



7 MORAN / CRITES

2030 Dow Center
May 8, 1997

The Dow Chemical Company
Midland, Michigan 48674

Ken Fitzpatrick
Legal Department
Freeport



Frias v. Shell Oil Company et al. (including Arco/Lyondell)

You asked me about this case which resulted in summary judgment on behalf of Arco/Lyondell, the decedent's employer. It was alleged that decedent's aplastic anemia was caused by benzene exposure while he was employed by Arco. I had a brief conversation with Rick Faulk about the case. He sent me their motion papers excluding exhibits. We can probably get the exhibits from the court and we might want to do that. The court did not issue an opinion.

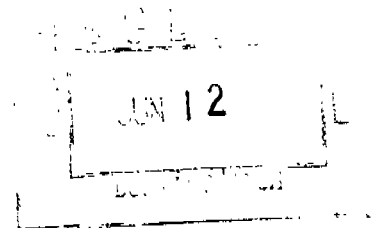
Rick basically said that the court ruled in their favor because the company had good programs in place to protect workers from benzene exposure. The fact that these programs existed showed, as a matter of law, that the plaintiffs would be unable to meet the intentional conduct or conscious indifference standards to overcome the workers' compensation bar under Texas law to prevail at trial. Rick said that they were surprised to win.

Dow could make pretty much the same arguments in the appropriate case. Note that the decedent's exposure began in 1974. This was around the time when Dow and others began to institute strict controls for benzene exposure.

Let me know if you want me to do any follow up. You will probably want to pass this along to Tom Moran. It was nice to have a chance to see you last week. Hope we can get together again sometime soon.

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