

7/17/55

FILED
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JUL 17 1955
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

NICOLINA SIRECI, as Executrix of the
Estate of JOSEPH E. SIRECI, deceased,

Plaintiff,

AFFIRMATION IN
OPPOSITION

-against-

Index #13411/83

CHEMCO, INC., ROMAN HAAS, INC.
MONSANTO, INC., UNION CARBIDE, INC.,
and AMERICAN CYANAMID, INC.

Defendants.

-----X

ROMAN & HAAS COMPANY s/h/a ROMAN HAAS,
INC.,

Defendant and Third
Party Plaintiff,

-against-

ELM COATED FABRICS, INC., a Division
of KALEX CHEMICAL, INC.,

Third Party Defendant.

-----X

MONSANTO COMPANY, INC.,

Third Party Plaintiff,

-against-

ELM COATED FABRICS, INC. and ELM
COATED FABRICS, INC. d/b/a ELM
COATED FABRICS DIV. OF KALEX
CHEMICAL PRODUCTS, INC.,

Third Party Defendants.

-----X

STATE OF NEW YORK, COUNTY OF NEW YORK

FRANK P. MANGIATORDI an attorney-at-law duly admitted to practice in the State of New York, hereby affirms under the penalty of perjury as follows:

That he is a partner in the firm of MANGIATORDI & CORPINA, ESQS., trial counsel to the attorneys of record herein, and as such attorney is fully familiar with the facts, circumstances, nuances and legalities pertaining thereto.

That this affirmation is submitted in opposition to this belated and untimely motion by the third party defendant for a protective order pursuant to CPLR 3103 with respect to a notice for discovery and inspection served on said third-party defendant on May 21, 1985.

The original notice of motion was received on July 8, 1985.

Thereafter, another notice of motion was received at your affirmant's office on July 15, 1985 with a covering letter from the attorneys for the third party defendant dated July 10, 1985 indicating that the motion "is returnable in Special Term, Part 1A and not Special Term, Part 1". The envelope of transmittal is postmarked July 11, 1985.

The above papers were received simultaneously on July 15, 1985 with an affirmation in opposition by ALEXANDER V. SANASONE, to a cross motion, made by your affirmant which was returnable in Special Term, Part 1, on July 23, 1985. That cross motion was in response to a motion made by the defendant, UNION

CARBIDE, INC. for summary judgment dismissing plaintiff's complaint on the primary ground that sales or distribution of the offending poly vinyl chloride was not manufactured by UNION CARBIDE since September 5, 1977 and that no products containing poly vinyl chloride resins were sold, by them, to the third party defendant.

That upon receipt of the motion for summary judgment, your affirmant had hearsay knowledge from a co-employee of decedent, that poly vinyl chlorides were used by third party defendant up until the untimely death of plaintiff's decedent.

Prior to receipt of the motion for summary judgment, the third party defendant was served with a notice for discovery and inspection by the defendant, UNION CARBIDE, a copy of which is attached hereto and marked Exhibit "A". Said notice was dated December 21, 1984 and no response or motion against it have been initiated by the third party defendant.

The third party defendant was and still is also in default of that notice. Therefore, your affirmant, duplicated the notice for discovery and inspection and served the demand on May 21, 1985, a copy of which is attached hereto and marked Exhibit "B", together with an affidavit of service of mailing.

Unfortunately the third party defendant's attorneys are having problems with receiving and sending their mail. Your affirmant refuses to believe that an attorney would misrepresent to the court, under oath, the receipt or forwarding of notices through the mail. The third party defendant's attorney states in

his affirmation in opposition that the attorney for UNION CARBIDE, INC. forwarded a copy of the notice for discovery and inspection to him in mid-June. He admittedly was aware of the notice at that time and, therefore, makes this motion untimely pursuant to CPLR 3122, which allows for this motion "within ten days".

The mere allegation by the attorney for the third-party defendant that the demands for discovery and inspection are overly broad, speculative and abusive are unfounded.

Demand goes to the very essence of the defense by the primary defendants as to the statute of limitation running prior to the lawsuit.

The plaintiff cannot speak on behalf of the decedent. The demand calls for the particulars which would be primarily and solely in the possession, knowledge and control of the third party defendant. To withhold this information and knowledge will substantially prejudice the plaintiff. The disclosure process as promoted by the legislature through the Civil Practice Law and Rules was designed in order to obviate the practice of concealing material which is "material and necessary" rather than to enhance the opportunity of concealment as proposed by the third party defendant.

In light of the fact that this motion is in the form of a cross motion made by your affirmant, returnable in Special Term, Part 1A, it is requested that this motion be returned to Special Term, Part 1, so that all of the motions may be decided

at the same time.

WHEREFORE, your affirmant respectfully requests that this motion be denied and that the third party defendant be compelled to answer the demand for discovery and inspection, and for such other and further relief as to this court may be just and proper.

Dated: New York, New York
July 17, 1985

Frank P. Mangiatordi
FRANK P. MANGIATORDI

Exhibit A

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
NICOLINA SIRECI, as Executrix of the :
Estate of JOSEPH E. SIRECI, deceased, :

Plaintiff, :

-against- :

CHEMCO, INC., ROMAN HAAS, INC., :
MONSANTO, INC., UNION CARBIDE, INC., :
and AMERICAN CYANAMID, INC. :

Defendants. :

NOTICE OF DISCOVERY
AND INSPECTION

-----X
ROHN & HASS COMPANY s/h/a ROMAN HAAS, :
INC., :

Defendant and Third :
Party Plaintiff, :

-against- :

ELM COATED FABRICS, INC., a Division :
of KALEX CHEMICAL, INC., :

Third-Party Defendant. :

Index No. 13411/83

-----X
MONSANTO COMPANY, INC., :

Third-Party Plaintiff, :

-against- :

ELM COATED FABRICS, INC. and ELM :
COATED FABRICS, INC. d/b/a. ELM :
COATED FABRICS DIV. OF :
KALEX CHEMICAL PRODUCTS, INC., :

Third-Party Defendants. :
-----X

S I R S :

PLEASE TAKE NOTICE that pursuant to Rule 3120(a) of
the Civil Practice Law and Rules, the defendant, Union Carbide

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Corporation, demands that the third-party defendant Elm Coat & Fabrics, Inc., a Division of Kalex Chemical, Inc. ("Kalex") produce and permit discovery by its attorneys, or another acting on its behalf, of the documents described in the annexed Schedule of Documents which are in the possession, custody or control of Kalex or any of its agents, employees, officers or other persons under the control of or acting on behalf of Kalex on the 16th day of January, 1985 at 10:00 A.M. at the offices of defendant's counsel located at 101 Park Avenue, 32nd floor, New York, New York 10178, at which time they will be physically inspected, copied or mechanically produced or reproduced.

If there is any document called for in this notice which is claimed to be privileged, identify each such document by stating (1) its date; (2) the name, address and occupation at the time of preparation of the person or persons who prepared it; (3) the name, address and occupation at the time of dissemination of the person or persons to whom it was directed or circulated or who had access thereto; (4) its nature (i.e., letter, memorandum, contract); (5) its subject matter(s); (6) the name, address and present occupation of the person or persons now in possession of it; and (7) the ground upon which the claim of privilege is made.

Definitions

As used herein, the terms "documents" and "records" mean (1) all writings of any kind, whether handwritten, typed, printed or otherwise produced or reproduced, and including, but

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not limited to, all agreements, contracts, correspondence, letters, telegrams, teletypes, telexes, cables, interoffice and intraoffice communications, memoranda, notes, opinions, reports, studies, entries in personal diaries or other record books, summaries or notes of conversations or communications of any type or description (including, without limitation, telephone conversations, personal conversations or interviews, meetings, conferences, negotiations and investigations), marginal comments appearing on any documents, calendars, pamphlets, books, manuals, directives, bulletins, news releases, ledgers, statistics, surveys, checks, financial statements, invoices, receipts, work sheets, opinions and reports of consultants, and all drafts of any of the foregoing writings; (2) all graphic, mechanical or electronic reproductions, representations, recordings or compilations of data of any kind, including, but not limited to, drawings, charts, graphs, motion picture films, microfilms, microfiles, phonograph and tape recordings, videotapes, any transcripts or printouts produced therefrom and all drafts of any of the foregoing; and (3) all copies of the documents listed in (1) and (2) above.

For the purposes of the foregoing definition, the term "draft" means any earlier, preliminary, preparatory or tentative version of all or part of a document, whether or not the terms of the draft are the same as or different from the terms of the final documents and the term "copies" means all

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copies of any documents which are not identical in every respect with the documents being produced.

The term "Kalex" shall mean the defendant Elm Coated Fabrics, Inc., a Division of Kalex Chemical, Inc. or any predecessor company of said defendant.

Schedule of Documents

1. Any and all inventory records pertaining to polyvinyl chloride ("PVC") or products containing PVC which were used, stored, or otherwise in Kalex's possession from January 1, 1976 to and including June 30, 1981.
2. Any and all records pertaining to PVC or products containing PVC purchased by Kalex from January 1, 1976 to and including June 30, 1981, including but not limited to purchase orders, packing slips, invoices, and purchase ledger books.
3. Any and all records pertaining to PVC or products containing PVC which were manufactured, used, sold or otherwise disposed of by Kalex from January 1, 1976 to and including June 30, 1981, including but not limited to purchase orders, packing slips, purchase orders, or other records of such manufacture, sale or other disposal.
4. The names and addresses of all persons or entities from whom Kalex purchased PVC or products containing PVC from January 1, 1976 to and including June 30, 1981.
5. Any and all brochures, catalogs or other descriptive literature with respect to PVC or any product containing PVC received by Kalex or promulgated by Kalex from January 1, 1976 to and including June 30, 1981.

6. Any and all guidelines, instruction booklets, safety manuals, rules, regulations or procedures with respect to PVC or products containing PVC used by Kalex from January 1, 1976 to and including June 30, 1981.

7. Any and all safety or inspection reports prepared by or on behalf of Kalex with respect to PVC or products containing PVC from January 1, 1976 to and including June 30, 1981, including but not limited to any OSHA reports or reports of or for any other federal, state or local government agency.

8. Any and all literature received by Kalex from any federal, state or local government agency with respect to PVC or the dangers of PVC between January 1, 1976 to and including June 30, 1981.

9. The complete personnel file of Joseph E. Sireci, including but not limited to records of positions held by Mr. Sireci and the duration thereof, records of duties performed by Mr. Sireci and the dates and locations thereof, payroll records, medical records, records of any insurance applications or insurance claims made by Mr. Sireci, and Mr. Sireci's worker's compensation file.

Dated: New York, New York
December 21, 1984

TO: Hogan, Jones & Parisi, P.C.
Attorneys for Third Party
Defendant
82 Beaver Street
New York, New York 10005

Morris & Duffy
Attorneys for Rohm &
Haas
233 Broadway
Suite 1800
New York, NY 10279

Mongiattordi & Corpins, P.C.
Attorneys for Plaintiff
110 East 42nd Street
New York, New York 10017

Siff & Newman, P.C.
Attorneys for Monsanto
233 Broadway
New York, NY 10279

Costello & Shea
Attorneys for American
Cyanamid
50 Broadway
New York, New York 10004

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Exhibit B

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
NICOLINA SIRECI, as Executrix of the
Estate of JOSEPH E. SIRECI, deceased,

Plaintiff,

-against-

CHEMCO, INC., ROMAN HAAS, INC.,
MONSANTO, INC., UNION CARBIDE, INC.,
and AMERICAN CYANAMID, INC.

Defendants.

NOTICE OF DISCOVERY
AND INSPECTION

Index No. 13411/83

-----X
ROHN & HASS COMPANY s/h/a ROMAN HAAS,
INC.,

Defendant and Third
Party Plaintiff,

-against-

ELM COATED FABRICS, INC., a Division
of KALEX CHEMICAL, INC.,

Third-Party Defendant.

-----X
MONSANTO COMPANY, INC.,

Third-Party Plaintiff,

-against-

ELM COATED FABRICS, INC. and ELM
COATED FABRICS, INC. d/b/a. ELM
COATED FABRICS DIV. OF
KALEX CHEMICAL PRODUCTS, INC.,

Third-Party Defendants.

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S I R S :

PLEASE TAKE NOTICE that pursuant to Rule 3120(a) of
the Civil Practice Law and Rules, the plaintiff, NICOLINA

SIRECI, demands that the third-party defendant Elm Coated Fabrics, Inc., a Division of Kalex Chemical, Inc. ("Kalex") produce and permit discovery by its attorneys, or another acting on its behalf, of the documents described in the annexed Schedule of Documents which are in the possession, custody or control of Kalex or any of its agents, employees, officers of other persons under the control of or acting on behalf of Kalex on the 11th day of June, 1985 at 10:00 A.M. at the offices of defendant's counsel located at 119 East 42nd Street, Suite 1511, New York, New York 10017, at which time they will be physically inspected, copied or mechanically produced or reproduced.

If there is any document called for in this notice which is claimed to be privileged, identify each such document by stating (1) its date; (2) the name, address and occupation at the time of preparation of the person or persons who prepared it; (3) the name, address and occupation at the time of dissemination of the person or persons to whom it was directed or circulated or who had access thereto; (4) its nature (i.e., letter, memorandum, contract); (5) its subject matter(s); (6) the name, address and present occupation of the person or persons now in possession of it; and (7) the ground upon which the claim of privilege is made.

Definitions

As used herein, the terms "documents" and "records" mean (1) all writings of any kind, whether handwritten, typed, printed or otherwise produced or reproduced, and including, but

not limited to, all agreements, contracts, correspondence, letters, telegrams, teletypes, telexes, cables, interoffice and intraoffice communications, memoranda, notes, opinions, reports, studies, entries in personal diaries or other record books, summaries or notes of conversations or communications of any type or description (including, without limitation, telephone conversations, personal conversations or interviews, meetings, conferences, negotiations and investigations), marginal comments appearing on any documents, calendars, pamphlets, books, manuals, directives, bulletins, news releases, ledgers, statistics, surveys, checks, financial statements, invoices, receipts, work sheets, opinions and reports of consultants, and all drafts of any of the foregoing writings; (2) all graphic, mechanical or electronic reproductions, representations, recordings or compilations of data of any kind, including, but not limited to, drawings, charts, graphs, motion picture films, microfilms, microfiles, phonograph and tape recordings, videotapes, any transcripts or printouts produced therefrom and all drafts of any of the foregoing; and (3) all copies of the documents listed in (1) and (2) above.

For the purposes of the foregoing definition, the term "draft" means any earlier, preliminary, preparatory or tentative version of all or part of a document, whether or not the terms of the draft are the same as or different from the terms of the final documents and the term "copies" means all

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copies of any documents which are not identical in every respect with the documents being produced.

The term "Kalex" shall mean the defendant Elm Coated Fabrics, Inc., a Division of Kalex Chemical, Inc. or any predecessor company of said defendant.

Schedule of Documents

1. Any and all inventory records pertaining to polyvinyl chloride ("PVC") or products containing PVC which were used, stored, or otherwise in Kalex's possession from January 1, 1976 to and including June 30, 1981.

2. Any and all records pertaining to PVC or products containing PVC purchased by Kalex from January 1, 1976 to and including June 30, 1981, including but not limited to purchase orders, packing slips, invoices, and purchase ledger books.

3. Any and all records pertaining to PVC or products containing PVC which were manufactured, used, sold or otherwise disposed of by Kalex from January 1, 1976 to and including June 30, 1981, including but not limited to purchase orders, packing slips, purchase orders, or other records of such manufacture, sale or other disposal.

4. The names and addresses of all persons or entities from whom Kalex purchased PVC or products containing PVC from January 1, 1976 to and including June 30, 1981.

5. Any and all brochures, catalogs or other descriptive literature with respect to PVC or any product containing PVC received by Kalex or promulgated by Kalex from January 1, 1976 to and including June 30, 1981.

6. Any and all guidelines, instruction booklets, safety manuals, rules, regulations or procedures with respect to PVC or products containing PVC used by Kalex from January 1, 1976 to and including June 30, 1981.

7. Any and all safety or inspection reports prepared by or on behalf of Kalex with respect to PVC or products containing PVC from January 1, 1976 to and including June 30, 1981, including but not limited to any OSHA reports or reports of or for any other federal, state or local government agency.

8. Any and all literature received by Kalex from any federal, state or local government agency with respect to PVC or the dangers of PVC between January 1, 1976 to and including June 30, 1981.

9. The complete personnel file of Joseph E. Sireci, including but not limited to records of positions held by Mr. Sireci and the dates and locations thereof, payroll records, medical records, records of any insurance applications or insurance claims made by Mr. Sireci, and Mr. Sireci's worker's compensation file.

Dated: New York, New York
May 21, 1985

Yours, etc.,

MANGIATORDI & CORPINA, ESQS.
Attorneys for Plaintiff
Office & P.O. Address
110 East 42nd Street
New York, New York 10017

212 697 0700

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TO:

HOGAN, JONES & PARISI, P.C.
Attorneys for Third Party Defendant
82 Beaver Street
New York, New York 10005

MORRIS & DUFFY, ESQS.
Attorneys for Rohm & Haas
233 Broadway
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New York, New York 10279

COSTELLO & SHEA, ESQS.
Attorneys for American Cyanamid
50 Broadway
New York, New York 10004

SIFF & NEWMAN, P.C.
Attorneys for Monsanto
233 Broadway
New York, New York 10279

KELLY, DRYE & WARREN, ESQS.
Attorneys for Union Carbide Corp.
101 Park Avenue
New York, New York 10178

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
 §§.:
COUNTY OF NEW YORK)

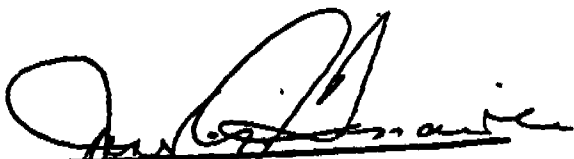
JANET A. FERRAIROLE being duly sworn,
deposes and says, that deponent is not a party to the action and
is over 18 years of age.

That on the 21 st day of May . 19 85
deponent served the within Notice of Discovery and Inspection
upon the persons named below by depositing a true copy of the
same enclosed in a postpaid properly addressed wrapper in an
official depository under the exclusive care and custody of the
United States Post Office Department within the State of New
York and directed to the said persons at the address indicated
below, such address being the address designated by said
persons for that purpose.

HOGAN, JONES & PARIST, P.C.
Attorneys for Third Party Defendant
82 Beaver Street
New York, New York 10005
MORRIS & DUFFY, ESQS.
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SIFF & NEWMAN, P.C.
Attorneys for Monsanto
233 Broadway
New York, New York 10279

KELLY, DRYE & WARREN, ESQS.
Attorneys for Union Carbide
101 Park Avenue
New York, New York 10178

Sworn to before me this . 19 85
21 day of May


JANET A. FERRAIROLE


KELLY O'SHEA
Notary Public, State of New York
No. 24 - 4820000
Qualified by Living Counselor

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