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May 21, 1987

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ORDER"

Re: Memice v. PPG Industries, et al.

Dear Peter:

Please be advised of the following recent developments in this matter.

(1) Deposition of John Ertel, Vice President of Pantasote.

On Friday, May 15, 1987, Barbara Moore attended the deposition of John Ertel, Vice President of Pantasote, which was conducted pursuant to a subpoena served by Mr. Princiotto, counsel for plaintiff.

The deposition commenced at approximately 2:15 p.m. but because we had only finished the witness' direct examination at 4:00 p.m. it was agreed that the deposition would have to be continued to allow for cross-examination and redirect examination. Accordingly, because there were quite a few unanswered questions remaining at the close of Mr. Princiotto's direct examination a complete summary of Mr. Ertel's testimony will be provided at a later date. However, I did want to apprise you of one important aspect of Mr. Ertel's deposition testimony.

Specifically, Mr. Ertel testified that during the period 1956-1960 Pantasote's Passaic facility purchased VCM exclusively from Allied Chemical Corporation. According to

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Mr. Ertel, although he could not provide exact dates, he believed that during the 1960's Pantasote also purchased additional unspecified quantities of VCM from three other companies: Union Carbide Corporation, Monsanto, and Ethyl Corporation. Mr. Ertel also testified that Pantasote basically made "spot" purchases from these suppliers although he was not asked to define this terminology. UCC

During the period 1956-1966, Mr. Ertel held three different positions with Pantasote: Manager of Pantasote's PVC production in Passaic; Works Plant Manager for Passaic; and Vice President for Production for Pantasote's Passaic and West Virginia facilities. However, there was no inquiry by Mr. Princiotto into the basis of his knowledge regarding suppliers in general or regarding Union Carbide specifically. Moreover, Mr. Ertel was unable to produce any records to substantiate this testimony. Accordingly, when his deposition is resumed we intend to inquire into these areas in detail.

Because this is the first time that Union Carbide's name has surfaced as a supplier to Pantasote's Passaic facility we are not certain how this will affect our prospects for summary judgment. Obviously, we will have to await the conclusion of Mr. Ertel's deposition before we are able to fully evaluate the impact of his testimony. However, we do know that Mr. Memice did not begin to work in the Resin Department at Pantasote -- where PVC was manufactured -- until 1966. Thus, if Mr. Ertel's testimony limits Carbide's supply of VCM to a period prior to the decedent's possible exposure, summary judgment may still be viable.

Mr. Ertel's deposition is currently scheduled to be resumed on June 4, 1987 at 10:00 a.m. The deposition will be conducted at Pantasote's offices in Passaic as an accommodation to the witness. We anticipate receiving the transcript of the first portion of his deposition before then and I will immediately provide you with a copy for your review.

(2) Case Management Conference with Judge Mandak on May 19.

On May 19 I attended the second case management conference before Assignment Judge Mandak. When he was advised that the deposition of Mr. Ertel had only been scheduled by the plaintiff's attorney for May 15 (the last day permissible for taking the deposition, per the last case management order), he blew up at plaintiff's counsel and advised him that the failure to schedule the deposition earlier was "total negligence"

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and made the last conference a "total waste of time". When his Honor calmed down, the following schedule was established:

1. The focus of the early discovery efforts remains to remove the defendants which did not supply VCM to the Pantasote plant in Passaic. Therefore, the Judge again refused to permit any discovery directed to the supply of PVC. Even Mr. Lustgarten (Shintech's attorney) stated that he would withdraw his proposed Interrogatories to co-defendants on the supply of PVC if the plaintiff's counsel would stipulate that he is not pursuing the PVC claim. While plaintiff's counsel did not so stipulate, it appears to me that the case will be limited to VCM.

2. After the completion of Mr. Ertel's deposition, those defendants which still feel that they have a viable motion for summary judgment must file no later than July 15. The Judge will then assign a return date for all motions before the end of the summer. 7/15

3. Plaintiff's counsel has permission to take the depositions of other Pantasote personnel on the issue of supply of VCM, but the motions for summary judgment will not be delayed due to his failure to complete those depositions.

4. Claire Barile, Esq. has been named as lead defense counsel for the purpose of determining what, if any, discovery the defendants will pursue against Pantasote after the motions for summary judgment have weeded out defendants which do not belong in the case. It is anticipated that the defense attorneys will meet shortly after the deposition of Mr. Ertel to determine our future course of action.

5. The next case management conference is scheduled for September 15, 1987 at 10 a.m. 9/15

I will advise you further as developments warrant.

Sincerely,



ROBERT L. HOLLINGSHEAD

RJH:mtw

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Called Pitney - - - - ,
spoke w Bob Hallingshead.
He will send copies
which were missing.

A.M.

6/2/87

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