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Bernadino v UCC
CORR

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February 12, 1990

John Downey, Esq.
Union Carbide Corporation
Law Department E3-285
39 Old Ridgebury Road
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FILED
FEB 14 1990
J. R. DOWNEY

Re: Bernadino v. Union Carbide Corp.

Dear John :

Enclosed please find a copy of interrogatories which have been served upon us by plaintiff's attorneys. We have determined that they are the exact same interrogatories which were served upon us in the Peterson matter.

We suggest that we either (1) duplicate the answers from the Peterson file or (2) ask plaintiff's attorneys to accept Union Carbide's answers to interrogatories in the Peterson matter in lieu of having to answer the Bernadino interrogatories. Please advise.

Also find copies of plaintiff's answers to our interrogatories. Attached to these answers are plaintiff's decedent's medical records. We are having our nurse/paralegal review the records to compile a summary and advise if the records are complete. Enclosed also find another attachment to the interrogatories, a transcript of plaintiff's decedent's testimony in connection with the worker's compensation action.

Plaintiff's answers to interrogatories indicate that at the time of his death plaintiff's decedent was 62 years old and had been married to Joan Bernadino for approximately 38 years. They had four children of that marriage, none of whom were dependent upon him at the time of death. He worked at the Amboy Terminating Company from January 20, 1960 to June, 1987 when the facility closed. Prior to that he worked at Koppers Chemical Co., Kearny, New Jersey, from 1949 to 1960 as an office manager. He admits to having been exposed to a chemical known as "Nafteline," which is found in mothballs, while at Koppers.

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The answers state that at OTD/ATC, plaintiff's decedent was exposed to polyethelenes and PVC. He also states that he was exposed to vinyl chloride monomers, polyethelene, polyurethane, polystyrene, isopropilidene, bisphenol resins and phenols, equipment lubricants and fuels and fumes from heat sealers in the vinyl resin bag packing bay. He states that all of these materials carried the Union Carbide logo.

Interestingly, plaintiff's decedent had a "white collar" job at ATC. He was office manager from 1960 to 1971, comptroller from 1971 to 1981 and terminal manager from 1981 to 1987. His exposure is not alleged to be as direct as, for instance, John Peterson's. He was responsible for clerical functions, inventory control, payroll, accounting, production scheduling, contract negotiations, and "making sure the place was clean and that there were no broken bags." As terminal manager, he had to run the entire terminal in addition to the previously mentioned jobs. He was responsible for the employees, the packaging, inventory control, and union negotiations. During strikes he had to help with the actual packaging and working process.

The answers described the OTD/ATC building as consisting of about 268,000 square feet, approximately 18,000 square feet of which was his office. There were 3 storage rooms separate from each other consisting of approximately 52,000 square feet each or a total of 156,000 square feet which was allocated for storage and the remainder was allocated for packaging. The packaging room was first with a door leading into the storage area and a door from the storage area into his office. His exposure occurred because he "worked throughout the entire plant." While answers to interrogatories state that plaintiff cannot give exact concentrations of PVC powder and other chemicals to which plaintiff's decedent was exposed, it is noted that the "concentrations of such chemicals were heavy, because of the intensity and density of the PVC product and its monomer which made it difficult to breath."

The answers indicate that masks were not given until approximately 7 years before the plant stopped working with PVC. There were no blowers or dust collectors during packaging.

The plaintiff's decedent first noticed a swelling

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on his left collar bone a few months before he left ATC in June of 1987. He saw Dr. DiStaso who admitted him to Clara Maas Hospital for a biopsy on June 28, 1987. The biopsy proved to be positive for non-differentiated carcinoma. He was later determined to have a mass between the right kidney and the adrenal gland consistent with renal cell carcinoma. There was bone metastasis.

He was readmitted to Clara Maas from May 5, 1988 to May 11, 1989 but we do not yet have these records.

He was admitted for the final time on July 1, 1988 and expired on July 8, 1988. He was admitted with pain and shortness of breath and was found to be suffering from carcinoma of the lung with dehydration and intractable pain. Hospital records indicated that plaintiff's decedent was a heavy cigarette smoker on the order of 2 packs per day.

As stated, the testimony given by plaintiff's decedent in connection with the worker's compensation action is enclosed. Plaintiff's decedent was questioned on May 31, 1988 a little over a month before his death.

A review of the testimony reveals that much of the factual information supplied by the plaintiff's answers to interrogatories comes from the decedent's testimony. In addition to the information set forth in the answers to interrogatories concerning the conditions of exposure, plaintiff's decedent testified that there were problems with leaky bags and bags that were not sealed properly. Because PVC is very fine, it was plaintiff's decedent's testimony that a whole bag could open from a pinhole. Plaintiff's decedent stated that he did not wear a mask but masks were available.

Plaintiff's decedent described in detail his medical history beginning in June, 1987 when the lump on his collar bone was discovered. He said that he was admitted to Clara Maas Hospital where they took X-rays and did a biopsy. He treated with Dr. DiStaso and Dr. Orsinni. Dr. Orsinni began with chemotherapy a few days after he was discharged from the hospital. He did that for awhile but it was not "doing anything" and plaintiff was sent to Dr. Devaraux who started him on radiation. As of the time of the deposition he described his treatment

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as "in limbo."

Plaintiff's decedent admitted to smoking about a pack and a half a day of Parliament cigarettes for the past 40 years and was still smoking as of the time of his deposition. He also stated that he has "a couple of drinks a day," hard liquor.

As of the time of the deposition, he could not walk without a walker because his legs hurt. He described his general health as "lousy." He stated that he felt dizzy and got vertigo and pains in his lower back.

On cross-examination, plaintiff's decedent stated that ATC stopped using polyvinyl choloride in the late 1970's - early part of 1980.

We shall continue to keep you advised of all developments.

Very truly yours,


MICHAEL K. TUZZIO

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enclosures

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