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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI, OHIO

FILED
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KENNETH J. MURPHY, Clerk
CINCINNATI, OHIO

THE DOW CHEMICAL COMPANY, et al., Plaintiffs, v. ACME WRECKING CO., INC., et al., Defendants.	Civil Action Nos. C-1-97-0307 and C-1-97-0308 (Consolidated Actions) Judge Weber
THE DOW CHEMICAL COMPANY, et al., Plaintiffs, v. SUN OIL COMPANY d/b/a SUNOCO OIL CORP., et al., Defendants.	

STATUS REPORT OF PLAINTIFFS

This report responds to the May 31, 2001 Order of the Court requesting that Plaintiffs inform the Court of the status of this matter. After addressing the status of settlement discussions with those defendants that have not yet reached settlement with Plaintiffs, the United States, and other members of the Work Group conducting the final remedy at the Skinner Site (the "Work Group"), this report addresses related developments relevant to the management of the remainder of this case that have occurred subsequent to the filing of Plaintiffs' last status report on May 21, 2001.

Status of Settlement Discussions with Non-Settlors

As indicated in Plaintiffs' May 21 Status Report, only eight parties have failed to settle the claims of Plaintiffs in this action and of the United States for response costs it has incurred and will incur at the Skinner Site. Settlement discussions among these parties, the Work Group (which includes four of the six Plaintiffs),[1] and the United States stand as follows:

(1) Settlements in principle have been reached with The David Hirschberg Steel Company and Sealy, Inc. It is Plaintiffs' understanding that the United States now intends to lodge a consent decree with the Court near the end of August 2001 that will embody these settlements and resolve the claims of the Work Group (including the Plaintiffs) against these parties and any other parties with whom settlements are reached by that time.

(2) Productive settlement discussions continue with John F. Bushelman Construction, Inc. and Acme Wrecking Company. Both of these companies have submitted "ability-to-pay" arguments – and financial information in support of those arguments – to the United States. The United States is reviewing that information and currently expects to be able to determine (along with the Work Group) whether settlement is realistic in the next several weeks.

(3) After a period of time in which Dick Clarke and related entities showed little interest in settlement, they recently expressed an interest in settlement discussions. The United States and the Work Group believe that they should be able to determine in the next several weeks whether settlement of their claims against these parties is likely.

[1] As noted below, two of the plaintiffs – PPG Industries, Inc. and Morton International, Inc. – will be moving shortly for dismissal of their claims against all defendants and for withdrawal from this case.

(4) Settlement discussions with Aeronca, John J. Whitton Trucking Company, and Marty Clarke and related entities proved fruitless. Consequently, on June 28, 2001, the Untied States filed a complaint against Aeronca, Whitton Trucking, Clarke Container, Inc. and Clarke Incinerator, Inc. (S.D. Ohio, CA No. C-1-01-439). (That case was originally assigned to Judge Beckwith. However, because the U.S. suit is closely related to that of Plaintiffs, Plaintiffs believe that the action of the U.S. should be assigned and, based on discussions with the Clerk of the Court, expect it to be assigned to this Court.) According to counsel for the United States, all these defendants will be served with the U.S. complaint by mail on or around July 6, 2001, and will have 60 days to answer the complaint (i.e., by early September). During the intervening period, the United States and members of the Work Group intend to engage in intensive settlement discussions with these parties to determine whether settlement can be achieved now that suit has been filed and "ability-to-pay" arguments raised for the first time by Aeronca and the Clarke entities on the eve of the filing of suit.

Motion for Dismissal of Certain Defendants

On or about July 5, 2001, Plaintiffs will file a motion for dismissal with prejudice of their claims against certain defendants. Plaintiffs PPG Industries, Inc. and Morton International, Inc. will move for dismissal of their claims in these consolidated actions against all defendants and for withdrawal from these actions. The other four Plaintiffs – The Dow Chemical Company, Ford Motor Company, GE Aircraft Engines, and Velsicol Chemical Corporation – will move for dismissal of their claims against certain settlors that will be identified in their motion.

Future Case Management of this Action

Because the actions of Plaintiffs and the United States raise parallel claims that involve the same defendants and the same facts, Plaintiffs believe that the case recently filed by the United States against Aeronca, John J. Whitton Trucking Company, Clarke Container, Inc., and Clarke Incinerators, Inc. should be consolidated with this action. In addition, Plaintiffs

respectfully suggest that the stay in this action be continued at least until the end of August for the following reasons. First, because other members of the Work Group are defendants who wish to pursue their own contribution cases against nonsettlors, the parties in this action will need to be "realigned" before those claims can be pursued. Second, because the United States and Plaintiffs remain in active settlement discussions with Acme Wrecking, John F. Bushelman Construction, and Dick Clarke and related entities, it is not yet clear which additional remaining nonsettlors will be sued by the United States. For reasons of judicial economy and the straightforward management of these related cases, it would appear sensible to allow settlement discussions to proceed for a limited period of time with the aforementioned parties (as well as with the three defendants in the new U.S. suit who are only now advancing "ability-to-pay" arguments) so that Work Group members and the United States can determine which of these parties they need to pursue in litigation and which current defendants in both suits will need to answer the complaints and engage in discovery. In that manner, all remaining claims can proceed simultaneously.

Accordingly, Plaintiffs respectfully suggest that it would be appropriate to:

(1) consolidate the actions of the Plaintiffs and the U.S. before this Court;

(2) extend the stay in this action until August 30, 2001; and

(3) order the Plaintiffs, other members of the Work Group who wish to proceed against nonsettlors, and the United States to further submit case management proposals for these related cases by August 30, 2001.

Respectfully submitted,

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