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J-M 83

March 22, 1979

[redacted] DO NOT COPY

Mr. Rodger L. Wilson
Johns-Manville Corporation
Ken Caryl Ranch
Denver, Colorado

RE: Ernest Davis v. J-M
Our File: C-7-268

Dear Rodger:

Enclosed are copies of three cases. Canter v. Koehring, 283 So.2d 716 (1973); Hadrick v. Diaz, 302 So.2d 345 (La. App. 1974); Coco v. Winston, 330 So.2d 649 (La. App. 1975). These cases basically outline the law of executive officer liability and the question of who is an executive officer under the standard general liability policy.

I also enclose partial copy of an opinion letter which summarizes these cases.

As to preparing Mr. Cuje for deposition, I suggest he review his past employment history with Johns-Manville and be ready to discuss same. Dates of employment, job titles and specific plant locations will be important. Most important will be the area of responsibility that he had and who that responsibility was delegated to. As reference, Mr. Davis was employed at J-M from 1950 through 1970.

I believe general questioning will include the areas of plant safety, plant meetings, safety equipment provided to employees. His knowledge of this information will be especially important and whether or not he had any responsibility for the formulation of safety and/or its implementation. I am sure you remember the areas gone into in Messrs. Hite's and Volweiler's depositions.

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Since the dust count samples will be produced, some questioning may be gone into as to what they mean and what they were used for. He may also be asked to interpret same.

Of particular importance will be his background as to his amenability for service under the Louisiana Long Arm Statute for this action. Mr. Cuje probably had most contact with the Transite Pipe Division and in reviewing Mr. Davis' records it seems he started in the Transite Pipe section in May of 1962. This was a final transfer, however, I note he had temporary employment in Transite Pipe in November of 1956, January of 1956, March of 1954 and August of 1953. His termination date was April 13, 1970.

Enclosed also is a copy of the Motion to Dismiss based on insufficiency of service of process. This motion basically follows the Black Letter Law as layed out in the International Shoe case. It will be important to emphasize to Mr. Cuje, as well as all the other individuals, that they were not physically present and/or had no authority or control over safety at the Marrero plant.

In reviewing my notes of the prior depositions, plaintiff's attorney seemed to concentrate on respirator use, directions for use of respirators and the types of respirators used in the plants. They will also question concerning warnings which were to be displayed in the plants and what was company policy as to informing employees of the medical condition. Remember it has been established that J-M had the policy of not allowing the doctor to speak to the individual party in 1965 about his condition but that a report was sent to J-M and that the condition would be discussed with the employee, at J-M's discretion. After 1965, the doctor was allowed to communicate his findings on x-rays, etc. directly with the employee. I believe the plaintiff is trying to develop the theory that J-M hid information from its employees.

I also enclose copy of interrogatories and answers to same Mr. Cuje provided. In reading same, I do not believe there is much exposure in this case on him since he seems to have nothing to do with production and safety during his entire career at J-M.

With kind regards, I am

Very truly yours,

Thomas M. Nosewicz

TMN/cts
Enclosures

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