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November 17, 2004

John W. "Don" Barrett
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Reply to the Lexington Office

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Via telecopier 202-383-5414
and email: jbeisner@omm.com
Original (with enclosures)
Via Federal Express

re: Welding Fumes litigation

Dear John:

Thank you for your letter of November 11, 2004, wherein you gave us your suggestions as to how the second and third MDL trial plaintiffs should be selected. Although we believe that we should have the prerogative of managing the flow of our own cases, we have given serious consideration to your suggestions, and we think that our two trial selections meet your criteria.

None of the specific persons you suggested is willing to give up his state court venue and go to Lincoln's backyard to try his case, but we have two volunteers who better cover the spectrum of issues, anyway.

We agree with Judge O'Malley (and with you) that the trial plaintiffs should be representative of different groups of clients. Charles Ruth has a strong manganism case, based on his medicals, but he perhaps has a weaker failure to warn case than would a person who welded in earlier years.

In order to contrast with the Ruth type of case, we propose as our plaintiff for the second MDL trial Mr. Dewey Morgan. Background materials on Mr. Morgan are enclosed. Mr. Morgan does not have as strong a medical case for manganism as does Mr. Ruth, but Mr. Morgan is considerably older, and welded earlier, which means that the failure to warn part of his case may perhaps be stronger than Mr. Ruth's. Mr. Morgan's type of case is more prevalent among our client base than Charles Ruth's.

We were interested in your comments about wishing to try a case involving "subclinical" symptoms. We agree that the "subclinical" / neuropsychological case should be tested in Judge O'Malley's court. However, even if the five persons you suggested were

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willing to go to Cleveland, all five of these people have clinical signs of parkinsonism, and thus would be poor representatives of the "subclinical" case we want to test.

We believe that the only way to test a "subclinical"/neuropsychological case is to use a plaintiff claiming those damages but without the standard clinical symptoms of parkinsonism. We have been retained by such a person, a Mr. Darwin Peabody, and he is our choice for the third MDL trial. As you can see from his enclosed medicals, he has no clinical symptoms of parkinsonism, but his doctors say that he does have "subclinical"/neuropsychological deficits caused from manganese in welding fumes.

In our view, these three plaintiffs – Ruth, Morgan and Peabody– give the MDL court the opportunity to test the entire range of cases which may be brought to trial around the country.

Best personal regards.

Sincerely,

A handwritten signature in black ink that reads "Don Barrett". The signature is written in a cursive, slightly slanted style.

Don Barrett

DB:ld

cc: David Cohen, Esq.
Dick Scruggs, Esq.
Plaintiffs' Executive Committee