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November 18, 1999

VIA FACSIMILE

Mr. William B. Baggett, Jr.
BAGGETT, MCCALL & BURGESS
Post Office Drawer 7820
Lake Charles, LA 70606-7820

RE: Daniel J. Ross, et ux
Vs. No. 90-4837
Conoco Inc., et al

Dear Billy:

Pursuant to the case master's recommendations concerning BFG's claims of privilege, the company course of business documents and litigation work product documents which were ordered to be produced by the case master has been forwarded to Alphagraphics for bates numbering. Those documents range from BFG51913a-BFG54902. A copy of those documents are at Alphagraphics and can be picked up by your office at any time.

Additionally, per order of the court, please return the inadvertently produced privileged document bearing bates number BFG35288-35289 so that BFG may properly include it on its privilege log.

Sincerely,



MIRCHANA S. EVERHART

MSE/lcj

Enclosure

cc: Woody Ban
Ted Laszlo
Case Master Johnson

VMC - PVC
Rulemaking

MEMORANDUM

February 14, 1983

TO: Edward M. Faber
FROM: Thomas F. Harrison
SUBJ: Review of Reported OSHA Cases Involving the VCM Standard.

I have reviewed the six cases that you located in the Occupational Safety and Health Cases series; these appear to be the only reported decisions involving interpretation and construction of OSHA's vinyl chloride regulations.

The cases show an evolutionary process veering away from a strict interpretation of the letter of the law to an approach that seems to favor looking at the spirit of the law.

In the first five cases, decided between 1975 and 1977, the Agency and reviewing courts were very much concerned with applying the law and regulations precisely as written. The goal was health protection at all costs, and industry would be afforded no discretion in complying with the literal requirements of the OSHA regulations. Indeed, the one time the Agency attempted to depart from the literal approach (Western Electric Inc., 4 OSHC 2021), it was summarily reversed by the U.S. Court of Appeals for the Second Circuit (Marshall v. Western Electric, Inc., 4 OSHC 2054).

These matters stood until Hooker Chemical Company was decided in 1981. In that case an OSHA inspector issued a citation to Hooker for failing to provide special training to employees working in areas of a resin plant where vinyl chloride concentrations did not exceed the "action level" of 0.5 ppm averaged over an eight hour work day. An Administrative Law Judge vacated the citation on the ground that the vinyl chloride level at the worksite was too low to require application of the training standard. He reached this result despite the fact that the regulation specifically requires that special training be provided for each employee engaged in vinyl chloride operations and that the training requirement is not conditioned upon any particular exposure level.

The OSHA Review Commission ordered a review of the decision sua sponte. However the Secretary of Labor filed a letter with the Commission urging that the ALJ's decision be affirmed. The Secretary (a Reagan appointee) announced a new OSHA enforcement policy and said that the training requirements

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were not applicable because Hooker's "operations simply are not processes which could result in hazardous exposure to vinyl chloride by the nature of the operations themselves." (See 9 OSHC 1580.) Based on the new policy, the Review Commission affirmed the ALJ's decision by a 2-1 vote.

Under this Administration's policy, then, it appears that OSHA will be more concerned with whether an employer's action causes or results in "hazardous exposure to vinyl chloride" rather than whether it is a literal violation of the regulation. Two cautionary points must be made, however: this new policy has not yet been tested in court, and any policy decision can be changed by a future administration of a different political persuasion.

A handwritten signature in cursive script, reading "Thomas F. Harrison".

Thomas F. Harrison

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