

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROSE MARIE KUPFER, Individually
and as Administratrix of the Estate
of WILLIAM J. KUPFER, Deceased,

Plaintiffs,

vs.

THE DOW CHEMICAL COMPANY;
PPG INDUSTRIES, INC.; and,
SHELL CHEMICAL COMPANY, a
division of Shell Oil Company,

Defendants.

Civil Action No.
92-CV-0594S

SHELL OIL COMPANY,

Defendant and
Third-Party Plaintiff,

vs.

THE GOODYEAR TIRE & RUBBER COMPANY,

Third-Party Defendant.

**RESPONSE OF THE DOW CHEMICAL COMPANY TO
PLAINTIFF'S INITIAL INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil
Procedure, defendant The Dow Chemical Company ("Dow") answers and
objects to plaintiff's first set of interrogatories upon
information and belief as follows:

GENERAL STATEMENT

Dow is a large corporation with numerous departments and divisions and many employees at numerous locations. These departments, divisions and employees have changed over the years; employees have died, retired and moved. In responding to these interrogatories, Dow has made efforts to research documents and data regarding the subject matter of the present lawsuit, but obviously each and every employee has not been contacted and questioned concerning the items included in this set of interrogatories.

Further, Dow and its attorneys have not completed their discovery and investigation in preparation for trial, nor have they concluded their analysis of information gathered to date. These responses, therefore, are based upon information presently available to Dow and its attorneys and specifically known to the individuals who are preparing these responses.

It is anticipated that future discovery and independent investigation may supply additional facts or information, add meaning to known facts, and may establish entirely new factual conclusions and contentions, all of which may lead to substantial additions through changes in and variations from the responses set forth. The responses are made without prejudice to the rights of Dow to produce evidence at the time of trial.

GENERAL OBJECTIONS

1. Dow objects to the "Definitions" set forth by plaintiff as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, and will respond pursuant to the Federal Rules of Civil Procedure giving each term its commonly understood and used meaning.

2. Dow objects to providing information relating to "Defendant's Predecessor" or "Defendant's Subsidiary Companies" as being overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Accordingly, Dow will respond only on its own behalf.

3. Dow objects to plaintiff's interrogatories to the extent that they seek information which is protected by the attorney-client privilege, attorney work product (the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation) or other trial preparation material protected from discovery under the Federal Rules of Civil Procedure.

4. Dow objects to plaintiff's interrogatories to the extent that they seek disclosure of confidential, proprietary or commercially sensitive and trade secret information.

5. Dow objects to plaintiff's interrogatories to the extent that they seek information already known to plaintiff, or available to plaintiff from sources other than Dow on the grounds that such interrogatories are overly broad and unduly

burdensome. Specifically, and without limiting the foregoing, Dow objects to plaintiff's interrogatories to the extent that such interrogatories call for information contained in:

- a. Publicly available scientific or medical journals, books, treatises, textbooks and other compilations;
- b. Publicly available records or files maintained by governmental offices or agencies; and
- c. Documents or records within the plaintiff's possession or control.

6. Dow objects to plaintiff's interrogatories insofar as they seek information from 1955 through 1978, a time period for which Dow has no record of sales of Vinyl Chloride Monomer ("VCM") to The Goodyear Tire and Rubber Company ("Goodyear"), Niagara Falls, New York. Moreover, Dow objects to the overall burdensome nature of plaintiff's interrogatories. Because of the passage of time, it would be extremely burdensome and costly for defendant to compile information which spans a time period of 25 years.

ANSWERS TO INTERROGATORIES

1. Please state name, address and job title of each person who has supplied information used in answering these interrogatories.

ANSWER: These interrogatories, by their scope, have required Dow to respond as a corporation and have not been responded to by an individual or an identifiable team of

individuals. However, Thomas J. Cresswell, Manager, Litigation, Legal Department, The Dow Chemical Company, Midland, Michigan 48674, is authorized to sign these interrogatories on behalf of Dow.

2. Did Defendant, Defendant's predecessor or Defendant's subsidiary companies sell or distribute vinyl chloride to the Goodyear Tire & Rubber Company in Niagara Falls, New York during the period of 1955 through 1978?

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Further, due to Dow's records retention schedule, sales records prior to 1978 are no longer available. However, a search of Dow's 1978 sales records revealed no sales or shipments of VCM to Goodyear's Niagara Falls, New York facility.

3. If the answer to Interrogatory No. 2 is in the affirmative, state:

- (a) the entity which sold or distributed the vinyl chloride;
- (b) the dates of such sale or distribution;
- (c) the amount of each sale or delivery to the Goodyear Tire & Rubber Company plant in Niagara Falls, New York;
- (d) the type of container used to deliver the vinyl chloride to Goodyear's plant (i.e., tank car, etc.); and,
- (e) any printed material, warnings, trademarks, company identifications, or logos that appeared on or with the containers of the vinyl chloride.

ANSWER: (a-e) Not applicable.

4. Does Defendant, Defendant's predecessor or Defendant's subsidiary companies have any records indicating that any vinyl chloride was sold or distributed to the Goodyear Tire & Rubber Company in Niagara Falls, New York during the period of 1955 through 1978?

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Subject to and without waiving this objection, see response to Interrogatory No. 2.

5. If the answer to Interrogatory No. 4 is in the affirmative, state:

(a) the identity and current address of each individual who currently has possession of those records and the present locations of such records; and,

(b) the title or description of such records.

ANSWER: (a-b) Not applicable.

6. At any time, has Defendant, Defendant's predecessor or any of Defendant's subsidiary companies published and/or distributed any brochures, pamphlets, packagings, labels, material safety data sheets or other written materials of any kind or character that contain any warnings, warranties, cautions, caveats, or directions for use with respect to the possibility of injury resulting from the use of its vinyl chloride?

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, unlimited in time, irrelevant to the issues in this suit and not reasonably calculated to lead to the discovery of admissible evidence. Dow further objects on the ground that the term "injury" is vague and

ambiguous in that it is not defined. Subject to and without waiving these objections, in the normal course of business, Dow provided its customers with product brochures containing information about the safe handling and use of Dow products. Moreover, during a portion of the time period at issue, Dow also provided Material Safety Data Sheets to customers at the time of purchase and thereafter upon request. Finally, Dow labels each shipment of its products in the normal course of business.

7. If the answer to Interrogatory No. 6 is in the affirmative, please state:

- (a) the exact wording of such printed material;
- (b) the type of such printed material (i.e. label, material safety data sheet, etc.);
- (c) the method used to distribute the printed material to customers or persons who were likely to use the vinyl chloride;
- (d) the date each such printed material was published or distributed;
- (e) the identity of each person who presently has possession of the above-described documents and their location(s); and,
- (f) the names, current addresses, and titles of the authors of such printed material.

ANSWER: (a-f) Dow objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, unlimited in time, irrelevant to the issues in the suit and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, please see the documents attached as Exhibits "A" and "F" to Dow's response to Plaintiff's Request for Production of Documents, which are self-explanatory.

8. Did you provide any of the printed material that was identified in your answer to Interrogatory no. 7 to the Goodyear Tire & Rubber Company? If so, identify:

- (a) the printed material provided to Goodyear;
- (b) its exact wording;
- (c) the person(s) who provided the material to Goodyear;
- (d) the date(s) it was provided to Goodyear; and,
- (e) the person(s) at Goodyear to whom the material was addressed, provided, or to whom it was intended.

ANSWER: (a-e) Dow objects to this interrogatory on the grounds that it is overly broad and unduly burdensome as a reasonable time frame has not been established. Dow further objects to this Interrogatory because it assumes that Goodyear used VCM manufactured by Dow at its Niagara Falls facility during the time period alleged to be at issue; to date, there is no evidence of which Dow is aware to support such an assumption. Without waiving these objections and responding to the time period of plaintiff's alleged exposure, due to Dow's records retention schedule, records are no longer available to indicate if Dow provided any of the material mentioned in response to Interrogatory No. 7 to Goodyear. However, as stated in Dow's response to Interrogatory No. 6, in the normal course of business Dow provided its customers with product brochures, Material Safety Data Sheets and labels. In this regard, please refer to the documents attached as Exhibits "A" and "F" to Dow's response to Plaintiff's Request for Production of Documents. By way of

further response, Dow states that Goodyear manufactured VCM at its Niagara Falls plant throughout most, if not all, of the relevant time period. As such, Goodyear had as much or more knowledge than Dow regarding the safe handling and use of VCM. Accordingly, Goodyear was a sophisticated and knowledgeable user of VCM which was very familiar with the known toxicities of VCM independent of any information which may have been provided by Dow.

9. Do you possess any written memoranda, specifications, drafts or other written materials of any kind or character which relate to the design and preparation of the labeling, warnings, and instructions for use which are listed in your answer to Interrogatory No. 7?

ANSWER: Dow objects to this interrogatory on the grounds that is overly broad, unduly burdensome and a reasonable time frame has not been established. Dow further objects because this Interrogatory is vague and ambiguous as phrased, particularly with respect to the word "specifications" for labeling or warning. Finally, this interrogatory seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections and responding to the time period of plaintiff's alleged exposure, as Dow understands this Interrogatory, it has no such documents.

10. If the answer to Interrogatory No. 9 is in the affirmative, please:

(a) identify each such written material or document, their author(s) and current address;

(b) identify the person or persons presently in possession of each such document; and,

(c) state where each such document is located.

ANSWER: (a-c) Not applicable.

11. At any time prior to December 31, 1978, did Defendant, Defendant's predecessor, or any of Defendant's subsidiary companies, conduct any tests, or perform or sponsor any research or studies, to determine if there were any potential hazards to human health from exposure to vinyl chloride.

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects to this interrogatory on the grounds that it is overly broad and unduly burdensome as a reasonable time frame has not been established. Furthermore, Dow objects to this interrogatory on the grounds that it is not limited to testing or research concerning the alleged health effects resulting from exposure situations applicable to this case and is, therefore, overly broad, irrelevant and not reasonable calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Dow conducted various research studies on VCM prior to December 31, 1978.

12. If the answer to Interrogatory No. 11 is in the affirmative, please state:

(a) the identity of each individual or organization which conducted such tests, or performed or sponsored such research or studies and their current addresses;

(b) the nature, manner and method of each test and any research or studies in detail;

(c) the results of such tests, research, or studies;

(d) whether the result of such tests, research or studies were reduced to writing; and,

(e) if the answer to subpart (d) is in the affirmative, please:

(1) identify each such written material or document;

(2) identify each person who presently has possession of each such document or written material and their current address; and,

(3) state where each such document is located.

ANSWER: (a-e) Dow objects to this interrogatory on the grounds that is overly broad, unduly burdensome, harassing, irrelevant to the issues in this suit and not reasonable calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, due to the passage of time and unavailability of records, it is impossible to name each individual who may have been involved in the testing or the date(s) when such testing took place. Some of the Dow employees who participated in the testing of VCM are indicated in the studies attached as Exhibit "B" to Plaintiff's Request for Production of Documents. As for the methods and results, the studies speak for themselves.

13. Were any changes in labeling , warnings, or instructions for use made as a result of such tests, research, or studies identified in your answer to Interrogatory no. 12 above?

ANSWER: Dow objects to this interrogatory on the grounds that is is overly broad and unduly burdensome as a reasonable time frame has not been established. Subject to and without waiving the foregoing objections, Dow made changes in its labels and warning documents as a result of some of the testing done on VCM.

14. If the answer to Interrogatory No. 13 is in the affirmative, please state:

- (a) the nature and text of the change made;
- (b) the date of each change;
- (c) the purpose of each such change; and,
- (d) the name, current address, and title of each person in charge of making each such change.

ANSWER: (a-d) Dow objects to this interrogatory on the grounds that is overly broad, unduly burdensome, vague and ambiguous as written and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Dow states that, as a result of a study conducted by Dow in 1961, Dow added a recommendation for a 50 PPM time weighted average exposure level and from 1961 until 1974, continually advised its customers that this 50 PPM standard should be implemented. Please refer to the 1961 Torkelson study attached as part of Exhibit "B". By way of further response, other changes or revisions may have been made as a result of

various studies on VCM, but Dow has no documents which would allow it to determine whether, in fact, any such changes were made over the years and, if so, the nature of each such change.

15. Does Defendant or any of Defendant's subsidiary companies possess any written report, article, memoranda, or study, whether published or unpublished, or other written material of any kind or character, which relate in any manner to any potential health hazards from exposure to vinyl chloride?

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects to this interrogatory on the grounds that it is overly broad and unduly burdensome; that a reasonable time frame has not been established; that it is vague and ambiguous as written; and that it is oppressive and harassing. Moreover, this interrogatory is not limited to the alleged health effects resulting from exposure situations applicable to this case and is, therefore, overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Dow further objects to this interrogatory to the extent it seeks, or could be construed to seek, disclosure of confidential, proprietary, or trade secret information for which there has been no showing of relevance or need. Subject to and without waiving the foregoing objections, please refer to Dow's response to Interrogatories Nos. 11 and 12.

16. If the answer to Interrogatory No. 15 is in the affirmative, please:

(a) identify each such written material or document by title, author(s), journal (if applicable), and date when written or published;

(b) identify each person by name, title, and employer who presently has possession of each such document;

(c) state where each such document is located; and

(d) the date when each such document was first received by Defendant, Defendant's predecessor or Defendant's subsidiary companies.

ANSWER: (a-d) Dow incorporates by reference its objections to Interrogatory 15. Subject to and without waiving the foregoing objections, please refer to the response to Interrogatories Nos. 11, 12 and 15.

17. Identify any physicians, toxicologists, epidemiologists, industrial hygienists, or other scientists or researchers who were employed between 1955 and 1974 by Defendant, Defendant's predecessor or any of Defendant's subsidiary companies who had responsibility for determining or investigating any potential hazards to human health from exposure to chemicals, including, but not limited to, vinyl chloride.

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects to this interrogatory on the grounds that is overly broad, unduly burdensome, vague and ambiguous, irrelevant to the issues in this suit and not reasonably calculated to lead to the discovery of admissible evidence. Further, due to the passage of time and unavailability of records, it is impossible to name each "physician, toxicologist, epidemiologist, industrial hygienist or other scientists or researcher" who was employed by Dow between 1955

and 1974 and who may have had some responsibility for determining "potential health hazards" from exposure to chemicals, including VCM. Over the years, Dow has employed numerous individuals with training, knowledge and expertise in the listed areas. Subject to and without waiving the foregoing objections, please refer to the Dow-published studies attached as Exhibit "B" to Dow's responses to Plaintiff's First Request for Production, which contain the names of some individuals who participated in Dow's testing of VCM during the referenced time frame.

18. For any person identified in your answer to Interrogatory no. 17, state:

(a) their name, and current address and employer;
and,

(b) their title(s) and dates when employed by Defendant, Defendant's predecessor or any of Defendant's subsidiary companies.

ANSWER: Please refer to the response to Interrogatory No. 17.

19. Between 1955 and 1974, did Defendant, Defendant's predecessor or any of Defendant's subsidiary companies maintain, operate, own, or sponsor any laboratory or research facility which studied any potential hazards to human health from exposure to chemicals manufactured or used by the Defendant, Defendant's predecessor or any of Defendant's subsidiary companies?

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, vague and ambiguous, irrelevant to the issues in this suit and not

reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, and as Dow understands this interrogatory, Dow states that its Biochemistry Laboratory in Midland, Michigan was opened in 1933. It later became the Toxicology Laboratory and is still in existence today. Dow also maintained a Toxicology Laboratory in Lake Jackson, Texas. In addition, Dow hired its first epidemiologist in 1978 and has maintained an epidemiology group continuously since that time. Dow has also had a Medical Department since 1946. Individuals in any one of these departments, among others, may have participated in studies and investigations of the effects of VCM exposure on humans.

20. If the answer to Interrogatory No. 19 is in the affirmative, identify:

- (a) the name and location of the facility;
- (b) the name and current address of the director(s) or other person(s) in charge of the facility between the year 1955 and 1974, and the dates of such directorship; and
- (c) the period of time when such facility was operated, owned, or sponsored by Defendant, Defendant's predecessor or any of Defendant's subsidiary companies.

ANSWER: Dow objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, irrelevant to the issues in this suit and not reasonably calculated to lead to the discovery of admissible evidence. Please refer to the response to Interrogatory No. 19.

21. With respect to the period of 1955 through 1978, did Defendant, Defendant's predecessor, or Defendant's subsidiary companies ever conducted [sic] any tests or studies in the field where vinyl chloride was being used, (including, but not limited to, The Goodyear Tire & Rubber Company) to determine 1) the nature and extent of exposure to workers from vinyl chloride, or 2) the nature and extent of any adverse effects on human health from exposure to vinyl chloride?

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraphs 2 and 4 of defendant's General Objections. Dow further objects because this interrogatory is vague and ambiguous as written. Furthermore, this interrogatory is not limited to the alleged health effects resulting from exposure situations applicable to this case and is, therefore, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, and as Dow understands this interrogatory, Dow did some industrial hygiene surveys during the time period at issue. However, a search of the records revealed no such surveys conducted by Dow at Goodyear's Niagara Falls facility.

22. If the answer to Interrogatory No. 21 is in the affirmative, please identify:

(a) the date, place and nature of each and every test or study;

(b) the results of each test or study;

(c) the amount of vinyl chloride in parts per million or milligrams per cubic meter found in the air at each site;

(d) the nature, manner and method of testing;

(e) the person(s) who performed such tests or studies or the author(s) of any reports or studies; and,

(f) the name and location of all person who currently have possession of the written results of any such tests or studies.

ANSWER: (a-f) Dow objects to this interrogatory for the reasons set forth in Paragraph 4 of defendant's General Objections. Dow further objects to this interrogatory on the grounds that is overly broad, unduly burdensome, harassing, irrelevant to the issues in this suit and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, please refer to the studies attached as Exhibit "C" to Plaintiff's Request for Production, which reflect some of the results of some industrial hygiene surveys done by Dow. As for methods and results, the studies speak of themselves.

23. With respect to any knowledge received by Defendant, Defendant's predecessor, or any of Defendant's subsidiary companies that vinyl chloride might be capable of producing malignant tumors in experimental test animals, identify:

(a) all dates, including the first date, when Defendant, Defendant's predecessor, or any of Defendant's subsidiary companies received such information;

(b) the manner in which that information was received;

(c) the source of the information;

(d) the person(s) who received the information;

(e) any written material or document which provided such information and each person and their address who presently has possession of each such document and its location;

(f) any tests or studies conducted by Defendant, Defendant's predecessor, or any of Defendant's subsidiary companies relating to an association between vinyl chloride and cancer, and identify each person who presently has possession of each such document, their address, and the location of the document; and

(g) any actions that were taken by Defendant, Defendant's predecessor, or any of Defendant's subsidiary companies (including the dates when taken) to notify its customers or users about any potential association between exposure to vinyl chloride and the development cancer.

ANSWER: (a-g) Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects on the grounds that this interrogatory is overly broad, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Documents regarding the development of data on the suspected carcinogenicity of VCM in animals is public information, equally available to plaintiff. Further, Dow currently employs, and has in the past employed numerous individuals with education and medical disciplines. It is therefore impossible to state the date(s) on which each such individual acquired such knowledge. Subject to and without waiving the foregoing objections, please see the Manufacturing Chemists Association Vinyl Chloride Chronology, which is self-explanatory, attached as Exhibit "D" to Plaintiff's Request for Production of Documents.

24. At any time, did any physician, medical officer, industrial hygienist, toxicologist or medical consultant ever make any recommendations and/or suggestions to the Defendant, Defendant's predecessor, or Defendant's subsidiary companies concerning the risk or hazards to the health of persons involved in the manufacture or use of vinyl chloride?

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, unlimited in time, vague and ambiguous, irrelevant to the issues in this suit and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, and as Dow understands this interrogatory, see Dow's response to Interrogatory 14. By way of further response, see the article "The Correlation of Clinical and Environmental Measurements for Workers Exposed to Vinyl Chloride" included in Exhibit "B" to Dow's Responses to Plaintiff's Request for Production of Documents. The authors of that paper (Kramer and Mutchler) presented their research and findings at the 1968 Gordon Research conference. Dow was aware of those findings as well as the findings of the other research studies produced in response to Plaintiff's Request for Production.

25. If the answer to Interrogatory No. 24 is in the affirmative, state:

(a) the identity and current address of the person who made the recommendation and/or suggestions;

(b) the identity and current address of the person(s) to whom the recommendations and/or suggestions were made;

(c) the date(s) when such recommendations and/or suggestions were made;

(d) the substance of the recommendations and/or suggestions; and,

(e) whether a written report regarding the recommendations and/or suggestions was made, and if so, identify each person who presently has possession of each such document and its location.

ANSWER: See response to Interrogatory 24.

26. Does Defendant agree that vinyl chloride can cause angiosarcoma of the liver?

ANSWER: Dow acknowledges that there is scientific data to support the proposition that human exposures to VCM at sufficient exposure levels for sufficient periods of time are capable of causing angiosarcoma of the liver. Dow does not agree, however, that there is a causal connection between VCM and every case of angiosarcoma of the liver.

27. Has Defendant undertaken to investigate the occurrences alleged in Plaintiff's complaint, including any communication with Plaintiff's decedent's employer, The Goodyear Tire & Rubber Company?

ANSWER: Dow objects to this interrogatory to the extent it seeks, or could be construed to seek, protected attorney work product. Subject to and without waiving this objection, the only investigation of the allegations in plaintiff's complaint has been done by, or at the direction of, Dow's lawyers. By way of further response, Dow has received no documents from Goodyear other than those Goodyear has made available in response to discovery served in this action.

28. If the answer to Interrogatory No. 27 is in the affirmative, please:

(a) state the name, address, and job title of the persons participating in each such investigation;

(b) list each written record pertaining to such investigation and its location and custodian;

(c) identify any documents received from The Goodyear Tire & Rubber Company;

(d) state whether defendant obtained statements from any witnesses; and,

(e) If so, please list each witness who has given a statement and the name, address and job title of each person having custody of any such statement.

ANSWER: See response to Interrogatory No. 27.

29. Does Defendant agree that William J. Kupfer had a malignant angiosarcoma of the liver?

ANSWER: Dow objects to this interrogatory because it seeks medical opinions Dow is not qualified to give. Dow further objects to this interrogatory to the extent it seeks, or could be construed to seek, protected attorney work product. Subject to and without waiving these objections, Dow states that discovery is ongoing and the response to this interrogatory will be supplemented if information developed in discovery provides a sufficient basis for Dow to respond.

30. What does Defendant contend was the cause of William J. Kupfer's malignant angiosarcoma of the liver?

ANSWER: See response to Interrogatory 29.

31. Does Defendant contend that William J. Kupfer improperly used its vinyl chloride?

ANSWER: Dow objects to this interrogatory because it assumes that William J. Kupfer used VCM manufactured by Dow and therefore lacks a proper foundation. To the best of Dow's knowledge, there is no information available to date which demonstrates that Mr. Kupfer ever used, or was exposed to Dow's material. Without waiving this objection, Dow states that discovery is ongoing and the response to this Interrogatory will be supplemented if information developed in discovery provides a sufficient basis for Dow to respond.

32. If the answer to Interrogatory No. 31 is in the affirmative, please set out in detail in what respects said vinyl chloride was improperly used by William J. Kupfer, identify all persons with knowledge of these facts and their current addresses, and identify all pertinent documents.

ANSWER: See response to Interrogatory 31, which is incorporated herein by reference.

33. Does Defendant contend that The Goodyear Tire & Rubber Company, or its employees, improperly used Defendant's vinyl chloride?

ANSWER: Dow objects to this interrogatory because it assumes that Goodyear, or its employees, used VCM manufactured by Dow and therefore lacks a proper foundation. To the best of Dow's knowledge, there is no information available to date which demonstrates that Goodyear purchased Dow material for use at its Niagara Falls facility during the relevant time period. Without waiving this objection, Dow states that discovery is ongoing and the response to this interrogatory will be supplemented if

information developed in discovery provides a sufficient basis for Dow to respond.

34. If the answer to Interrogatory No. 33 is in the affirmative, please set out in detail in what respects said vinyl chloride was improperly used, identify all person with knowledge of these facts and their current addresses, and identify all pertinent documents.

ANSWER: See response to Interrogatory 33, which is incorporated herein by reference.

35. State whether Defendant, Defendant's predecessor or Defendant's subsidiary companies at any time testified in a court of law, in a deposition, before a hearing officer, or before any body of local, state, or federal government, or made written submissions to any body of local, state or federal government, where the potential danger to human health from exposure to vinyl chloride was an issue or where a claim for injury due to exposure to vinyl chloride had been made.

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, vague and ambiguous as written, and unlimited in time making it irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objections, and limiting this response to the time period and issues relevant to this lawsuit, Dow states that certain of its employees testified and made written submissions to certain governmental agencies regarding the potential human health consequences of exposure to toxic amounts of VCM.

36. If the answer to Interrogatory No. 35 is in the affirmative, state:

(a) the identity of each person testifying or making a submission;

(b) the date(s) on which that person testified or made a submission;

(c) the purpose of the testimony or submission;

(d) the substance of the testimony or submission;

(e) whether the testimony was transcribed or reduced to writing; and,

(f) the identity of the person and his location who currently has custody of the testimony or the submission.

ANSWER: (a-f) Dow objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, unlimited in time, harassing, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, and limiting this response to the relevant time period, Dow states that Dr. Theodore R. Torkelson, a Dow employee at the time, testified about VCM on behalf of the Manufacturing Chemists Association at a hearing before the Subcommittee on Environment of the Committee on Commerce, United States Senate, 93rd Congress, 2nd Session on August 21, 1974. The transcribed proceedings are public documents. In addition, V. K. Rowe, K. H. Oelfke, R. L. Daniel, R. R. Cook, B. B. Holder, and P. J. Gehring provided testimony on the proposed standard for vinyl chloride at a hearing held by the Occupational Safety and Health Administration on June 25, 1974. V. K. Rowe also provided testimony in relation to another such hearing held on February 15, 1974.

Due to the passage of time and unavailability of records, Dow is presently uncertain whether additional employees attended the indicated hearing. Moreover, Dow is uncertain whether any other testimony regarding the potential consequences of exposure to toxic amounts of VCM has ever been given by a Dow employee during the relevant time frame.

37. For each separate defense, state the facts upon which you rely, identify any persons knowledgeable of such facts, their current address and job title, and identify any documents that relate to such facts.

ANSWER: Dow objects to this interrogatory on the grounds that it calls for the production of material prepared for litigation and attorney work product, seeks discovery beyond that which is required by the Federal Rules of Civil Procedure and because it is overly broad and fails to indentify items to be produced with reasonable particularity. Subject to the foregoing objections, see facts, information and documentation produced in Dow's response to Plaintiff's Interrogatories and Plaintiff's Request for Production of Documents. Further, Dow states that discovery is ongoing and the response to this interrogatory will be supplemented, to the extent required by the Federal Rules of Civil Procedure and subject to the foregoing objections, if further information developed in discovery provides a sufficient basis for Dow to respond.

38. Identify all persons that the Defendant expects to call as expert witnesses at trial, and as to each, state:

- (a) field of expertise;
- (b) educational background and nature of degree(s) obtained;
- (c) publications, including title of article, name of journal, and date of publication and/or title of book and the date of publication;
- (d) awards and memberships in professional associations;
- (e) training;
- (f) licenses;
- (g) teaching positions;
- (h) all cases by style, docket number and jurisdiction in which the proposed expert witness has testified either at depositions or at trial; and,
- (i) all reports or submissions rendered by each expert in connection with this case.

ANSWER: (a-i) Dow objects to this interrogatory to the extent it seeks information beyond the scope of FRCP 26(b)(4). Subject to the foregoing objection, discovery has only just begun and Dow has not yet determined whether or whom it may call as an expert witness at the trial of this case.

39. For each person whom Defendant expects to call as an expert witness at trial, state:

- (a) the subject matter on which each proposed expert witness is expected to testify;
- (b) the substance of the facts and opinions to which each proposed expert witness is expected to testify; and,
- (c) a summary of the grounds for each opinion to which each proposed expert witness is expected to testify.

ANSWER: (a-c) See response to Interrogatory No. 38.

40. Does Defendant admit that service of process was properly had on Defendant in this case?

ANSWER: Yes.

41. If the answer to Interrogatory No. 40 is negative, please explain the reasons for such answer.

ANSWER: Not applicable.

42. Does Defendant have policies of insurance that might cover the claims that have been made by the Plaintiff herein?

ANSWER: Yes.

43. If the answer to Interrogatory No. 42 is in the affirmative, list the name of each insurance carrier who may have coverage, the amount of such coverage, and the dates of each such policy.

ANSWER: Please refer to the summary of insurance coverage relevant to this suit attached as Exhibit "E" to Plaintiff's Request for Production of Documents.

44. Does Defendant contend that it warned Goodyear Tire & Rubber Company that exposure to vinyl chloride could cause angiosarcoma of the liver?

ANSWER: Dow objects to this interrogatory because it assumes Dow had a duty to warn Goodyear, a proposition for which there is no proper foundation at this time. Dow further objects to this interrogatory on the grounds that a time limitation has not been established. Subject to and without waiving these objections, Dow states that, upon information and belief,

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Goodyear was a member of the Vinyl Task Force of the Manufacturing Chemists Association (which later changed its name to the Chemical Manufacturers' Association). As a member of the task force, Goodyear was knowledgeable about the scientific and medical data regarding the known consequences of exposure to toxic amounts of VCM. Goodyear was a member of that panel when the first indications that chronic VCM exposure could be causing angiosarcoma of the liver arose. As a member of that task force, Goodyear would have known about the toxicologic and scientific studies which predated the first indications that VCM could be causing angiosarcoma of the liver. Moreover, Goodyear manufactured its own VCM during most of the time period at issue in this action. Thus, Dow contends that Goodyear had knowledge of the known and knowable risks associated with exposure to toxic amounts of VCM, including the potential link between VCM and angiosarcoma of the liver, independent of any information which may have been provided by Dow. Dow further states that, as a member of the task force, Goodyear had access to, and would have been aware of Dow's recommendation that occupational exposure levels not exceed 50 PPM, which recommendation Dow initially made in 1961, as well as other scientific developments indicating that occupational exposures should be reduced.

45. If the answer to Interrogatory No. 44 is in the affirmative, please state:

(a) the date when such a warning was first provided to Goodyear Tire & Rubber Company;

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(b) all subsequent dates when such a warning was provided to Goodyear Tire & Rubber Company;

(c) the text of each such warning; and,

(d) the method used to transmit each such warning to Goodyear Tire & Rubber Company and the person at Goodyear to whom the warning was addressed.

ANSWER: See response to Interrogatory No. 44.

46. When did Defendant, Defendant's predecessor or Defendant's subsidiary companies begin manufacturing or distributing vinyl chloride?

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Subject to and without waiving the foregoing objection, Dow has been manufacturing VCM since 1948.

47. For each year, beginning with 1955 and ending with 1978, state the total amount of vinyl chloride manufactured or distributed by Defendant, Defendant's predecessor or Defendant's subsidiary companies.

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, irrelevant to the issues in this suit and not reasonably calculated to lead to the discovery of admissible evidence.

48. Identify and provide the dates of any meetings, committees, studies, or other projects or activities of the Manufacturing Chemists Association (now called the Chemical Manufacturers Association) in which Defendant, Defendant's predecessor or Defendant's subsidiary companies were involved which related to the potential hazards to human health from exposure to vinyl chloride.

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects to this Interrogatory because it is overly broad, unduly burdensome, and a reasonable time frame has not been established. Subject to and without waiving these objections, Dow states that it was an active member of the Vinyl Task Force of the Manufacturing Chemists' Association and that various Dow employees, including, but not necessarily limited to, Dr. Theodore Torkelson, participated in meetings of the task force. Dow does not have records which would reflect the dates of all such meetings in which a Dow employee may have participated or which would reflect whether the potential hazards of exposure to toxic amounts of VCM were discussed at any such meeting. By way of further responses, see the chronology attached as Exhibit "D" to Dow's responses to Plaintiff's Request for Production of Documents.

49. Identify any documents in possession of Defendant, Defendant's predecessor or Defendant's subsidiary companies which relate to the projects or activities of Manufacturing Chemists Association which are identified in your answer to Interrogatory no. 48, and identify the person(s) and his location who currently has custody of such documents.

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects to this interrogatory on the grounds that is overly broad, unduly burdensome, and a reasonable time frame has not been established. Subject to and without

waiving foregoing objections, please see the response to Interrogatory No. 48.

50. Identify any recommendations, warnings, or instructions for use that were made to customers or users of vinyl chloride by Defendant, Defendant's predecessor Defendant's subsidiary companies which stated that the time weighted average exposure for vinyl chloride should not exceed 50 parts per million as recommended by T. R. Torkelson, F. Oyen, and V. K. Rowe in "The Toxicity of Vinyl Chloride as Determined by Repeated Exposure of Laboratory Animals," that was published in the American Industrial Hygiene Association Journal, Volume 22, pages 354-361, in October, 1961.

ANSWER: Dow objects to this interrogatory for the reasons set forth in Paragraph 2 of defendant's General Objections. Dow further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as it seeks information relating to all customers and users of Dow's VCM. Subject to and without waiving the foregoing objections, with regard to exposure to VCM in general, Dow states that it always has acted to eliminate or reduce any known danger or hazard from using VCM. In particular, in 1961, Dow began recommending to its industrial customers that they control the VCM exposure of their workers to a level below 50 PPM. This recommendation was communicated both through Dr. Theodore Torkelson's published article specifically recommending the 50 PPM level and, more importantly, through repeated subsequent communications by Dow representatives, including in particular Dr. Torkelson, at Committee Meetings of

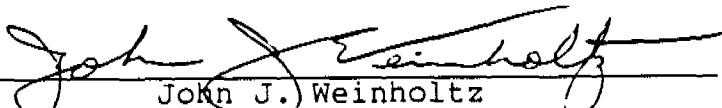
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the MCA and the Society of Plastics Industries. Goodyear Participated on the MCA's Vinyl Task Force and, as such, would have been aware of Dow's recommendation. However, Dow is unaware of what actions, if any, Goodyear took as a result of Dow's recommendation. In addition to recommending to its industrial customers that a 50 PPM exposure level be adopted, Dow in fact implemented a 50 PPM exposure level in its own industrial plants during the early 1960's.

Dated: June 18, 1993
Buffalo, New York

PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER

By


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