SEDGWICK, DETERT, MORAN & ARNOLD
NICHOLAS W. HELDT
111 Pine Street
San Francisco, California 94111
Telephone: (415) 982-0303

Attorneys for Special Party in Interest,
THE DOW CHEMICAL COMPANY

MARIE MATTROCCE

FILED
IN OPEN COURT
APR 5 1983
~~GARY M. OLSEN~~, Clerk
BY Claire Kendall Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

DEPARTMENT NUMBER NINE

Coordination Proceeding Special Title (Rule 1550(b)) ASBESTOS INSURANCE COVERAGE CASES	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 1072 DECLARATION OF JAMES H. HANES

I, JAMES H. HANES, declare:

I am Vice President of Dow Chemical U.S.A., an operating unit of The Dow Chemical Company, and Associate General Counsel of The Dow Chemical Company. I am authorized to make this declaration on behalf of The Dow Chemcial Company.

The Dow Chemical Company ("Dow") manufactures a broad variety of industrial, commercial and consumer products. The plaintiffs herein (i.e., Johns-Manville Corporation, Fibreboard Corporation, Armstrong World Industries, and GAF Corporation) compete with Dow in a number of product areas.

///

LAW OFFICES
SEDGWICK, DETERT,
MORAN & ARNOLD
A PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS
111 PINE STREET
ELEVENTH FLOOR
SAN FRANCISCO
(415) 982-0303

During the last twenty-seven years, Dow has been insured by Fireman's Fund Insurance Company (1956 to 1976) and by Aetna Casualty and Surety Company (1976 to present). Many claims have been brought against Dow during that period which allege damages arising out of the use of, or exposure to, Dow products. A large number of such claims allege injuries due to sustained exposure to one or more Dow products; that is, cumulative trauma injuries.

In order to assist its insurers in their investigation of claims and preparation for litigation, Dow provided Fireman's Fund and Aetna with an enormous amount of information, including: product design and composition specifications; laboratory studies and data relating to the effects, hazards, and toxicity of the product or products in question; historical data; market information; and whatever other information was required by the insurer in order to accurately evaluate and fully defend each individual claim.

The information provided by Dow to its insurers in connection with claims brought against Dow was, and is, considered highly sensitive and confidential. It is the type of information that is considered confidential within Dow, and is shared only among those who have a bona fide need for the information. Dow would not willingly provide such information to any person or entity outside Dow unless it was assured that the information would remain strictly confidential. The confidential information provided to Fireman's Fund and Aetna was subject to the clear and

///

LAW OFFICES
SEDGWICK, DETERT,
MORAN & ARNOLD
A PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS
111 PINE STREET
ELEVENTH FLOOR
SAN FRANCISCO
(415) 982-0303

explicit understanding that such information would be held in confidence.

The files maintained by its insurers are trade secrets of Dow. In addition to specific details or bits of information contained in any individual file which constitute trade secrets, the overall picture represented by files, which include names of plaintiffs, their counsel, the products which are alleged to be injurious, the types of injuries alleged, theories of recovery, and so forth, constitutes a compilation of adverse and highly sensitive information concerning Dow, and that such a compilation is itself a trade secret of The Dow Chemical Company.

In many claims, Dow obtains and transmits to its insurers the medical records pertaining to the claimant. Often these records are obtained through the authorization of the claimant. Dow feels an obligation to the claimant to take reasonable steps to avoid broad dissemination of this personal information.

Dow is concerned that should a compilation of information contained in the files of its insurers be made and distributed, even if limited only to the parties to this action, Dow's interests will be irreparably prejudiced in that:

1. Its competitors will obtain a competitive advantage;

2. Its ability to effectively negotiate with insurers for liability insurance will be greatly impaired;

3. It will make the negotiation and settlement of pending and future liability claims more difficult, and possibly

LAW OFFICES
SEDGWICK, DETERT,
MORAN & ARNOLD
A PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS
111 PINE STREET
ELEVENTH FLOOR
SAN FRANCISCO
(415) 982-0303

more expensive, through publication of past and present reserves and information concerning individual claims evaluations, and

4. Litigation against Dow will be stimulated by dissemination of information regarding past and present claims brought against Dow.

If this Court orders disclosure of underwriting and claims files pertaining to The Dow Chemical Company it will forever affect Dow's dealings with its insurers. No sensitive business information will be provided to Dow's insurers even though that might assist the prompt, fair and efficient handling of claims. Based on my years of experience in handling claims against Dow, the risk of harm to The Dow Chemical Company that may result if a compendium of claims information is ordered produced in this action is so enormous that it may call for re-evaluation of the desirability of carrying insurance at all.

I am charged with the duty to supervise the handling of all claims and litigation against The Dow Chemical Co., and am personally familiar with the coverage position taken by Dow's insurance carriers with respect to claims. Fireman's Fund and Aetna have always consistently adhered to the manifestation theory of coverage on cumulative trauma claims against Dow.

I declare under penalty of perjury that the foregoing is true and correct of my own personal knowledge and if called as a witness I could and would competently testify thereto.

///

///

LAW OFFICES
SEDGWICK, DETERT,
MORAN & ARNOLD
A PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS
111 PINE STREET
ELEVENTH FLOOR
SAN FRANCISCO
(415) 982-0303

Executed this 28th day of March, 1983, at San Francisco, California.

James H. Hanes

James H. Hanes

LAW OFFICES
SEDGWICK, DETERT,
MORAN & ARNOLD
A PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS
ONE BUSH STREET
ELEVENTH FLOOR
SAN FRANCISCO
(415) 781-7900