

PITNEY, HARDIN, KIPP & SZUCH

(MAIL TO)
P.O. BOX 1945
MORRISTOWN, NEW JERSEY 07962-1945

ROBERT L. HOLLINGSHEAD

DIRECT DIAL NUMBER
(201) 966-6017

(DELIVERY TO)
200 CAMPUS DRIVE
FLORHAM PARK, NEW JERSEY 07932-0950
FLORHAM PARK (201) 966-6300
NEW YORK (212) 926-0331
TELEX 642014
FACSIMILE (201) 966-1550

NEWARK OFFICE
33 WASHINGTON STREET
NEWARK, NEW JERSEY 07102
(201) 623-1960

February 16, 1993

Gregory A. Lalim, Esq.
Union Carbide Corporation
Law Department E3-285
39 Old Ridgebury Road
Danbury, CT 06817-0001

Re: Colby v. Union Carbide Corp.

Dear Greg:

Please be advised of the following developments in this matter.

As you know from our previous conversations, there has been very little recent activity in this case, due to our decision to await the plaintiff's expert reports before conducting further discovery. Those reports were recently received by me and I am enclosing them herewith, as follows:

1. The report of Rowland D. Goodman, M.D., dated October 22, 1992, stating his opinion that "there is direct causal relationship between the industrial exposure to identified carcinogens as described in the history above particularly vinylchloride monomers and phenols."

2. The report entitled "Study of Economic Loss" by M. Marcus, Ph.D., dated December, 1992, wherein Dr. Marcus opines that the economic loss due to the death of Mr. Colby is in the amount of \$743,739, in present value.

3. A report by Dr. Burton Z. Davidson, Ph.D., P.E., dated September 4, 1992, wherein Dr. Davidson opines on the toxicity of the materials to which Mr. Colby had been exposed and the measures which Union Carbide should have undertaken to prevent his exposure.

PRIVILEGED AND
"CONFIDENTIAL MATERIAL
SUBJECT TO PROTECTIVE
ORDER"

UCC 075837

Gregory A. Lalim, Esq.
February 16, 1993
Page 2

As you know, Alfred Levinson, Esq., the attorney for the plaintiff herein, has been the attorney in several other cases against Union Carbide arising out of the operation of the OTD/ATC facility in Perth Amboy, New Jersey. Those other cases were brought by (1) Messrs. Maliko, Schaeffer, Wilkerson and Mazanowski in approximately 1978; (2) Mr. Peterson approximately five years ago; and (3) Mrs. Bernadino on behalf of her deceased husband approximately three years ago. In each of those other cases, Dr. Davidson provided expert opinions and, as you will see upon your review of his report, he anticipates at least some of what Union Carbide may say in response to his report in this case, particularly if we again request Nick Wheeler to provide us with an expert report regarding the properties of polyvinylchloride and vinylchloride monomer. However, Mr. Levinson has not used the services of Dr. Goodman or Dr. Marcus before. Both are known experts in New Jersey with quite different reputations. Dr. Goodman is known as a plaintiff's doctor who will find a causal relationship in every case. However, he is a very good witness due to his extensive testifying experience. On the other hand, Dr. Marcus is a very well respected economic loss expert who nearly always testifies for plaintiffs but has been known to appear for defendants as well. Mr. Levinson's choice of Dr. Goodman is something of a surprise, given the fact that in previous cases he has retained experts with a national reputation, in particular Dr. Samuel Epstein. I do know, however, that he and Dr. Epstein had a falling out over Dr. Epstein's fees in the Bernadino case, which issue caused great difficulty in obtaining a reasonable settlement in that matter. Perhaps Mr. Levinson has decided that a local expert, albeit with fewer credentials in this area, will suffice in this case.

As soon as you have had a chance to review these reports, I would appreciate it if you would call me so we can discuss the retention of appropriate experts in response. I believe that we should retain an oncologist, hopefully with a specialty in adenocarcinoma, to counter Dr. Goodman, an engineer/industrial hygienist, to respond to Dr. Davidson and a financial expert to review Dr. Marcus' calculations. Another decision that should be made quickly is whether or not to ask Nick Wheeler to provide a report similar to his reports in the earlier cases, as noted above. Nick's prior reports focused on the various types of PVC resins that are manufactured, the specific type that was shipped to OTD/ATC, and the dispersion rate of entrapped vinylchloride monomer in the PVC that was shipped to OTD/ATC, in order to demonstrate the amount of VCM that the plaintiffs would have been exposed to in their workplace.

Another subject that we should preliminarily discuss is the issue of settlement. At the time of Mrs. Colby's deposition, and several times since, Mr. Levinson has asked me if Union Carbide

PRIVILEGED AND
"CONFIDENTIAL MATERIAL
SUBJECT TO PROTECTIVE
ORDER"

UCC 075838

PITNEY, HARDIN, KIPP & SZUCH

Gregory A. Lalim, Esq.
February 16, 1993
Page 3

will be amenable to a settlement in this case, provided the experts' reports and depositions, if necessary, demonstrate a causal relationship, as has happened in all the prior cases. My response has uniformly been that Union Carbide would always be willing to listen to a reasonable settlement demand, provided that the facts of the case merit consideration of settlement. I anticipate that Mr. Levinson will call again in the near future to ask for Carbide's view of settlement, given these experts' reports, and we should discuss our response to that inquiry.

With regard to factual discovery, it is my intention to notice the depositions of Mr. Colby's primary physicians in order to elicit the true health picture of this heavy smoking, heavy drinking individual, both of which traits seem to have been only casually mentioned by Dr. Goodman. As to the conditions of the OTD/ATC facility, nearly all of that information has been preserved in depositions in the earlier cases. To the extent that it has not been preserved, we would probably have difficulty obtaining helpful information about Mr. Colby's employment at the plant in the 1961 to 1967 period. My recollection is that Mr. Maliko worked in that same time frame and we probably have information in that file that will be helpful now. I will review the earlier files for such information and will provide you with a further report on this issue as soon as I can.

I look forward to your telephone call upon your review of these materials.

Sincerely,

Bob

ROBERT L. HOLLINGSHEAD

RLH:pc
Enclosures

PRIVILEGED AND
"CONFIDENTIAL MATERIAL
SUBJECT TO PROTECTIVE
ORDER"

UCC 075839