

MEMORANDUM

November 24, 1965

To: The Commission
From: Office of the General Counsel
Re: Securities and Exchange Commission v. Texas Gulf Sulphur Co.

DPH

765
why should it they OK
we disagree + thus
avoid the possibility
of the criticism
mentioned in the
last sentence?

QUESTION PRESENTED:

Should the Commission permit the private plaintiffs in suits against Texas Gulf Sulphur Co. and its officials to inspect those documents which the Commission has been directed to produce for inspection by the defendants in the above action?

RECOMMENDATION: Yes.

*29 Nov 65
OK*

BACKGROUND AND REASONS:

During a hearing on October 25, 1965, the court directed the Commission to produce certain documents for inspection by the defendants in the above action pursuant to defendants' motion under Rule 34 of the Federal Rules of Civil Procedure. Earlier, it will be recalled, the Commission authorized this Office to produce these documents if so ordered, with the exception of staff memoranda to the Commission. * / While we have not yet had a definitive ruling from the court as to these memoranda to the Commission, we are prepared to produce the remaining documents beginning Friday, November 26.

Although the court has not expressly ordered the Commission to produce these same documents for inspection by the private plaintiffs, several of the private plaintiffs' attorneys have requested permission to inspect the documents. Since defendants will be permitted to copy the documents and make whatever use of them they wish, we believe that no harm could come from permitting inspection by the private plaintiffs and, indeed, the Commission could be criticized for refusing to do so. On the other hand, in order to prevent the criticism (by defendants) that the Commission is encouraging private litigants to sue Texas Gulf, we would not permit the private plaintiffs to inspect the hundreds of unsolicited letters we have received from members of the investing public in connection with this action.

DF
MJ

* / The Commission also authorized this Office to produce for inspection by the private parties the investigative transcripts of defendants' testimony if ordered to do so by the court. This question has not yet been presented to the court, nor have defendants asked to inspect these transcripts, hence these transcripts are not among the documents for which authorization to produce is sought in this memorandum.