

From:
M. J. Friar

E3-254
Ext. 5019

August 28, 1985

L. A. Crisorio

R. N. Wheeler, Jr.

Re: Herman Dendinger

Please review. Note he has
colon cancer.

VTY,

MJF

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Re: Herman A. Dendinger, et al. v. Chrysler
Plastic Products Corporation, et al.;
United States District Court No. C84-7684

Gentlemen and Miss Friar:

This letter will report on developments at the video-taped trial testimony proceeding of Herman A. Dendinger, plaintiff in the captioned case.

Mr. Dendinger is 49 years old, married since 1962, with four children, two boys and two girls, ages 22, 21, 16 and 12, respectively. Dendinger is approximately 6' tall, appears to weigh no more than 150 lbs., and has a full facial beard, but looks plainly tired and emaciated. His past employment pattern suggests a fairly enthusiastic and energetic person, struck low by the onset of the cancer.

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His pre-Chrysler Plastic Products Corporation employment is fairly insignificant. He worked for one year making candy, and was for two years self-employed as an interior and exterior house painter. He then worked as a bartender and later managed a local tavern until beginning his employment with Chrysler Plastic Products Corporation on May 27, 1968. As expected, plaintiffs' counsel solicited testimony that he had not been exposed to any toxic chemicals at any employment prior to that with Chrysler.

The duration of Mr. Dendinger's employment at Chrysler was through April, 1980. During that time, he spent his first year as a strike-off man, during which time his responsibilities were to take ink samples to match them against standard colors for production modes. For the next 12 years, he served as a color matcher, who was responsible for the production color of the products as they came off the forming machines.

There is considerable controversy suggested by the testimony as to whether or not Mr. Dendinger was continuously exposed to polyvinyl chloride, given his job responsibilities. In the direct examination, plaintiffs' counsel marked photographs similar to those identified in the Wallace testimony, and had Dendinger testify as to the frequency of his visits to the mezzanine area to take ink samples. Dendinger indicated that it was impossible to avoid exposure to PVC residue, since it was all over the place. He contended that they walked in it, touched it, breathed it, and used air hoses to blow it off themselves after leaving the ink room. At times, he indicated that the amount of PVC dust on the floor could be as much as four inches, and that at times it was necessary to scrape the PVC off the ink lids to take samples. He suggested that he was often present when other employees would dump PVC into the clear tanks to form the resin, and that visibility was so bad that it looked like "one big cloud of dust."

He related that he was familiar that there was an OSHA inspection of the plant, and learned that immediately after the inspection, prior to the installation of ventilation devices, that all ink room employees were to wear respirators. Since he

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was not an ink room employee, but worked in the office, he was not issued a respirator. He indicated that he was never warned or told by Chrysler that he should wear the mask or a ventilator because of potential harmful consequences of exposure to the PVC. Similarly, he testified that he had received no warnings of the dangers involved in over-exposure, nor provided any information on how to minimize exposure.

He further testified that he was never given any instructions concerning the safe handling of PVC, nor was he ever furnished with any governmental regulations concerning appropriate handling techniques. Although he was aware of the inspections, he was never provided with any monitoring results by Chrysler.

Unfortunately, from our statute of limitations defense, Dendinger testified that he first learned of his cancer on the day before Easter, 1984. He indicated that he first experienced pain in the right shoulder, which he attributed to bursitis. On surgery performed May 2, 1984, he learned that he had cancer of the colon. A Dr. Halderman performed the surgery at Sandusky Memorial Hospital, and removed the colon including the tumor. At the time of the surgery, it became apparent that the tumor had penetrated the bowel wall, and had metastasized to both the liver and the lymph nodes.

Mr. Dendinger consulted with a Dr. Rahan, a Sandusky, Ohio, oncologist, who apparently informed him that the cancer he had was a rapidly acting cancer, and that the only available treatment was chemotherapy. In May, 1984, the prognosis was set at six months.

Since Mr. Dendinger's wife's father and sister had cancer, and had undergone chemotherapy without success, he elected against pursuing that treatment. Conceding that the pain of the chemotherapy was worse than the cancer itself, he simply decided to let nature take its course.

Mr. Dendinger testified that he was an occasional pipe smoker, and smoked cigarettes, albeit quite infrequently, while

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employed at Chrysler. His estimate was that he had smoked only three packs of cigarettes since 1968, and certainly had not smoked at any time within the last ten years. As expected, he plainly indicated that he did not inhale the tobacco products.

After the May, 1984 surgery, he was later admitted for some treatment in the late summer by the oncologist to determine how much further the cancer had metastasized. He was informed that there was no further evidence of cancer, other than in the liver, although approximately two-thirds of that organ had been compromised. After that CAT scan, Dr. Rashan had suggested some experimental treatment at Ann Arbor, Michigan, but Mr. Dendinger declined to pursue it.

We expect to receive a copy of the transcript of the deposition in the near future, and will of course forward it on to you for your files.

Also for your records, I enclose herewith a copy of the memorandum of plaintiffs in opposition to the motions we recently filed. As expected, plaintiffs again argue that it is not their intent to defeat jurisdiction based upon diversity, but that they are entitled to name as proper parties defendant anyone necessarily implicated in the action. If the effect of designating non-diverse defendants is to deprive the federal court of jurisdiction, plaintiffs argue that that is an entirely appropriate result.

In light of the testimony yesterday, plaintiffs' argument in their penultimate paragraph of the memorandum is interesting, since they suggest that if the first amended complaint is stricken, severe prejudice could result in light of potential statute of limitations considerations. I am frankly puzzled by that suggestion, but we will certainly pursue it once we obtain further medical records from Mr. Dendinger. During his testimony, he did, however, indicate that he had not seen a doctor prior to the May, 1984 surgery for at least four years, and it may have been even longer than that.

We are expecting to receive from Chrysler Plastic Products Corporation its voluminous response to plaintiffs'

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request for production of documents identifying suppliers of PVC.
I have received from Martha Friar information regarding sales to
Chrysler, but would appreciate receiving further information from
all other counsel in that regard.

Should you have any questions, please do not hesitate
to contact either Lou Tosi or me.

Very truly yours,


John J. McHugh, III

JJM:rlm
enc.
3861-1

cc: Louis E. Tosi, Esq.
Mr. Prentice Hapgood (Ref: 048 L 72468) (with enc.)
Miss Pamela E. Thornton (with enc.)
Mr. Nelson R. Goodrich (Ref: 875ERB201697H) (with enc.)
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