Van Cleef / [illegible]
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MF100: VanCleef

Boglioli and O'Mara, Esqs.
121 Monmouth Parkway
PO Box 68
West Long Branch, NJ 07764
908-229-8020
Attorneys for Plaintiffs

CORNELIUS VAN CLEEF and FREDERICK DE CICCO,

Plaintiffs,

vs.

PRINCETON CHEMICAL RESEARCH, INC., a New Jersey Corporation; SALVATORE LA PLACA and JEANNE LA PLACA, and GULF OIL CHEMICAL COMPANY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NO. W-001645-90

Civil Action

AMENDED First-Party COMPLAINT

Plaintiffs, Cornelius Van Cleef and Frederick DeCicco, residents of New Jersey, alleges and say:

FIRST COUNT

STRICT LIABILITY

1. Plaintiffs, Cornelius Van Cleef and Frederick DeCicco, are residents of New Jersey.

2. Plaintiffs are owners of land and premises located at 1377 U.S. Highway Route 206, Montgomery, New Jersey, also identified as Lot 11, Block 29001 on the Montgomery Township Tax Map (hereinafter "the property").

3. Defendant, Princeton Chemical Research, Inc., a New Jersey Corporation, at all times relevant herein, was a company doing business in New Jersey (hereinafter "Princeton Chemical").

4. Princeton Chemical owned and operated a facility on the property at 1377 Route 206, Montgomery Township, New Jersey, from 1967 until 1978.

5. Princeton Chemical manufactured golf balls on the property and in addition thereto and among other activities performed work pursuant to a certain agreement entered into and between them and Gulf Oil Chemicals Company as set forth in a letter dated February 17, 1971 executed on behalf of Gulf Oil Corporation by its Vice President and agreed to by Princeton Chemical Research Inc.

6. As part of its operation, Princeton Chemical stored and used products containing various hazardous substances including PCB's, Xylene and Benzene on the property. Some of these materials were stored in an area of the property known as the Tank Farm. PCB's, Xylene and Benzene are defined as hazardous substances by the State of New Jersey under N.J.A.C. 7:1E-1.3.

7. The New Jersey Department of Environmental Protection has alleged that the property contains contaminated soils and may have caused or contributed to groundwater contamination (hereinafter "NJDEP").

8. The NJDEP has alleged that Princeton Chemical stored hazardous wastes on the property and discharged pollutants into the soil and nearby streams.

9. The NJDEP issued an Administrative Order finding plaintiffs and Salvatore LaPlaca and Princeton Chemical, jointly and severally responsible for the clean-up of the alleged pollution and directing them to conduct a remedial investigation and feasibility study and to take appropriate remedial action with respect to the alleged pollution of the property and adjacent groundwater.

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10. In separate cases, plaintiffs and Princeton Chemical challenged this Administrative Order and requested an administrative hearing. The cases were consolidated and are pending.

11. Pursuant to the Orders of NJDEP, plaintiffs have paid Fred C. Hart Associates for an environmental investigation of the property.

12. According to Fred C. Hart Associates' January 19, 1989 report, the site contained areas of PCB and Xylene concentrations. The report attributed the presence of Xylene to historical evidence of a spill on the site in the area of the Tank Farm.

13. When plaintiffs purchased the property, they were not told of the contamination caused by Princeton Chemical.

14. Plaintiffs use and have always used the property as an office building. Neither plaintiffs nor their tenants engage in any activity which would cause pollution of any kind to the property.

15. Princeton Chemical brought, used, stored and disposed of products containing PCB's and Xylene on the property. PCB and Xylene are not substances naturally occurring on the property.

16. PCB and Xylene are abnormally hazardous substances which are inherently dangerous to human life and health.

17. Because Princeton Chemical imported, stored, used and disposed of PCB and Xylene on the property, the property became and remains contaminated with PCB and Xylene.

18. By reason of the continuing contamination of the property, there exists a risk of contamination to the environment and a risk to human health and life.

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19. Princeton Chemical engaged in an abnormally dangerous activity while owners of the property and are strictly liable to plaintiffs for such conduct.

20. By reason of the foregoing, plaintiffs have been damaged and will continue to incur additional damage.

WHEREFORE, plaintiffs demand judgment against the defendant, Princeton Chemical, for:

A. Compensatory damages;

B. Interest according to law;

C. Attorney's fees and costs of suit;

D. A mandatory injunction requiring Princeton Chemical to clean up the property;

E. For such other relief as the Court deems equitable and just.

SECOND COUNT

NUISANCE

1. Plaintiffs repeat the allegations of the First Count as if fully set forth herein.

2. By storing and disposing pf PCB and Xylene and other hazardous materials on the property, Princeton Chemical knowingly created and negligently permitted to remain on the property a defective and artificial condition.

3. Princeton Chemical, using, storing and disposing of PCB and Xylene and other hazardous materials on the property, posed and poses an unreasonable risk of harm to others.

4. Princeton Chemical created a public and private nuisance at the property and is primarily liable to abate the problem.

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5. Plaintiffs acquired the property without knowledge or notice of the nuisance created by Princeton Chemical, as a result of which plaintiffs have suffered and will suffer damages.

WHEREFORE, plaintiffs demand judgment against the defendant, Princeton Chemical, for:

A. Compensatory damages;

B. Interest according to law;

C. Attorney's fees and costs of suit;

D. A mandatory injunction requiring Princeton Chemical to clean up the property;

E. For such other relief as the Court deems equitable and just.

THIRD COUNT

NEGLIGENCE, GROSS NEGLIGENCE AND RECKLESS INDIFFERENCE

1. Plaintiffs repeat the allegations contained in the First and Second Counts as if fully set forth herein.

2. Princeton Chemical knew or should have known of the risks to the environment and human health inherent in the importation, storage, use and disposal of PCB, Xylene and other hazardous substances on the property.

3. Princeton Chemical failed to provide for the safe and sufficient storage and use of PCB and Xylene and other hazardous substances on the property.

4. Princeton Chemical failed to prevent spills and discharge of PCB, Xylene and other hazardous substances on the property.

5. Princeton Chemical failed to decontaminate the property before the property was sold.

6. Princeton Chemical failed to give notice or warning to others about the contamination of the property.

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7. By reason of the foregoing, plaintiffs have and will continue to incur damages.

WHEREFORE, plaintiffs demand judgment against the defendant, Princeton Chemical, for:

A. Compensatory damages;

B. Punitive damages;

C. Interest according to law;

D. Attorney's fees and costs of suit;

E. For such other relief as the Court deems equitable and just.

FOURTH COUNT

INDEMNIFICATIONS

1. Plaintiffs repeat the allegations of the First, Second and Third Counts as if fully set forth herein.

2. Plaintiffs, as current fee owners of the property, have been joined in the pending NJDEP action which claims plaintiffs, defendant Princeton Chemical, and defendant Salvatore LaPlaca, are jointly liable for conducting a remedial investigation of the property and feasibility study and taking whatever remedial action NJDEP determines to be necessary. Plaintiffs deny that they are liable.

3. Plaintiffs have incurred expenses in defending this action and have already paid for the cost of the Hart Associates remedial investigation. Plaintiffs are likely to incur further substantial costs in the future.

4. To the degree that the NJDEP or third parties find that there is liability for pollution on or emanating from the property, such pollution was due directly to the acts and/or omissions of defendant Princeton Chemical. Plaintiffs' liability, as fee owners, is imputed, vicarious and technical.

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WHEREFORE, plaintiffs demand judgment against the defendant, Princeton Chemical, for:

A. An appropriate mandatory injunction requiring Princeton Chemical, its successors and assigns, to defend, indemnify and hold harmless plaintiffs' and their successors and assigns from any and all claims or suits for remediation, damages or other relief by the NJDEP or by third parties arising from the condition on the property;

B. An appropriate mandatory injunction requiring Princeton Chemical solely to undertake and pay for any further actions or remediation ordered by the NJDEP;

C. Compensatory damages;

D. Interest according to law;

E. Attorney's fees and costs;

F. Such further relief as the Court deems equitable and just.

FIFTH COUNT

1. Plaintiffs repeat the allegations contained in the First, Second, Third and Fourth Counts as if fully set forth herein.

2. Plaintiffs purchased the property from defendants Salvatore and Jeanne LaPlaca in 1980.

3. Defendants Salvatore and Jeanne LaPlaca purchased the property from Princeton Chemical in 1978.

4. Plaintiffs' purchase of the property was secured in part by a purchase money mortgage given by plaintiffs to Salvatore and Jeanne LaPlaca.

5. The defendants, Salvatore and Jeanne LaPlaca, agreed to indemnify and hold the plaintiffs harmless from and against all claims and liability arising from contamination of the site, including liability to third parties resulting from contamination.

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6. Pursuant to the terms of the purchase of the property, if such liabilities were incurred, the judgments, fees and costs resulting therefrom were to be credited against payments due to the defendants, Salvatore and Jeanne LaPlaca from plaintiffs.

WHEREFORE, plaintiffs demand judgment against defendants Salvatore and Jeanne LaPlaca for:

A. A declaration that defendants Salvatore and Jeanne LaPlaca are to indemnify and hold harmless plaintiffs for any costs which plaintiffs have or may incur in connection with the pending NJDEP action.

B. A declaration that defendants Salvatore and Jeanne LaPlaca are to indemnify and hold harmless plaintiffs for any actions which may be brought by third parties which allege damages caused by pollution from the property.

C. A declaration that the costs and fees already incurred and advanced by plaintiffs as of the date of the judgment be credited to any outstanding balances due on the mortgage.

D. For such other relief as the Court deems just and equitable.

SIXTH COUNT

NECESSARY PARTIES

1. Plaintiffs repeat the allegations contained in the First, Second, Third, Fourth and Fifth Counts as if fully set forth herein.

2. Upon information and belief, the Office of Administrative Law has pending before it Re: Department of Environmental Protection v. Princeton Chemical Research, Inc.; Salvatore LaPlaca; Cornelius Van Cleef and Frederick DeCicco; OAL Docket No. EWR 3387 and 3391-88.

3. The NJDEP has alleged that Princeton Chemical caused the discharge of hazardous substances on the property during the times it occupied the property.

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4. The NJDEP has ordered certain actions to be taken by plaintiffs and the defendants in this case, and that Administrative Order is the subject of the Administrative Law Action described in paragraph 2 above.

5. Any remediation plan for the property can only proceed with a plan approved by the NJDEP.

6. The equitable and injunctive relief sought by plaintiffs cannot be performed without the concurrence of NJDEP.

7. Because of NJDEP's rights and duties in this matter, any judgment in the Court will affect NJDEP's interest.

8. Complete disposition of the case and full relief cannot be afforded to the plaintiffs unless NJDEP is a party to this action and bound by the judgment of this Court.

WHEREFORE, plaintiffs demand that NJDEP be joined as a plaintiff in this action.

SEVENTH COUNT

STRICT LIABILITY

1. The plaintiffs herein repeat the allegations of Counts One through Six as if fully set forth herein.

2. The result of the agreement between defendant Princeton Chemical and Gulf Oil Chemicals Co. said defendants Princeton Chemical and Gulf engaged in certain activities which required the handling including storage of chemicals on the premises in question.

3. Pursuant to said agreement and in addition thereto Gulf Oil Chemicals Co. acting through its agents, servants and/or employees, engaged in certain activities on the premises which are now owned by this plaintiff involving the handling and storage of certain chemicals and in addition thereto Gulf Oil Chemicals Co. participated in the erection and the dismantling of

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certain equipment owned by it which pursuant to the contract of February 17, 1971, was sold to the defendant, Princeton Chemical, all of which activities including handling and/or storage of said chemicals and the equipment used in connection therewith has resulted in certain orders being entered against the plaintiffs herein by the NJDEP.

4. As a result thereof, the plaintiffs have been damaged and will continue to incur damages.

WHEREFORE, plaintiffs demand judgment against the defendant, Gulf Oil Chemicals Co., for:

A. Compensatory damages;

B. Interest according to law;

C. Attorney's fees and costs of suit;

D. A mandatory injunction requiring Gulf Oil Chemical Co. to clean up the property;

E. For such other relief as the Court deems equitable and just.

EIGHTH COUNT

NUISANCE

1. The plaintiffs herein repeat the allegations of Counts One through Seven as if fully set forth herein.

2. By storing and disposing pf PCB and Xylene and other hazardous materials on the property, Gulf Oil Chemical Co. knowingly created and negligently permitted to remain on the property a defective and artificial condition.

3. Gulf Oil Chemical Co., using, storing and disposing of PCB and Xylene and other hazardous materials on the property, posed and poses an unreasonable risk of harm to others.

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4. Gulf Oil Chemical Co. created a public and private nuisance at the property and is primarily liable to abate the problem.

5. Plaintiffs acquired the property without knowledge or notice of the nuisance created by Gulf Oil Chemical Co., as a result of which plaintiffs have suffered and will suffer damages.

WHEREFORE, plaintiffs demand judgment against the defendant, Gulf Oil Chemical Co., for:

A. Compensatory damages;

B. Interest according to law;

C. Attorney's fees and costs of suit;

D. A mandatory injunction requiring Gulf Oil Chemical Co. to clean up the property;

E. For such other relief as the Court deems equitable and just.

NINTH COUNT

NEGLIGENCE, GROSS NEGLIGENCE AND RECKLESS INDIFFERENCE

1. Plaintiffs repeat the allegations contained in the First through Eighth Counts as if fully set forth herein.

2. Gulf Oil Chemical Co. knew or should have known of the risks to the environment and human health inherent in the importation, storage, use and disposal of PCB, Xylene and other hazardous substances on the property.

3. Gulf Oil Chemical Co. failed to provide for the safe and sufficient storage and use of PCB and Xylene and other hazardous substances on the property.

4. Gulf Oil Chemical Co. failed to prevent spills and discharge of PCB, Xylene and other hazardous substances on the property.

5. Gulf Oil Chemical Co. failed to decontaminate the property before the property was sold.

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6. Gulf Oil Chemical Co. failed to give notice or warning to others about the contamination of the property.

7. By reason of the foregoing, plaintiffs have and will continue to incur damages.

WHEREFORE, plaintiffs demand judgment against the defendant, Gulf Oil Chemical Co., for:

A. Compensatory damages;

B. Punitive damages;

C. Interest according to law;

D. Attorney's fees and costs of suit;

E. For such other relief as the Court deems equitable and just.

TENTH COUNT

INDEMNIFICATION

1. Plaintiffs repeat the allegations of the First through Ninth Counts as if fully set forth herein.

2. Plaintiffs, as current fee owners of the property, have been joined in the pending NJDEP action which claims plaintiffs, defendant Gulf Oil Chemical Co., and defendant Salvatore LaPlaca, are jointly liable for conducting a remedial investigation of the property and feasibility study and taking whatever remedial action NJDEP determines to be necessary. Plaintiffs deny that they are liable.

3. Plaintiffs have incurred expenses in defending this action and have already paid for the cost of the Hart Associates remedial investigation. Plaintiffs are likely to incur further substantial costs in the future.

4. To the degree that the NJDEP or third parties find that there is liability for pollution on or emanating from the property, such pollution was due directly to the acts and/or omissions of defendant Gulf Oil Chemical Co.. Plaintiffs' liability, as fee owners, is imputed, vicarious and technical.

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WHEREFORE, plaintiffs demand judgment against the defendant, Gulf Oil Chemical Co., for:

A. An appropriate mandatory injunction requiring Gulf Oil Chemical Co., its successors and assigns, to defend, indemnify and hold harmless plaintiffs' and their successors and assigns from any and all claims or suits for remediation, damages or other relief by the NJDEP or by third parties arising from the condition on the property;

B. An appropriate mandatory injunction requiring Gulf Oil Chemical Co. solely to undertake and pay for any further actions or remediation ordered by the NJDEP;

C. Compensatory damages;

D. Interest according to law;

E. Attorney's fees and costs;

F. Such further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiffs demand a trial by jury.

BOGLIOLI AND O'MARA
Attorneys for the plaintiffs

By: _____
BERNARD F. BOGLIOLI

DATED: 7/8/91

CERTIFICATION PURSUANT TO R. 4:5-1

I, BERNARD F. BOGLIOLI, ESQ., do hereby certify that:

1. I am a member of the firm of Boglioli and O'Mara, attorneys for plaintiffs in the within cause of action.

2. Upon information and belief, the matter in controversy is not subject to any other action pending in any Court or of a pending arbitration proceeding except that the Office of Administrative Law has pending before it:

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Re: Department of Environmental Protection v. Princeton Chemical Research, Inc.; Salvatore LaPlaca; Cornelius Van Cleef and Frederick DeCicco; OAL Docket No. EWR 3387 and 3391-88; and an action for declaratory judgment by plaintiffs against their insurer is pending in the Superior Court of New Jersey, Law Division, Somerset County, Cornelius VanCleef and Frederick DeCicco v. West American Insurance Company, a Subsidiary of Ohio Casualty Group. Docket No. W-1356-90.

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

BERNARD F. BOGLIOLI

DATED: 7/8/91

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