

Inter-City Testing & Consulting Corporation

August 26, 1993

Blake Bailey, Esq.
Bailey Negem & Patterson, LLP
440 S. Vine
Tyler, TX 75702

Re: Arthur B. Lee & Madell Lee, et al
vs. Tyler Pipe Industries Inc.

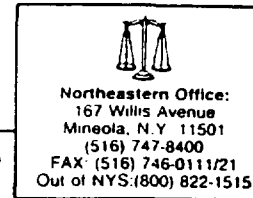
Dear Mr. Bailey:

I have reviewed the various documents submitted with reference to the above-captioned case, including but not limited to the oral depositions of: Bobby Smith, Charles Kuenemann, William R. Palmer, O.W. Wynn, Claude Jones, James Presswood, Robert Keith Wilson M.D., and Ralph G. Smith Ph.D.

The following is a summary of my opinion relating to the liability of Tyler Pipe Company in its relationship and responsibilities for the safety of its workers and the causal relationship between that responsibility and the death of Arthur Lee.

It is well known that the foundry process, using silica flour and other silica products for the manufacture of pipe, exposed workers and anyone else in the environment to minute particles of silica which could foreseeably cause silicosis in humans. The spray mix operation, the use of circulating fans, the lack of local exhaust systems, and the cleaning/blowing-out of molds, contributed to a high concentration of silica dust in the work environment.

Based upon documentation presented by the various individuals deposed, none of the workers were placed on notice of the hazards and dangers of silica exposure while working in the Tyler plant. It is a known fact that, as early as the mid-1940's, dangers of silica exposure were acknowledged and that persons working in a foundry with silica materials were at a high risk of developing silicosis. It was custom and practice in the hazardous chemical industry, as well as foundries, for the



management and supervisors within the foundry to properly protect the workers from continual or intermittent exposure to the hazardous silica dust. This included, but was not limited to, the use of respiratory protection, work garments that would be removed after each shift, and showers prior to leaving the plant. In addition, local exhaust systems would be used for complete control of extraneous and unused silica material that otherwise would be distributed into the open environment, exposing the workers to the silica dust. Safety meetings should have been held with each and every worker, informing them of the hazards and dangers of not protecting themselves and others from exposure to silica particles. That included the use and application of respiratory protection and work clothes that were to be washed for each of the workers on a daily basis. As a reminder to each of the workers, placards and instructions should have been placed in the work areas.

In order to determine the effectiveness of the safety program within the plant and to further protect the workers, industrial hygienists, toxicologists, or safety specialists should have performed air samplings in order to make sure that the silica concentration within the working environment was not at a dangerous level. The industrial hygienist or safety specialist working for or consulting to the company should have made sure that all of the safety regulations and rules were enforced.

In my opinion, based upon all of the materials reviewed, that Tyler Pipe Industries Inc. was grossly negligent in their responsibilities to their workers, including Arthur Lee. They failed in each and every instance to provide protection, whether it be within the plant design or protection of the individuals themselves. As a result, it was only a matter of time before Arthur Lee developed silicosis and eventually died of that disease. Tyler Pipe Industries exhibited a callous disregard for Arthur Lee and other workers by the lack of their procedures, policies and warnings.

Respectfully submitted,
INTER-CITY TESTING & CONSULTING CORPORATION

Jesse H. Bidanset, Ph.D.

Jesse H. Bidanset Ph.D., DABFT
Chief Consulting Toxicologist

JHB:/j