

ANTHONY P. LA ROCCO, an attorney admitted to practice in the Courts of this State, hereby affirms as true under the penalties of perjury and states the following:

1. He is associated with the firm of COSTELLO & SHEA, attorneys for the defendant, AMERICAN CYANAMID COMPANY (s/h/a AMERICAN CYANAMID, INC., AMERICAN CYANAMID), and is familiar with the facts of this matter from a review of the material maintained in the litigation file.

2. This Affirmation is submitted in support of defendant AMERICAN CYANAMID COMPANY'S (hereinafter referred to as "AMERICAN CYANAMID") Cross-Motion for an Order, pursuant to CPLR §3212, granting summary judgment in favor of defendant AMERICAN CYANAMID, dismissing plaintiff's Complaint, and for such other and further relief as this Honorable Court may deem just and proper.

3. This is a product liability action predicated upon multiple theories of liability. Plaintiff seeks monetary damages for the alleged conscious pain and suffering and wrongful death of her husband, Joseph Sireci. A copy of plaintiff's Summons and Complaint are annexed as Exhibit "A".

Perusal of the Complaint portends that plaintiff alleges that the decedent's injuries were sustained from his alleged continuous exposure to polyvinyl chloride resins in his employment environment. The decedent was employed by Kalex Chemical Products, Inc. See Exhibit "A". Plaintiff further alleges that AMERICAN CYANAMID, as well as other entities, manufactured, sold and/or supplied polyvinyl chloride resins to plaintiff's employer.

4. Issue was joined by AMERICAN CYANAMID by interposition of its Verified Answer on August 6, 1983. A copy of this Verified Answer is annexed as Exhibit "B".

5. AMERICAN CYANAMID'S Verified Answer denies the material allegations of plaintiff's Complaint, including those which relate to said defendant's manufacture, sale and/or dispersal of polyvinyl chloride resins. See Exhibit "B".

6. As fully set forth in its supporting Memorandum of Law, AMERICAN CYANAMID is entitled to summary judgment dismissing plaintiff's action. The Affidavit of J.J. Fisher (hereinafter referred to as "Fisher Affidavit"), submitted in support of the instant Cross-Motion, conclusively establishes that AMERICAN CYANAMID has no connection

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with the allegations of plaintiff's Complaint. The Fisher Affidavit unequivocally attests that AMERICAN CYANAMID has never manufactured or sold polyvinyl chloride resins; nor has said defendant ever manufactured or supplied polyvinyl chloride molding compounds, which would be used in a plastics factory such as plaintiff's employer. Mr. Fisher further attests that AMERICAN CYANAMID has never supplied polyvinyl chloride resins or molding compounds manufactured by any other company.

7. Thus, it cannot be gainsaid that, if plaintiff's decedent was exposed to polyvinyl chloride resins or products containing polyvinyl chloride resins at the premises of his alleged employer, such products perforce were neither manufactured nor supplied by AMERICAN CYANAMID.

8. Significantly, the decedent's own employer corroborates AMERICAN CYANAMID'S position. The Affidavit of Stanley Mandel, Director of Materials Management for Kalex Chemical Products, Inc., whose Affidavit is submitted in support of Union Carbide's and Monsanto's Motions for summary judgement, unequivocally attests that, as Director of Material Management for Kalex, he was in charge of purchases of polyvinyl chloride resins and products containing polyvinyl

chloride, and that his review of pertinent records and documentation maintained by Kalex indicates that "Kalex never purchased polyvinyl chloride resins from...American Cyanamid...." Mr. Mandel further attests that "[I]t was also the policy of Kalex to make purchases of polyvinyl chloride resins directly from each manufacturer..." and that "[T]he third party distributors (i.e., Monsanto, American Cyanamid and Rohm & Haas) were not involved in these transactions."

9. Accordingly, since no triable issue of fact regarding AMERICAN CYANAMID'S alleged manufacture, sale or distribution of the deleterious product in question exists, said defendant is entitled to summary judgment as a matter of law.

WHEREFORE, defendant AMERICAN CYANAMID respectfully requests that this Honorable Court make an Order, pursuant to CPLR §3212, granting summary judgment in favor of defendant AMERICAN CYANAMID COMPANY, dismissing plaintiff's Complaint, and for such other and further relief as this Honorable Court may deem just and proper.

Dated: New York, New York
August 6, 1985


ANTHONY P. LA ROCCO

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