacting the legislative and public perceptions of the industry." (CMA 39538).

The CMA concealed not only the existence of the SOWG, but its expressed goal as the recommendation as a final solution regarding the public compensation issue..." which would "require the continuing involvement of the Executive Committee."

Consistent with its prior practice, the CMA concealed both the existence and the activities of the dated development work group which advised the CMA that "the public perceives chemical exposures as a source of significant health problems among chemical industry workers and the public" and that "data addressing the issue originally not available" and that "CMA member companies have pertinent data which can be supplied to support CMA strategy, but not without considerable expenditure of time and personnel" that "the decision into commitment to development and use of the data must be made at a very high management level in the CMA and of each company; and should a decision be made to accumulate, analyze, and compile the data; in a useable form, standing long-term workgroup composed of representatives of each involved company should be established." CMA concealed its continued of "the Kasten Bill".

CMA concealed its decision not to "align itself at this time with the asbestos coalition" and "push to eliminate from the asbestos bill the provision

that would permit the inclusion of the chemical industry in its coverage" without implying chemical industry's support of the bill.

SPAC

CMA concealed its attempts to "coordinate efforts to put in place an industry grassroots network which would be available to maximize support for CMA's legislative issues" with the Kasten Bill given as an example.

CMA concealed its development of a one page statement for use in responding to questions regarding its position on "concerning the public concession issue." (CMA 39540).

Without listing them, CMA consistently concealed all references to the relevant activities of committees not specifically identified in plaintiff's petition or interrogatories. Further, it identified the report of its bio-medical and environmental and special programs (SPAC) Charter, etc. (39545 - 546).

The CMA concealed its "waste management plan" which expressed its recognition of "a public perception that chemical wastes are a significant public health and environmental threat" which "has lead to laws in implementing regulations that have impacted on the chemical industry's operations and competitiveness, including an overview reflecting its recognition that this public "perception is essentially rooted in the belief that the chemical industry, knowingly or negligently, will continue to act irresponsibly in disposing of its waste in pursuit of profits..." and refers to "this portrayal of an industry that disregards the health and safety of millions of Americans in its management wastes as having been "seized upon by environmentalist, congress, and the media" and can lead to new laws and regulations which might "significantly throttle the chemical industries operations and competitiveness." (CMA 39549). The CMA concealed its proposed plan which would include the recognition "that some waste disposal practices of the past were inadequate with the "overall objective" being "to take some bold and dramatic steps to demonstrate to the media, the public, the congress, and the environmental community the chemical industries committed to sound environmental management, is responsible, and is committed to doing the right thing for all the right reasons." This is relevant to plaintiff's allegations that the plaintiff's specific allegations that the health and safety activities of the CMA were little more than public relations programs, in fact, it is completely consistent with it if it doesn't prove it.

The CMA of course concealed the report of its strategic options work group (SOWG) regarding "chemical industry alternatives and priorities for our compensation system" which included such relevant matters as its establishment of a "science board" and which refers to such irrelevant matters as "tort/jury" "determinations of causality and legislative presumptions of causality as being the "least preferable. Little opportunity for technical input. Swayed by emotion." (CMA 39554). The CMA concealed its cynical preference for the Workers'

Compensation and "exclusivity" in the remedies available. CMA of course will say all of this is irrelevant, but any fair minded person will see that the evidence it deleted at CMA 39551 - 565 is more than a little likely to lead to discoverable evidence.

Page 8

CMA concealed its preparation of a special committee which "targeted key states for action" with regard to "CMA Reform Act Efforts" and its involvement with the Kasten Bill. Kasten pre-emption Products Liability Bill (CMA 39559 - 3565).

CMA concealed the report of its daily development work group which answered to its (also concealed) SOWG, and specifically redacted that work group's recognition that "data are inadequate" to proceed with a reasonable risk management process (CMA 39563), but that the data was certainly available. (CMA 39564 - 565). For example, the report states that the "number of victims of chemically induced illnesses" is readily available" for lawsuits, Workers' Compensation Claims, and Epidemiology Studies. The CMA concealed the number of alleged victims not being compensated was also "readily available data in the form of outcome of loose lawsuits and available within six months as a result of the "outcome of complaints to the company." It also recognized that information regarding the number of alleged victims of chemically induced illness could be derived from complaints to the companies, news clippings, third party insurance reports, and third party insurance reports within six months. The only type of data described as not available or taking long than six months was "medical reports". The CMA concealed the DWG's report that information concerning the "cause-effect relationship between exposure and illness" was available for some epidemiology studies, risk analyses, toxicity testing, and EPA summaries for priority chemicals and was immediately available and that exposure data would be available within six months. The CMA concealed that other data such as emissions and effluence information was readily available as well as was information regarding releases, RCRA reports (location). The CMA also concealed the DWG's report that both toxicology and epidemiological data wasn't available for chlorinated aliphatics and chlorinated aromatics and that carcinogenicity, epidemiology, mutagenicity, teratogenicity, and toxicity data were available for chlorinated pesticides, dioxins, PCB's, and other relevant information.

3/8/84 (CMA 12766 - 767 AND 39567 - 39614) - CMA Executive Committee Meeting Minutes.

CMA concealed its treasurers report, the president's report, and relevant matter such as the Superfund Economic Impact Study to "identify the economic impact of both the waste - end and feedstock taxes..." (CMA 39568).

CMA concealed references to the Superfund's Funding Task Group and its activities and Clean Sites, Inc. (CMA 39569 - 570).

CMA concealed "free trade" type meetings between the Canadian Chemical Producers Association (CCPA) and the CMA, the SOCMA, and the SPI, ending the paragraph revealing the meetings with this statement, "it should be clearly understood that negotiations can only be carried out by the U. S. and Canadian Governments." Attached is a list of products for which CCPA proposed a bi-lateral free trade agreement. Each company was to respond "anonymously" to the attached questionnaire. Chemicals include PVC, Poly Styrene, Vinyl Acetate, Acrylonitrile, as well as EO, VCM, EDC, etc. (at CMA 39575).

CMA concealed its "Superfund Status Report" relating to the Florio Subcommittee on Commerce consideration of Superfund reauthorization legislation, which "nailed down" the exclusion of "navigable waters" from the province of the act. CMA redacted the discussion of a conflict of Billy Tauzin and James Florio. (D - NJ). On the Superfund Reauthorization Bill.

CMA continues to work with all of the members of Florio's Subcommittee and the Full Energy and Commerce Committee for a reasonable Superfund Reauthorization."

The CMA concealed the report that the Senate Environment and Public Works Committee Superfund Reauthorization Hearings began "with the primary focus on the Woburn Mass Dump Site and Health Effects." (CMA 39589). The CMA redacted its "aggressive lobbying campaign... aimed primarily at the members of Florio's Subcommittee, The Energy and Commerce Committee, The Ways and Means Committee, and The Senate Environment and Public Works Committee."

The CMA concealed the report it received that "Environmentalists continued to lobby very aggressively in the House and Senate for a very large increase in the Superfund and for the 'victim's compensation'."

As was its practice, CMA concealed the entire Technical Directors Reports which "highlights CMA accomplishments and activities in its advocacy of prime issues." Which includes much relevant information relating to for example, CIIT, CRAC, CRAC's Risk Analyses Task Group (RATG)". New special programs for butadiene and EO, reference to the existence of or the report from the CMA Hydroquinone/quinone used in large quantities in the course of VCM loading operations), Phthalate Esters Panel Discussing plastics containing Phthalate Esters.

Craes
RATG

The CMA concealed that the Phthalate Esters Panel "requested that the commissioners of the CPSC allows CMA to audit exposure studies performed by a "CPSC Contractor." The audit should clarify issues on the reliability of the data and its relevance to accessing potential human exposure." (CMA 39591)

Although CMA did not redact a small portion of the document which is now found at (CMA 39592), it did conceal the fact that these isolated few words came from a document referred to as "the report of a technical director" whose very existence would be invisible to anyone reading only what was left after CMA's redaction efforts.

CMA concealed the report and any reference to the report entitled "Worker Health and Safety Education in the Chemical Industry" and CMA concealed the existence of the symposia it presented on such matters as "Hazard Communication: Training and Educating the Worker". (CMA 39594)

CMA concealed the report of the Director of Communications (Exhibit "F" CMA 39597 - 599) discussing CMA's efforts to "expand our network of contacts to include regional media" and that, despite the "Superfund" reference in the title of the "Superfund Communications Program" the effort was "not limited to the Superfund Issue, but [to] bring in Clean Sites, Inc., general industry attitudes of cooperation to solve problems..." i.e., propaganda efforts. The reporter boasts of interviews conducted at *Business Week*, *Wall Street Journal*, *New York Times*, *Washington Post*, *Congressional Quarterly*, *Chemical Marketing Reporter*, *Chemical Week*, and *The Journal of Commerce*. These are all identified as "Superfund Communication Activities". Although "the contacts produce discussions that are not limited to the Superfund Issue...". CMA concealed the non-Superfund related activities of its very well funded "Superfunded Communication Committee" concerning such matters as the benefits of chemicals: a special radio series, 'Lifestyles', has just issued its third series of consumer oriented programs on the importance of chemicals, their benefits and their proper use and safety..." which is "produced in-house at CMA and distributed to 1,400 radio stations..." with "75% usage - a phenomenal participation. In addition to the stations the material also goes to 400 home extension economists, many of whom write newsletters or newspaper columns. "Any member who wanted "a sample of the program" was requested to write Linda Edwards in the Communications Department. (CMA 39598)

The CMA concealed that it actually disseminated what it characterized as "CMA Issue - Oriented Films" to 228 schools, "becoming a permanent part of their library" with a projected 500 duplications of these three films expected by July 31. (CMA 39599)

The CMA concealed the report of the Director of Governmental Relations in its entirety. Indeed, CMA concealed the existence of the Government

Relations Committee in its entirety. Samples of relevant matter concealed here include CMA's boasting of having "met the objectives of the chemical industry" in changing earlier versions of the Shipping Act of 1984 - "the most far reaching revision of the regulatory process governing ocean transportation since enactment of the first Shipping Act in 1916. The new law came after several years of CMA advocacy during Congressional attempts to modernize the nations Maritime Regulatory Statutes." (CMA 39603 - 604). The CMA actually boasted of having obtained "nearly 35 CMA suggested changes to earlier version" of the act which "were incorporated in the final act." (CMA 39604)

CMA concealed its decision, despite "differences of opinion" not "to appear at the hearing" on the Hazardous Materials Transportation Act (HMTS CMA 39604).

CMA concealed relevant information concerning its involvement in "Railroad Deregulation" which it recognized had produced "concern... that the ICC has disregarded provisions in the Rail Act that provide consumer and shipper protection" and a bill being circulated by John Danforth (R - MO) concerning the implementation of the Staggers Rail Act of 1980.

CMA concealed Senator David Durenberger's (R-MN) solicitation of "a TSCA Amendments Package". The CMA's bill (isn't that they are saying?) "will include changes in the following areas:

1. The Section 4 Test Rule Process, Perceived as too slow and unwieldy under present procedures;
2. Tightening up premanufacture notice (PMN) test data requirements;
3. Cutting down on claims for confidential business information, alleged to be excessive under present law; and
4. Some means of getting EPA to make greater use of section 6 control actions on existing chemicals.

"[Concurrently this Subcommittee on Toxic Substance]" held a hearing on April 10 on a National Academy of Sciences report which Senate Staff interprets as demonstrating that most commercially important chemicals are place on the market without adequate toxicity testing. CMA will be submitting its response for the record..."

The CMA conceals its recognition of the distinction between "perceived or real" confidentiality "problems" (CMA 39605).

The CMA concealed its involvement in "monitoring " Senate Labor Subcommittee Meetings to make sure they remained "limited to consideration of asbestos problems" and specifically to monitor developments in case an effort is made to broaden the inquiry to include a 'trigger mechanism' for other substances/diseases." (CMA 39606)

SLCC

The CMA redacted all of its boasting about the way it influences legislation and legislators such as Senator Durenberger (R-MN) on the Safe Drinking Water Act: "CMA feels the positive aspects of the draft bill include its focus on drinking water without including more general groundwater protection provisions," etc.

The CMA's "State Level Communication and Coordination" action activities are concealed in their entirety, as was CMA's consistent practice. This particular report includes references to "right-to-know legislation" "expected shortly in Louisiana" as well as other "serious and onerous bills" involving "both Worker and Community Right-To-Know Legislation" (CMA 39612)