



43307
LIT
Warren - etc
THE DOW CHEMICAL COMPANY *Core*

MIDLAND, MICHIGAN 48674

2030 WILLARD H. DOW CENTER
December 21, 1989

John R. Downey, Esq.
Union Carbide Chemicals &
Plastics Company, Inc.
39 Old Ridgebury Road
Danbury, Connecticut 06817-0001

Judith Elledge, Esq.
Conoco, Inc.
600 North Dairy Ashford
P. O. Box 2197
Houston, Texas 77252-2197

Re: WARREN, JOHN H. v. DOW, et al.
Dow File No. 8800005

Dear Mr. Downey and Ms. Elledge:

Plaintiffs have filed an action in the U. S. District Court, District of Massachusetts. We all have several points in common. The vague, ill-defined liability claim against us is a generic one and the defense will likely be similarly generic. All of us should, by now, be equally annoyed by overly vague, non-specific, meritless litigation which burdens the court, the taxpayers and the shareholders in our publicly-owned client companies.

At the present time, I see no conflict of any consequence to our agreeing to share counsel in this case until a reason not to share develops. In the interest of efficiency, we have previously shared counsel in similar litigation. Because of the nature of this case and the obvious efficiencies of doing so, I invite you to share counsel again.

As we discussed in our several telephone conversations, the counsel selected by the group is Lane McGovern, Ropes & Gray, One International Place, Boston MA 02210-2624. Based upon my conversation with others in this group, I submit this proposal for our mutual agreement to share counsel in Warren:

1. Once you are served, each of you should contact Lane McGovern as soon as possible to advise whether your company is joining in the shared use of counsel in this case. If you are opting out of sharing this firm's services, please let our shared counsel know who your lawyer will be so there can be coordination of any necessary motions and discovery with your counsel, since joint motions and discovery save costs to all. I will volunteer to act as our in-house counsel group's coordinator. The coordinator will have only ministerial responsibility easing the communication burden on our trial counsel.
2. The sharing counsel will be on an equal-share basis until there is some reason to use another formula. Work of sole benefit or interest to a single company will, of course, be billed to that company's separate account.

PRIVILEGED AND
"CONFIDENTIAL MATERIAL
SUBJECT TO PROTECTIVE
ORDER"

DEC 27 1989

UCC 082368

John R. Downey, Esq., et al.
Page 2
December 21, 1989

3. We will give prior notice to one another of any intentions to offer settlement or withdraw from our sharing of counsel. Any documents put in any repository created by the law firm during the pendency of your involvement in the sharing group will be accessible to you.
4. We will share necessary expert fees and confer with one another for getting unanimity regarding experts, tactics and other matters.
5. We will avoid bedeviling retained counsel with duplicative inquiries and calls and ask for regular written updates to be issued to each of us for that purpose. We will each keep our own insurance carriers supplied with such information and copies as they wish.
6. No one is waiving any rights to cross-act, etc. by this sharing of counsel. Any necessary preservation of rights of cross-claims agreement to deal with prospective contribution issues between us can be worked out prior to trial.
7. If a conflict between us arises which we cannot resolve among ourselves, anyone uncomfortable with staying with the shared counsel can then bail out and hire a different firm; and those still comfortable with the sharing format can continue on with the group's law firms which will not be recused in this case or in any subsequent or other litigation by virtue of their representing our group in this case.
8. Once our counsel sharing group is fully formed and its members identified, I will report to our full group the plan for an approach to this case, the fee structure, and identify any partner or associates who would be assisting with this litigation.
9. The public interest of having publicly-owned corporations operating cost efficiently and the avoidance of cluttering the already overloaded U. S. District Court with duplicative efforts in response to such lawsuits all weigh heavily in favor of a joint sharing of counsel in this case.

Please feel free to call me at (517) 636-9936 if you wish to discuss this matter further.

Very truly yours,



Lawrence A. Lobby
Legal Department

LAL:cjs

**PRIVILEGED AND
"CONFIDENTIAL MATERIAL
SUBJECT TO PROTECTIVE
ORDER"**

UCC 082369