

Penn DOT / Pleadings
2/27/96 completed

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION, PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES,
PENNSYLVANIA PUBLIC UTILITY
COMMISSION, PENNSYLVANIA EMERGENCY
MANAGEMENT AGENCY, AND PENNSYLVANIA
DEPARTMENT OF STATE,

Plaintiffs

v.

UNITED STATES MINERAL PRODUCTS
COMPANY,

Defendant

NO. 244 FEB 21 3 01 PM '96
COMMONWEALTH COURT
OF PENNSYLVANIA

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICES SET FORTH BELOW TO FIND OUT WHETHER YOU CAN GET LEGAL HELP.

Central Pennsylvania Legal Services, Inc.
213 North Front Street
Harrisburg, PA 17101
(717) 232-0581

Public Services and Lawyers Referral Committee,
Dauphin County Bar Association
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

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TRANSPORTATION, PENNSYLVANIA	:	
DEPARTMENT OF GENERAL SERVICES,	:	
PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, PENNSYLVANIA EMERGENCY	:	
MANAGEMENT AGENCY, AND PENNSYLVANIA	:	
DEPARTMENT OF STATE,	:	NO. _____ M.D. 1996
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
UNITED STATES MINERAL PRODUCTS	:	
COMPANY,	:	
	:	
Defendant	:	

COMPLAINT

PRELIMINARY STATEMENT

1. This is an action for damages and other relief stemming from the polychlorinated biphenyl (PCB) contamination of the Transportation and Safety Building located in the Capitol Complex in Harrisburg, Pennsylvania.

2. Plaintiffs' damages include, but are not limited to, costs for air, bulk, and wipe sampling and analysis; monitoring costs; the cost of operations and maintenance work attributable to PCBs; the cost to clean equipment and furnishings contaminated by PCBs; the cost to replace equipment, furnishings and records that were contaminated by PCBs; the cost of removing PCBs from the building; and the costs to relocate building occupants, equipment, and furnishings due to the PCB hazard in the building.

3. Plaintiffs further seek punitive damages from the defendant in an amount which is just and fair under the circumstances. The demand for punitive damages is based on the wanton and willful actions of the defendant in causing plaintiffs' employees, tenants, and customers to be exposed to a hazardous and toxic substance.

JURISDICTION

4. This Court has jurisdiction pursuant to 42 Pa.C.S. §761(a)(2) over this action brought by agencies of the Commonwealth government.

PARTIES

5. Plaintiff Department of Transportation (PennDOT) is an administrative department of the executive branch of the government of the Commonwealth of Pennsylvania. Its headquarters are in the Transportation and Safety Building.

6. Plaintiff Department of General Services (DGS) is an administrative department of the executive branch of the government of the Commonwealth of Pennsylvania. As the successor to the General State Authority, DGS is charged with the duty, inter alia, of constructing, maintaining, and repairing Commonwealth buildings. See 71 P.S. §631.1.

7. Plaintiff Pennsylvania Public Utility Commission (PUC) is an independent administrative commission of the Commonwealth of Pennsylvania. Two of its bureaus maintained office

space in the Transportation and Safety Building prior to June 16, 1994.

8. Plaintiff Pennsylvania Emergency Management Agency (PEMA) is an administrative agency of the executive branch of the government of the Commonwealth of Pennsylvania. Its principal office is located within the Transportation and Safety Building.

9. Plaintiff Department of State (State) is an administrative department of the executive branch of the government of the Commonwealth of Pennsylvania. The Department's Bureau of Professional and Occupational Affairs occupied the sixth floor of the Transportation and Safety Building prior to June 16, 1994.

10. Defendant United States Mineral Products Company (U.S. Mineral) is a company incorporated under the laws of the State of New Jersey and conducts business in Pennsylvania. U.S. Mineral has its principal place of business at Furnace Street, Stanhope, New Jersey 07874.

FACTUAL ALLEGATIONS

11. The Transportation and Safety Building is located at Commonwealth and Forster Streets in Harrisburg, Pennsylvania. It was built between 1965 and 1967.

12. Several thousand Commonwealth employees have their offices in the building. Each day, hundreds of members of the general public conduct business in the building.

13. DGS, on behalf of the Commonwealth, holds legal title to the Transportation and Safety Building.

14. PennDOT is the principal tenant in the Transportation and Safety Building, occupying offices on all of the currently occupied floors. PEMA's offices are on the basement floor. Prior to June 16, 1994, other Commonwealth agencies occupying space in the building included State, on the sixth floor, and the PUC on the fourth floor.

15. DGS is responsible for general building maintenance, but PennDOT pays for many building maintenance projects out of its own budget. PennDOT is also billed by DGS on a quarterly basis for its prorated share of the costs of operating the building.

16. U.S. Mineral manufactured, marketed, and sold spray applied fireproofing which contains PCBs. This fireproofing, including but not necessarily limited to CAFCO Blaze-Shield Type D, was installed in the Transportation and Safety Building during its construction and is found throughout the building.

17. The U.S. Mineral fireproofing used in the construction of the Transportation and Safety Building has deteriorated since its installation. It has not adhered permanently to the surfaces to which it was applied, and debris from its deterioration has been found throughout the building.

18. On June 16, 1994, a five alarm fire occurred in the Transportation and Safety Building. Immediately following the fire, the entire Transportation and Safety Building was closed while safety tests were conducted. Portions of the building were reoccupied in stages beginning June 20, 1994.

19. As a result of the testing program which followed the fire, plaintiffs discovered that U.S. Mineral's fireproofing contained PCBs in amounts that exceed federal standards. In addition, it was discovered that fireproofing debris was located in many more areas than previously had been known. These discoveries prompted plaintiffs to impose restrictions on what activities could take place in the building in order to safeguard the health of building users and caused significant disruption to the plaintiffs' normal activities. Floors four through seven remain closed in part due to PCB contamination.

20. In 1976 Congress found that the extreme health hazards posed by PCBs required a ban on their manufacture, processing, or distribution. See 15 U.S.C. §2605(e).

21. According to the Agency for Toxic Substances and Disease Registry, a branch of the federal Public Health Service, PCBs have been found to cause harmful effects to the skin and may irritate the nose and lungs. Animal studies indicate that PCBs can cause liver, kidney, skin, stomach, thyroid gland and other damage. They are known carcinogens in animals and are suspected carcinogens and teratogens in humans. Contact exposure to PCBs has caused death in laboratory animals. Their toxic effects are exacerbated by the fact that PCBs are extraordinarily persistent in the environment and are resistant to biological degradation. Moreover, PCBs tend to accumulate in tissues.

22. The existence of PCBs in a building at a level in excess of federal standards causes difficult and costly management

problems in terms of routine maintenance and repair activities as well as in terms of planning for and undertaking renovations, whether small or large. Further, constant vigilance is required to prevent employees and the public from exposure to the PCBs. No measure of precaution is sufficient to guarantee that harmful PCB exposure will not occur to persons in the building.

23. The cost to remove PCB containing materials from buildings is much higher than the cost to remove comparable materials which are PCB-free.

24. As a result of the installation and deterioration of defendant's fireproofing, users and occupants of the building have come into contact with PCBs. PCBs have become suspended in the air of the building and are present on interior surfaces and furnishings of the building. The structure of the building itself is contaminated by PCBs.

25. The release of PCBs from defendant's fireproofing contaminated the Transportation and Safety Building.

26. In order to decontaminate the building for purposes of continued occupancy, it would have been necessary to remove defendant's fireproofing, clean contaminated surfaces within the building, and install replacement fireproofing which did not contain PCBs. This process would have taken more than a year and would not have been cost-effective. Consequently, DGS intends to demolish the building and have a replacement structure built.

27. Regulations promulgated by the United States Environmental Protection Agency require removal of defendant's PCBs

from the Transportation and Safety Building before undertaking major renovations to the building or demolishing it. The regulations were promulgated to protect the public health and safety by minimizing human exposure to PCBs.

COUNT I - STRICT LIABILITY

28. Paragraphs 1 through 27 are incorporated herein by reference.

29. U.S. Mineral is in the business of selling and did sell the fireproofing in the Transportation and Safety Building.

30. U.S. Mineral's fireproofing was installed in the Transportation and Safety Building without substantial change in the condition in which it left the control of U.S. Mineral.

31. U.S. Mineral's fireproofing in the Transportation and Safety Building is defective and unreasonably dangerous to plaintiffs, their employees, tenants, and other persons using the building because it contains PCBs.

32. U.S. Mineral's fireproofing was defectively designed because it contains PCBs, a hazardous substance unnecessary to the manufacture of the product. Functionally equal fireproofing not containing PCBs could have been manufactured by U.S. Mineral.

33. U.S. Mineral's sale of defectively designed PCB containing fireproofing is a proximate cause of plaintiffs' injuries.

34. U.S. Mineral provided no warning to plaintiffs that its fireproofing contained PCBs or that its fireproofing could be hazardous to human health.

35. U.S. Mineral's failure to warn was a proximate cause of plaintiffs' injuries.

WHEREFORE, plaintiffs pray that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficiently punish it and discourage repetition of its outrageous, reckless, willful, and wanton conduct;

C. plaintiffs recover their costs and disbursements of this suit; and

D. the Court grant such other and further relief as it deems just and proper.

COUNT II - NEGLIGENCE

36. Paragraphs 1 through 35 are incorporated herein by reference.

37. At all times material, U.S. Mineral knew, or with the exercise of reasonable care should have known, that its PCB containing fireproofing would be used in facilities such as the Transportation and Safety Building.

38. At all times material, U.S. Mineral knew, or with the exercise of reasonable care should have known, that its PCB containing fireproofing was inherently dangerous, defective, and hazardous and could cause harm to persons working in or visiting facilities such as the Transportation and Safety Building and would contaminate and thereby cause harm to the buildings themselves.

39. U.S. Mineral owed a duty to plaintiffs, and breached that duty, when it failed to adequately test the safety of its fireproofing products. As a result, U.S. Mineral supplied defectively designed products which have contaminated the Transportation and Safety Building with a hazardous substance.

40. U.S. Mineral owed a duty to plaintiffs, and breached that duty, when it failed to recommend the removal of its PCB containing fireproofing from the market and to undertake the responsibility of locating, removing, and replacing the fireproofing in the Transportation and Safety Building, although it knew or should have known that the presence of the carcinogenic PCBs in this product posed a health hazard in the building.

41. In breaching its duties as set forth above, U.S. Mineral acted recklessly, willfully, wantonly, and outrageously.

42. U.S. Mineral's actions and its failure to act when it had a duty to do so were proximate causes of plaintiffs' injuries.

WHEREFORE, plaintiffs pray that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered; against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficiently punish it and discourage repetition of its outrageous, reckless, willful, and wanton conduct;

C. plaintiffs recover their costs and disbursements of this suit; and

D. the Court grant such other and further relief as it deems just and proper.

COUNT III - BREACH OF EXPRESS WARRANTY

43. Paragraphs 1 through 42 are incorporated herein by reference.

44. U.S. Mineral expressly warranted that CAFCO Blaze Shield Type D would not "dust or flake."

45. DGS relied upon this express representation when it purchased CAFCO Blaze Shield Type D for use in the Transportation and Safety Building.

46. U.S. Mineral breached its express warranty by the sale to DGS of a product which "dusts."

47. U.S. Mineral's breach of its express warranty has harmed DGS.

48. DGS has given U.S. Mineral timely and adequate notice of the breach of its express warranty during the course of the litigation known as Commonwealth of Pennsylvania Department of General Services and Department of Transportation v. United States Mineral Products Company, No. 284 M.D. 1990.

WHEREFORE, DGS prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. DGS recover its costs and disbursements of this suit; and

C. the Court grant such other and further relief as it deems just and proper.

COUNT IV - BREACH OF IMPLIED WARRANTIES

49. Paragraphs 1 through 48 are incorporated herein by reference.

50. U.S. Mineral impliedly warranted that its fireproofing sold to DGS was of good and merchantable quality.

51. U.S. Mineral had not disclaimed its implied warranties before DGS purchased its products.

52. U.S. Mineral breached its implied warranties by the sale to DGS of carcinogenic and otherwise hazardous products.

53. U.S. Mineral's breach of its implied warranties has harmed DGS.

54. DGS has given U.S. Mineral timely and adequate notice of the breach of its implied warranties during the course of the litigation known as Commonwealth of Pennsylvania, Department of General Services and Department of Transportation v. United States Mineral Products Company, No. 284 M.D. 1990.

WHEREFORE, DGS prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. DGS recover its costs and disbursements of this suit; and

C. the Court grant such other and further relief as it deems just and proper.

COUNT V - FRAUDULENT MISREPRESENTATION

55. Paragraphs 1 through 54 are incorporated herein by reference.

56. Through advertisements, U.S. Mineral misrepresented its fireproofing by failing to state that PCBs were contained therein and by stating that CAFCO Blaze Shield Type D would not dust.

57. U.S. Mineral's misrepresentations were made knowingly, deceptively, and in bad faith in order to induce purchasers such as DGS to utilize its products in building projects..

58. DGS relied upon U.S. Mineral's misrepresentations when it purchased products which it believed to be safe and dust free.

59. DGS was damaged by U.S. Mineral's material misrepresentations because it was induced to purchase defendant's unsafe, carcinogenic products which have deteriorated and contaminated the Transportation and Safety Building with PCBs.

WHEREFORE, DGS prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered; against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficiently punish it and discourage repetition of its outrageous, reckless, willful and wanton conduct;

C. DGS recover its costs and disbursements of this suit; and

D. the Court grant such other and further relief as it deems just and proper.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:


JOEL M. RESSLER
Senior Deputy Attorney General
I.D. No. 28625

DANIEL J. DOYLE
Senior Deputy Attorney General
I.D. No. 54855

JOHN G. KNORR, III
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 783-1471

Date: February 27, 1996

V E R I F I C A T I O N

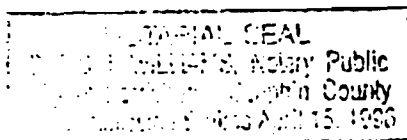
COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF DAUPHIN :

I, Robert C. Wonderling, Deputy Secretary for Administration, Department of Transportation, being first duly sworn, hereby state that I have read the foregoing complaint and believe it to be true and correct to the best of my knowledge, information, and belief.


ROBERT C. WONDERLING

Sworn to and subscribed
before me this 14th day
of February, 1996.

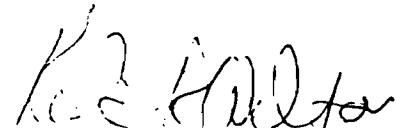

NOTARY PUBLIC



V E R I F I C A T I O N

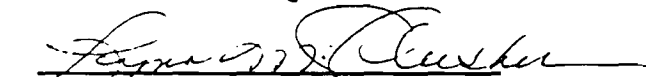
COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF DAUPHIN :

I, Kirk R. Wilson, Deputy Secretary for Central Services,
Department of General Services, being first duly sworn, hereby
state that I have read the foregoing complaint and believe it to be
true and correct to the best of my knowledge, information, and
belief.

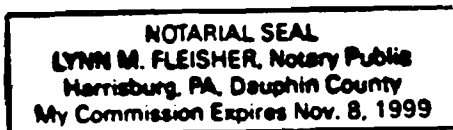


KIRK R. WILSON

Sworn to and subscribed
before me this 13th day
of January, 1996.



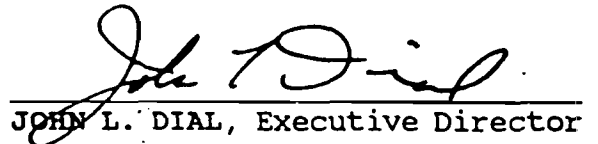
NOTARY PUBLIC



V E R I C A T I O N

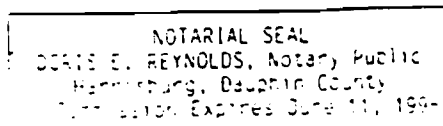
COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF DAUPHIN : ,

I, John L. Dial, Executive Director for the Public
Utility Commission, being first duly sworn, hereby state that I
have read the foregoing complaint and believe it to be true and
correct to the best of my knowledge, information and belief.


JOHN L. DIAL, Executive Director

Sworn to and subscribed
before me this 8TH day
of FEBRUARY , 1996.


NOTARY PUBLIC



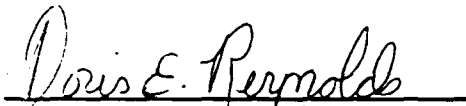
V E R I F I C A T I O N

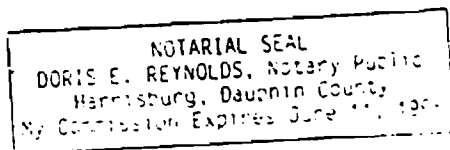
COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF DAUPHIN :

I, Charles F. Wynne, Director of the Pennsylvania
Emergency Management Agency, being first duly sworn, hereby state
that I have read the foregoing complaint and believe it to be true
and correct to the best of my knowledge, information, and belief.


CHARLES F. WYNNE

Sworn to and subscribed
before me this 15TH day
of FEBRUARY , 1996.


NOTARY PUBLIC



V E R I F I C A T I O N

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF DAUPHIN :

I, Kenneth C. Villwock, Deputy Secretary of the Commonwealth, being first duly sworn, hereby state that I have read the foregoing complaint and believe it to be true and correct to the best of my knowledge, information, and belief.

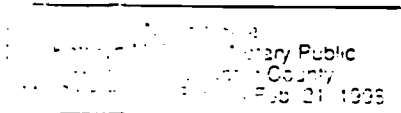


KENNETH C. VILLWOCK

Sworn to and subscribed
before me this 8th day
of February, 1996.



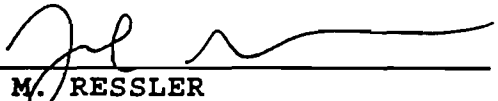
NOTARY PUBLIC



CERTIFICATE OF SERVICE

I, Joel M. Ressler, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on February 27, 1996, I served a true and correct copy of the foregoing Complaint, by causing two copies to be deposited in the United States Mail, first-class postage prepaid to the following:

Kenneth R. Neal, Esquire
Danaher, Tedford, Lagnese & Neal, P.C.
700 Capitol Place
21 Oak Street
Hartford, CT 06106-8000



JOEL M. RESSLER
Senior Deputy Attorney Genreal