

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALICE L. WARREN,  
ADMINISTRATRIX OF THE  
ESTATE OF JOHN H. WARREN,  
DECEASED,

Plaintiff,

v.

THE DOW CHEMICAL COMPANY  
THE B.F. GOODRICH COMPANY,  
UNION CARBIDE COMPANY and  
CONTINENTAL OIL COMPANY,

Defendants.

CIVIL ACTION NO. 89-30201-F  
BBO #064415

RESPONSES OF DEFENDANT  
CONOCO, INC. TO  
PLAINTIFF'S INTERROGATORIES

Defendant Conoco, Inc. ("Conoco") pursuant to Rule 33 of the Federal Rules of Civil Procedure, hereby responds to plaintiff's interrogatories and makes the following objections to each and every interrogatory as if fully set forth at length in the specific responses thereto.

GENERAL OBJECTIONS

1. Conoco objects to providing the information sought in interrogatory Nos. 4-10 and 15-20, on the basis that plaintiff has not made even a minimal showing that Conoco sold or supplied VCM to Monsanto Chemical Company. Without such a showing, plaintiff cannot use the discovery process to fish through

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Conoco's voluminous records for evidence on which to base her complaint.

After a reasonable investigation and diligent inquiry, which included interviews of current and former Conoco employees, as well as an extensive search of Conoco's records, there is nothing to suggest that Conoco sold or otherwise supplied VCM to Monsanto Chemical Company during the time period referred to in plaintiff's interrogatories or at any time. The information sought in Interrogatory Nos. 4-10 and 15-20 calls for product testing, safety recommendations, knowledge of hazards or dangers associated with the product, warnings, prior litigation, prior complaints, names and addresses of individuals from Conoco who participated in OSHA hearings, Manufacturing Chemists Association and Society of The Plastics Industry meetings, and government records. Without a factual basis for showing that sales to Monsanto took place, the information sought is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Unless and until plaintiff produces evidence that demonstrates it was more probable than not that Conoco sold VCM to Monsanto, it would be extremely unfair and prejudicial to permit plaintiff free access to Conoco's files to conduct a highly improper expedition into areas which are wholly irrelevant. Conoco will seek a Protective Order concurrently

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herewith for a stay of discovery until plaintiff produces the requisite sales information.

2. Conoco objects to plaintiff's designation of "the product" as "vinyl chloride monomer" ("VCM") and "polyvinyl chloride" ("PVC") and its "related compounds" on the basis that plaintiff's complaint makes no allegation that Conoco manufactured and/or supplied PVC which caused or contributed to the decedent's illness and subsequent death. Moreover, VCM and PVC are separate and distinct products; they are not interchangeable. Accordingly, plaintiff's definition of "the product" is overly broad and Conoco objects to providing any information regarding PVC. Furthermore, plaintiff does not define and Conoco does not know what plaintiff means by the vague and ambiguous term "related compounds," nor does plaintiff allege that Conoco manufactured and/or supplied such "related compounds" which caused or contributed to the decedent's illness and subsequent death. Therefore, Conoco objects to providing any information regarding "related compounds." Accordingly, for the foregoing reasons, Conoco objects to each and every interrogatory requesting information about "the product" and will respond as to VCM only.

3. Conoco objects to the "Definitions" section of plaintiff's interrogatories because it imposes upon Conoco the duty to provide information which is not required by the Federal

Rules of Civil Procedure. In addition, Conoco objects to plaintiff's definitions to the extent that they alter the common sense and usual meaning of the words or phrases stated therein. Further, Conoco objects to plaintiff's definition of "defendant" because it is extremely broad and because it inappropriately includes numerous individuals who clearly cannot be construed in any manner as "the defendant." Accordingly, Conoco will respond only on its own behalf.

4. Conoco 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 materials protected from discovery under the Federal Rules of Civil Procedure.

5. Conoco objects to plaintiff's interrogatories to the extent that they seek information already known to plaintiff, or available to plaintiff from sources other than Conoco on the grounds that such interrogatories are overly broad and unduly burdensome. Specifically, and without limiting the foregoing, Conoco objects to plaintiff's interrogatories to the extent that such interrogatories call for information contained in:

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(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. Conoco objects to plaintiff's interrogatories insofar as they seek information from 1947 to the present (or to the late 1970's) which is outside the time period during which the decedent was allegedly exposed to the product (1948-1974). Such an interrogatory is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, Conoco 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 over a time period of 40 years. Further, to the extent plaintiff can make a preliminary showing that Conoco sold or otherwise furnished VCM to Monsanto Chemical Company during a given time period, Conoco reserves the right to object to producing information outside the time period that plaintiff alleges Conoco sold or otherwise furnished VCM to Monsanto.

## RESPONSES

Subject to and without waiving the foregoing objections, Conoco responds to plaintiff's interrogatories as follows:

### Interrogatory No. 1

Please identify yourself, giving your full name, residence, business address and occupation and the office or title you hold with the defendant.

### Response No. 1

Trice Lawrence, Custodian of Records for Conoco Chemicals Company, a former division of Conoco, Inc., 600 N. Derry Ashford, P.O. Box 2197, Houston TX 77252-2197. See Verification attached hereto.

### Interrogatory No. 2

Did the defendant, or any agent or employee of the defendant, design, manufacture, assemble, package, sell, distribute, advertise, process, test, or in any way handle the product?

### Response No. 2

Conoco objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this interrogatory because it seeks information concerning any "agent" or "employee" of defendant. See Conoco's objection to plaintiff's definition of "defendant." Moreover, the interrogatory is overly broad and unduly burdensome in that it is not limited to any reasonable time period. Subject to and without waiving the foregoing

objections, and limiting this response to VCM only, the answer is yes.

Interrogatory No. 3

If the answer to the preceding interrogatory is in the affirmative, please state:

- a. the dates between which the product was manufactured, assembled, packaged sold, distributed, advertised, processed or in any way handled;
- b. the location of the plant or plants where the product was manufactured and assembled;
- c. all dates on which the product was sold, shipped or otherwise furnished to Monsanto Chemical Company, identifying any documents reflecting such sales and shipments.

Response No. 3

Objection. See Conoco's response to plaintiff's Interrogatory No. 2. Subject to and without waiving said objections, and limiting this response to VCM only, Conoco states as follows:

a. Conoco Chemicals Company, a former division of Conoco, manufactured VCM from 1968 through July 1984.

b. Conoco manufactured VCM in Lake Charles, Louisiana.

c. None, per existing records. Despite reasonable inquiry, no employee or former employee has been located who recalls any sales of Conoco's VCM to Monsanto at any location or who recalls Monsanto being a VCM customer of Conoco.

Interrogatory No. 4

If the defendant at any time between 1947 to date has tested and/or investigated the potential health effects posed by the use of or exposure to the product, please state:

- a. the nature of each such test and/or investigation done by the defendant;
- b. the date or dates on which such testing and/or investigation were performed;
- c. the name or names of every person in the defendant's employment or acting in behalf of the defendant, who performed or was otherwise involved in such tests and/or investigations and the nature of his or her involvement;
- d. all observations made as to the dangers or hazards involved in the use of or exposure to the product;
- e. a description of all records in the defendant's possession relating to such testing and investigation.

Response No. 4

Conoco objects to providing any information on testing or investigations into the potential health effects posed by the use of or exposure to VCM without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this interrogatory on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The interrogatory is not limited by any reasonable time period and, at the very least, it seeks information for time periods beyond the decedent's alleged

exposure period (1948-1974). See also Conoco's General Objection No. 6. Moreover, the interrogatory is not limited to testing and/or investigation concerning the alleged health effects resulting from exposure as applicable to this case and is therefore overly broad and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 5

As to all safety equipment or special tools recommended by defendant to be used in the use of the product, please give:

- a. a description of any and all such safety equipment or special tools as recommended by defendant;
- b. the danger or dangers from which such safety equipment or special tools are supposed to protect any person or persons; and
- c. where and in what manner was such safety equipment or special tools recommended by the defendant to Monsanto Chemical Company and John Warren.

Response No. 5

Conoco objects to providing any information on safety equipment or special tools recommended in the use of VCM without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this interrogatory on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The

interrogatory is not limited by any reasonable time period and, at the very least, it seeks information concerning time periods subsequent to the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6.

Interrogatory No. 6

If the defendant was ever aware of any danger or hazard or defect in the use of the product, please state:

- a. when the defendant became aware of such danger or hazard in the use of the product;
- b. what was the nature of such danger or hazardous condition;
- c. whether the defendant at any time informed any purchasers or users of the product of such condition, described in subsection (b);
- d. state the method by which the defendant informed Monsanto Chemical Company or John Warren of such danger or hazardous condition, including the substance and contents of all written notification; and
- e. the date or dates on which the defendant notified Monsanto Chemical Company or John Warren of such condition.

Response No. 6

Conoco objects to providing any information regarding the danger or hazards of VCM without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this interrogatory on the grounds that it is designed to harass answering defendant and is overly broad, unduly

burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The interrogatory is not limited by any reasonable time period and, at the very least, it is not limited to the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6. Moreover, it seeks information concerning any alleged danger or hazard associated with the product and it is therefore overly broad in that it is not limited to the dangers or hazards alleged in this case. Conoco further objects on the ground that the phrase "any danger or hazard or defect" is vague and ambiguous in that it is not defined.

Interrogatory No. 7

If there were any notations of danger or warning instructions as to the use of the product furnished with the product or printed on the product's packaging or container, please state:

- a. the location of all said notations, warnings or instructions;
- b. the substance and contents of any and all said warnings and instructions; and
- c. the size and color of the printings of said warnings and instructions.

Response No. 7

Conoco objects to providing any information on warnings without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of its General

Objections. Conoco further objects to this interrogatory on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The interrogatory is not limited by any reasonable time period and, at the very least, it is not limited to the alleged exposure period in this case (1948-1974). See also Conoco's General Objection No. 6.

Interrogatory No. 8

If there has been any litigation initiated against the defendant concerning in any way the handling or use of the product, please:

- a. give the date and title of each such action, the court in which it was filed and the docket number;
- b. outline the contents of the complaint filed in such action;
- c. state the name and address of the attorney for the plaintiff in each such action; and
- d. state and explain the disposition of each such action.

Response No. 8

Conoco objects to providing any information on litigation without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of its General Objections. Conoco further objects to this interrogatory on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. At

present, the interrogatory constitutes an enormous fishing expedition into every litigation file of Conoco, regardless of its subject matter (not even limited to personal injury as opposed to commercial matters), and is not limited to litigation initiated against Conoco during the decedent's alleged exposure period (1948-1974), alleging that plaintiff suffered from angiosarcoma of the liver as a result of exposure to VCM. See also Conoco's General Objection No. 6.

Interrogatory No. 9

If the defendant has ever received any complaints or other notices of injury or illness similar to that alleged by the plaintiff, please state for each such complaint or notice:

- a. its date;
- b. its substance, including a description of the factual circumstances; and
- c. the name and address of the person making the complaint.

Response No. 9

Conoco objects to providing the information requested in this interrogatory without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to this interrogatory on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The interrogatory is not limited to VCM or to complaints or other notices of angiosarcoma of the liver related

to VCM exposure received by Conoco during the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6. Further, the terms "complaints or other notices of injury or illness" and "similar" in this context are vague and ambiguous in that they are not defined.

Interrogatory No. 10

If it is the contention of the defendant that the alleged injury suffered by John Warren was caused by or contributed to by some act or omission of John Warren, Monsanto Chemical Company or other persons, please state in detail each act or omission which it is contended caused or contributed to the alleged injury.

Response No. 10

Conoco objects to producing the information requested for the reasons set forth in Conoco's General Objection No. 1.

Interrogatory No. 11

If there is any person that you expect to call as an expert witness (including expert medical witnesses) at the time of trial please state in detail as to each such person:

- a. the person's identity, giving name, profession or occupation and address;
- b. the subject matter on which the person is expected to testify;
- c. the substance of the facts and opinions to which the person is expected to testify; and
- d. a summary of the grounds for each opinion.

Response No. 11

Conoco has not determined who, if anyone, it intends to call as an expert witness at the time of trial. If, or when, a determination is made, the response to this interrogatory will be amended seasonably.

Interrogatory No. 12

If you have retained or specially employed any person (including physicians) relating to the alleged occurrence in anticipation of litigation or for trial preparation purposes whom you do not expect to call as an expert witness at the time of trial, please identify each person by name, address and occupation.

Response No. 12

Conoco objects to this request to the extent that it requests expert discovery which is beyond the scope of Rule 26(b)(4) of the Federal Rules of Civil Procedure. Plaintiff is simply not entitled to expert discovery related to an expert who has been retained or specially employed by answering defendant in anticipation of litigation or for trial preparation purposes and who is not expected to be called as a witness at trial.

Interrogatory No. 13

For all products as defined above sold or otherwise supplied by the defendant to Monsanto Chemical Company between the years 1947 and 1979, please state:

- a. trade name;
- b. the name and address of the plant to which the product or material was shipped; and
- c. the dates on which the product was shipped to each plant.

Response No. 13

Conoco objects to this interrogatory to the extent that is is overly broad, unduly burdensome, not relevant and not reasonably calculated to lead to the discovery of admissible evidence. The interrogatory is not limited by any reasonable time period and, at the very least, it is not limited to the alleged exposure

period in this case (1948-1974). See also Conoco's General Objection No. 6. Moreover, Conoco objects to plaintiff's use of the term "products" for the reasons set forth in paragraph 1 of defendant's General Objections. Subject to and without waiving said objections, Conoco responds, with respect to VCM only, as follows:

a. - c. None.

Interrogatory No. 14

For each individual in your employ at any time subsequent to 1947 who has knowledge of the sales or supply by the defendant of the product to Monsanto Chemical Company between the years 1947 and 1979, please state:

- a. the individual's name;
- b. his or her present or last known address and telephone number;
- c. his or her present employment and job classification if still in your employ; and
- d. his or her job title or job classification during the time that he or she had such knowledge with the dates for each title.

Response No. 14

Objection. See Conoco's response to plaintiff's Interrogatory No. 13. Subject to and without waiving said objection, and limiting this response to VCM only, Conoco states as follows:

a. - d. Conoco has located no employees, former employees, or retirees with knowledge of any sale or supply of VCM to

Monsanto Chemical Company between the years 1947 and 1979 or at any other time.

Interrogatory No. 15

For each individual in your employ at any time subsequent to 1947 who participated in hearings held by OSHA and/or National Institute for Occupational Health and Safety and/or Department of Labor regarding regulating the use of the product, please:

- a. the individual's name;
- b. his or her present or last known address and telephone number;
- c. his or her present employment and job classification if still in your employ; and
- d. his or her job title or job classification during the time that he or she had such knowledge with the dates for each job title.

Response No. 15

Conoco objects to providing the information requested in this interrogatory without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this interrogatory to the extent that it is designed to harass answering defendant and is overly broad, unduly burdensome, not relevant and not reasonably calculated to lead to the discovery of admissible evidence. The interrogatory is not limited to any reasonable time period and, at the very least, it is not limited to the alleged exposure period in this case (1948-1974). See also Conoco's General Objection No. 6.

Further, it would be impossible to determine since 1947 which employees attended hearings held by OSHA and/or the National Institute for Occupational Health and Safety and/or Department of Labor hearings. To the extent that those agencies have records listing those who attended the hearings, it would be less burdensome and costly for plaintiff to obtain the information directly from those agencies. Indeed, plaintiff and Conoco have equal access to that information.

Interrogatory No. 16

Please identify by name, present or last known address and job title all persons who participated in Manufacturing Chemists Association meetings between the years 1947 and 1979 at which the product was discussed.

Response No. 16

Objection. See Conoco's response to plaintiff's interrogatory No. 15.

Interrogatory No. 17

Please identify by name, present or last known address and job title all persons who participated in Society of the Plastics Industry, Inc. meetings between the years 1947 and 1979 at which the product was discussed.

Response No. 17

Objection. See Conoco's response to plaintiff's interrogatory No. 15.

Interrogatory No. 18

Identify any and all records, reports, statements or data compilations prepared by any federal, state or local governmental entity as the result of all investigations related to the product.

Response No. 18

Objection. See Conoco's response to plaintiff's interrogatory No. 15.

Interrogatory No. 19

For each such document:

- (a) identify the person or persons having possession, custody or control of the document;
- (b) set forth, in detail, the factual findings contained in the document as well as the opinions or conclusions set forth in the document;
- (c) state whether the document or any of the matters contained therein was prepared pursuant to a duty imposed by law and, if so, identify the statute, regulation or other legal authority imposing the requirement;
- (d) identify all person(s) who conducted or assisted in the investigation or in the preparation of the document;
- (e) describe in detail when, where and in what manner the investigation was conducted.

Response No. 19

Objection. See Conoco's response to plaintiff's interrogatory No. 15. Conoco further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, vague, unlimited in time, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

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Interrogatory No. 20

Please state the name(s) and address(es) of all person(s), business(es) and entities hired by the defendant to transport, ship and/or deliver the product between the years 1947 and 1979.

Response No. 20

Conoco objects to producing the information requested for the reasons set forth in paragraph 1 of Conoco's General Objections. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this interrogatory to the extent that it is overly broad, unduly burdensome, vague, ambiguous and irrelevant to the issue in this litigation and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 21

Please state the name, present or last known address, telephone number and position they hold with the above defendant, if applicable, of all persons having knowledge of discoverable facts.

Response No. 21

Conoco objects to this interrogatory as it seeks information which is protected from discovery by the attorney-client privilege and/or the work product doctrine. Conoco objects further because this interrogatory is overly broad, vague and ambiguous in its use of the phrase "discoverable facts." This interrogatory unfairly requires defendant to know or fathom all facts even nominally relevant to this litigation before attempting to answer.

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CONOCO, INC.  
As to Objections  
By its attorney,



Sharon R. Burger  
NUTTER, MCCLENNEN & FISH  
One International Place  
Boston, Massachusetts 02110-2699  
(617) 439-2000

**CERTIFICATE OF SERVICE**

I, Sharon R. Burger, hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record by mail on this date.

  
Sharon R. Burger

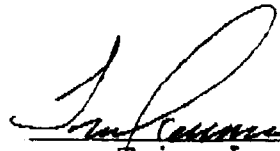
Dated: February 8, 1991

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VERIFICATION

Mr. Trice Lawrence, after first being duly sworn,  
states as follows:

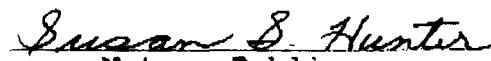
I am employed by Conoco Inc. and I am the custodian of  
the existing sales records of Conoco Chemicals Company, a  
former division of Conoco Inc. As the custodian of these  
records I have made the foregoing answers based upon infor-  
mation I obtained from searching these records. The facts  
stated in the foregoing answers for and on behalf of Conoco  
Inc. are true and correct to the best of my knowledge,  
information and belief.

  
Trice Lawrence

STATE OF TEXAS)  
COUNTY OF HARRIS)

SUBSCRIBED AND SWORN TO before me this 8th day of  
February, 1991.



  
Notary Public

My Commission Expires

April 9, 1994

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