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(Privileged Communication Between Counsel)

April 1, 1969

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Warning Labels

Further to my letter to you of March 3, 1969 and in the absence of the recommended survey of legal advice from foreign counsel, enquiries in this country have failed to disclose any survey of foreign laws on the subjects of hazardous products, product liability and the legal effect of caution labels.

Both the French and the Belgian Civil Codes contain identical provisions under identical article numbers which are believed to be the "Code" bases of liability which courts may apply:

"Art. 1382: Every act of man which causes injury to another obligates the one by whose fault it occurred to give redress.

"Art. 1383: Everyone is responsible for the injury he has caused not only by his act, but also by his neglect or imprudence.

"Art. 1384: A person is responsible not only for the injury which he causes by his own act, but also for that which is caused by the act of persons for whom he is responsible, or things which he has in his care."

While these provisions cannot be considered as the only ones applicable, they are widely used. It is reasonable to assume that comparable provisions exist in the "codes" of other nations throughout the world.

On June 27, 1967, The Council of the European Economic Community issued a Directive under Art. 100 of The Rome Treaty "On the Approximation of Legislative, Regulatory, and Administrative Provisions on the Classification, Labeling, and Packaging of Hazardous Substances". Under Art. 2 of the Directive, "substances" are defined to include "chemical elements and compounds thereof as found in a natural state or as produced industrially",- and are "hazardous" when "toxic", which is defined to be when "- - - the inhalation, ingestion, or cutaneous absorption of which can result in substantial acute or chronic injury to health, or death" and when "noxious", which is defined to be when "- - - the inhalation,

ingestion, or cutaneous absorption of which can result in limited injury to health", among other things. A list of "hazardous substances" was appended to the Directive,- and while "asbestos" (or diatomaceious earth, for that matter) may or may not be included, it is not clear that inclusion specifically in the list is a necessary requirement. Of course, the Council may enlarge the list at any time. Articles 5, 6 and 7 of the Directive relate to packaging and labeling requirements and Annexes II, III and IV to the Directive specify symbols and labels for each classification of hazardous products, types of risks presented and safety instructions.

The "Member States" must conform their national laws to the Directive by January 1, 1970. The Member States are France, Belgium, Holland, Luxembourg, Italy and Western Germany. While "Associated Countries and Territories" do not seem to be required expressly to "harmonize" their laws, Art. 132 of The Rome Treaty has reciprocal provisions requiring "- - - the same system - - -" and "- - - the same treatment - - -" in trade between Member States and Associated Countries and Territories. As the 1967 Directive discussed above deals with differences in the laws and regulations of the Member States regarding hazardous substances as "- - - obstacles to trade - - -" and the 1963 Yaounde Convention between the E.E.C. and 18 African and Malagasy States does state as an objective the complete elimination of "- - - hindrances to trade - - -", it is not unlikely that Associated Countries and Territories will require compliance with the Directive. Additional countries and territories have been added, so that many now have an "associated" status,- and they are in several areas of the world.

Thus, it would seem that legislative bases exist now and may be applied in the discretion of local courts,- and that supra-national directives are requiring wide-spread legislative and regulatory action in the general legal areas concerned. It is logical to assume that awakening awareness of the alleged problem will be the key to further judicial, legislative and regulatory action in the specific areas.

It is recommended again that legal counsel abroad be consulted. I would doubt the cost would be prohibitive.

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