

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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

Plaintiff,

vs.

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

Defendants.

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Civ. No. 92-05945

SHELL CHEMICAL COMPANY,

Defendant and  
Third-Party Plaintiff

vs.

THE GOODYEAR TIRE & RUBBER COMPANY,

Third-Party Defendant

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THIRD-PARTY DEFENDANT'S RESPONSE TO NOTICE FOR DISCOVERY  
AND INSPECTION OF DEFENDANT AND THIRD-PARTY PLAINTIFF

Pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, the third-party defendant, THE GOODYEAR TIRE & RUBBER COMPANY [hereinafter "GOODYEAR"], hereby submits its response to defendant and third-party plaintiff's notice for discovery and inspection (dated March 11, 1993).

GENERAL OBJECTIONS

GOODYEAR objects to the notice for discovery and inspection as burdensome, unreasonable and oppressive.

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GOODYEAR objects to the notice for discovery and inspection as seeking disclosure beyond the permissible scope of discovery under the FRCP, overly broad in time and scope, and unlikely to lead to the discovery of relevant, material or admissible evidence.

By way of example only, discovery is sought of all of third-party defendant's blueprints, drawings, diagrams, records, etc. related to areas where vinyl chloride monomer was manufactured, used or stored at the Niagara Falls Plant, without limiting the request to those specific areas in which it is claimed plaintiff's decedent received his exposure.

By way of further example, the notice is not limited in time to a reasonable period or even, in fact, to the period during which the plaintiff's decedent is claimed to have received his exposure.

GOODYEAR further objects to the extent that the notice requires production of documents which are proprietary and confidential, and particularly which contain confidential research, process, development or commercial information, the disclosure of which would cause competitive disadvantage to GOODYEAR if they were to be disclosed.

GOODYEAR further objects to the notice as, in part, vague and duplicative.

GOODYEAR further objects to the notice as potentially requiring production, in part, of documents which are privileged attorney/client communications.

By reason of the volume of material being produced and the difficulty and burden of categorizing such documents, particularly as they may, in many instances, overlap several items of the notice, documents

are being produced without categorization.

A list of documents being produced, identified by Bates-stamp number, is attached.

GOODYEAR reserves all proper objections to the materiality and relevance of the subject matter of the documents produced. Specific objections to the items of the notice are set forth within.

These documents are available for inspection in the offices of third-party defendant's counsel at a mutually convenient time. Copies of documents will be made at counsel's expense, if requested.

ITEM 1

Blueprints, plans, diagrams, photographs and other documents depicting the layout of all departments where vinyl chloride monomer was manufactured, used or stored at Goodyear's Niagara Falls, New York plant for the years 1955 to 1981.

RESPONSE TO ITEM 1

See General Objections. Without waiver of objection, such documents as have been located after a reasonable and diligent search are being produced.

ITEM 2

Process flow diagrams for all departments where vinyl chloride monomer was manufactured, used or stored at Goodyear's Niagara Falls, New York plant for the years 1955 to 1981.

RESPONSE TO ITEM 2

See General Objections. Without waiver of objection, such docu-

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ments as have been located after a reasonable and diligent search are being or will be produced, upon entry of an appropriate confidentiality order.

ITEM 3

Piping and instrument diagrams for all departments where vinyl chloride monomer was manufactured, used or stored at Goodyear's Niagara Falls, New York plant for the years 1955 to 1981.

RESPONSE TO ITEM 3

See General Objections. Without waiver of objection, such documents as have been located after a reasonable and diligent search are being produced.

ITEM 4

Records identifying the machinery and equipment used in all departments where vinyl chloride monomer was manufactured, used or stored at Goodyear's Niagara Falls, New York plant for the years 1955 to 1981, and the blueprints, plans, diagrams, photographs and other documents depicting the location of such machinery and equipment.

RESPONSE TO ITEM 4

See General Objections. Without waiver of objection, such documents as have been located after a reasonable and diligent search are being produced.

ITEM 5

Blueprints, plans, diagrams, photographs and other documents depicting the ventilation system in all departments where vinyl chloride monomer was manufactured, used or stored at Goodyear's Niagara Falls,

New York plant for the years 1955 to 1981.

RESPONSE TO ITEM 5

See General Objections. Without waiver of objection, such documents as have been located after a reasonable and diligent search are being produced.

ITEM 6

A list of all materials, chemicals, products, by-products and waste materials used or created in all departments where vinyl chloride monomer was manufactured, used or stored at Goodyear's Niagara Falls, New York plant for the years 1955 to 1981.

RESPONSE TO ITEM 6

No such list has been found, and none is known to exist. Documents being produced in response to other items of this notice, however, may provide the information requested, at least in part.

ITEM 7

Records of purchases by Goodyear of vinyl chloride monomer for use at the Niagara Falls, New York plant for the years 1955 to 1981.

RESPONSE TO ITEM 7

No records of such purchases have been found or are known to presently exist. Goodyear is continuing its search in this regard, and any such records as are subsequently identified will be produced.

ITEM 8

Goodyear's written safety, hygiene and health policies and procedures concerning the transportation, transfer, storage, handling, use, production, manufacture and disposal of vinyl chloride monomer for the

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years 1955 to 1981.

RESPONSE TO ITEM 8

See General Objections. Without waiver of objection, such documents as have been located after a reasonable and diligent search are being produced.

ITEM 9

Records indicating the quantities of vinyl chloride monomer manufactured by Goodyear at the Niagara Falls, New York plant for the years 1955 to 1981.

RESPONSE TO ITEM 9

No records of such production presently exist.

ITEM 10

A list of all facilities where Goodyear manufactured vinyl chloride monomer for the years 1955 to 1981.

RESPONSE TO ITEM 10

Niagara Falls, New York, from 1955-1967.

ITEM 11

A list of all facilities where Goodyear used or stored vinyl chloride monomer for the years 1955 to 1981.

RESPONSE TO ITEM 11

Niagara Falls, New York  
Plaquemine, Louisiana  
Akron, Ohio, Research and Development

ITEM 12

Records of all shipments of vinyl chloride monomer received by

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Goodyear's Niagara Falls, New York plant from any other Goodyear facility for the years 1955 to 1981.

RESPONSE TO ITEM 12

None. Upon information and belief, no such shipments were made.

ITEM 13

Records of all monitoring and testing performed by or on behalf of Goodyear or any private or public entity concerning worker exposure to vinyl chloride monomer at Goodyear's Niagara Falls, New York plant for the years 1955 to 1981.

RESPONSE TO ITEM 13

See General Objections. Without waiver of objection, such documents as have been located after a reasonable and diligent search are being produced.

ITEM 14

Goodyear's industrial hygiene monitoring protocol for vinyl chloride monomer for the years 1955 to 1981.

RESPONSE TO ITEM 14

See General Objections. Goodyear also objects that this item is not limited to its Niagara Falls plant and further objects to the term "industrial hygiene monitoring protocol" as vague and not defined. Without waiver of objection, as Goodyear understands the request, and limited to Goodyear's Niagara Falls plant, such documents as have been located after a reasonable and diligent search are being produced.

ITEM 15

Records that refer or relate to personal protection equipment or other safety items provided or made available to employees working in departments where vinyl chloride monomer was manufactured, used or stored at Goodyear's Niagara Falls, New York plant for the years 1955 to 1981.

RESPONSE TO ITEM 15

See General Objections. Goodyear further objects to the terms "refer or relate", "other safety items", and "provided or made available" as overly broad, vague, unduly burdensome and unreasonable. Without waiver of objection, as Goodyear understands the request, such documents as have been located after a reasonable and diligent search are being produced.

ITEM 16

Records that refer to warnings or other health information provided to employees of Goodyear's Niagara Falls, New York plant during the year 1955 to 1981 regarding exposure to vinyl chloride monomer.

RESPONSE TO ITEM 16

See General Objections. Goodyear further objects to the term "refer to warnings or other health information" as overly broad, unduly burdensome and unreasonable. Without waiver of objection, documents which set forth warnings or health information provided to the subject employees regarding exposure to vinyl chloride monomer which have been located after a reasonable and diligent search are being produced.

ITEM 17

Records that refer to toxicity testing of vinyl chloride monomer

performed by or on behalf of Goodyear for the years 1955 to 1981.

RESPONSE TO ITEM 17

None. Upon information and belief, no such testing was performed.

ITEM 18

Records of all grievances or complaints made by employees of Goodyear's Niagara Falls, New York plant concerning exposure to vinyl chloride monomer or complaints regarding personal protective equipment for the years 1955 to 1981.

RESPONSE TO ITEM 18

See General Objections. Goodyear further objects to the term "complaints" as overly broad, unduly burdensome and unreasonable. Without waiver of objection, after a due and diligent search, a record of such a grievance has been located is being produced.

ITEM 19

Goodyear's log and summary of occupational injuries and illnesses maintained pursuant to OSHA for its Niagara Falls, New York plant from the date the log or summary was first required to be maintained to 1981.

RESPONSE TO ITEM 19

OSHA 200 log for the period 1978 to 1981 is being produced. The log no longer exists for the period prior to 1978.

ITEM 20

Records of Goodyear that refer or relate to alleged employment related occurrences of angiosarcoma of the liver and any other liver cancer with regard to present and former Goodyear employees of the Niagara

Falls, New York plant.

RESPONSE TO ITEM 20

See General Objections. Goodyear further objects to the terms "refer or relate" as overly broad, unduly burdensome and unreasonable. Goodyear further objects to this item of defendant's notice as vague, and Goodyear is uncertain as to what records are being sought. To the extent this item seeks production of confidential employee personnel, medical and health records, Goodyear, in order to protect the privacy interests of its employees, will not disclose such records in the absence of appropriate authorizations. Without further definition, Goodyear is unable to respond, except to note that among the records being produced are references to cases of such disease among the subject employees.

ITEM 21

Records of all present and former Goodyear employees of the Niagara Falls, New York plant who have been diagnosed as having angiosarcoma of the liver or any other liver cancer.

RESPONSE TO ITEM 21

See General Objections. Goodyear further objects to this item of defendant's notice as requiring production of confidential employee personnel, medical and health records which Goodyear, in order to protect the privacy interests of its employees, will not disclose in the absence of appropriate authorizations.

ITEM 22

Records of health insurance claims for angiosarcoma of the liver and any other liver cancer made by or on behalf of past or present em-

ployees of Goodyear's Niagara Falls, New York plant.

RESPONSE TO ITEM 22

See General Objections. Goodyear further objects to this item of defendant's notice as requiring production of confidential employee personnel, medical and health records which Goodyear, in order to protect the privacy interests of its employees, will not disclose in the absence of appropriate authorizations. Moreover, the records of such health insurance claims would generally be in the possession of health insurance carriers.

ITEM 23

Records of workers' compensation claims made by or on behalf of past or present employees of Goodyear's Niagara Falls, New York plant alleging employment-related angiosarcoma of the liver and any other liver cancer.

RESPONSE TO ITEM 23

See General Objections. Goodyear further objects to this item of defendant's notice as requiring production of confidential employee workers' compensation records which Goodyear, in order to protect the privacy interests of its employees, will not disclose in the absence of appropriate authorizations. Moreover, the complete files of such Workers' Compensation claims would generally be in the possession of Workers' Compensation carriers. Without waiver of objection, aside from a Workers' Compensation claim filed by this plaintiff, Goodyear is presently unaware of any such claim.

ITEM 24

Records that refer or relate to any governmental investigation of Goodyear's Niagara Falls, New York plant conducted by NIOSH or any other governmental agency concerning worker exposure to vinyl chloride monomer or occurrences of liver cancer.

RESPONSE TO ITEM 24

See General Objections. Goodyear further objects to this item of defendant's notice to the extent that it requires production of records that "refer or relate" to the indicated subject, as being overly broad, vague and burdensome. Goodyear further objects to this item as unlimited in time. Without waiver of objection, Goodyear responds that no records of any such NIOSH investigation have been found. Goodyear has located and is producing reports of two OSHA inspections of its Niagara Falls, New York vinyl plant between 1955 and 1981.

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ITEM 25

Documents possessed by Goodyear from 1955 to 1981 concerning the toxicity and possible adverse health effects of vinyl chloride monomer.

RESPONSE TO ITEM 25

See General Objections. Goodyear further objects to this item of defendant's notice as being overly broad. Read literally, the defendant's request would require that Goodyear search the bookshelves and files of all individuals in departments within the corporation who or which may maintain any type of technical or scientific literature regarding chemicals and, having done that, attempt to review and reconstruct what literature regarding vinyl chloride monomer may have been present during the requested period. This request is unreasonable in

scope and, in fact, impossible. Without waiver of objection, such materials as have been identified after a reasonable and diligent search are being produced.

ITEM 26

Material safety data sheets and technical bulletins provided to Goodyear by any manufacturers of vinyl chloride monomer for the years 1955 to 1981.

RESPONSE TO ITEM 26

Such materials as have been identified after a reasonable and diligent search are being produced.

ITEM 27

Documents and records of other information provided by Goodyear to employees or to any union representatives of Goodyear employees from 1955 to 1981 concerning the handling of vinyl chloride monomer and the toxicity and possible adverse health effects of exposure to vinyl chloride monomer.

RESPONSE TO ITEM 27

See General Objections. Goodyear further objects to the scope of this item as not limited to the records of the Niagara Falls plant of Goodyear, where it is alleged plaintiff's decedent was employed. Goodyear further objects to the term "handling" in this context as overly broad, and assumes the request is intended to be limited to such information provided to the subject employees for the safe handling of vinyl chloride monomer. Without waiver of objection, such records as may be relevant to the Goodyear, Niagara Falls plant as have been identified after a reasonable and diligent search are being produced or

will be produced subject to the entry of an appropriate confidentiality order.

ITEM 28

Minutes, transcripts and other records and recordings of meetings between Goodyear management or supervisory personnel and employees or union representatives of Goodyear employees from 1955 to 1981 concerning the handling of vinyl chloride monomer and the toxicity and possible adverse health effects of vinyl chloride monomer.

RESPONSE TO ITEM 28

See General Objections and Response to Item 27. Goodyear further objects to the scope of this item as not limited to the records of the Niagara Falls plant as Goodyear, where it is alleged plaintiff's decedent was employed. Without waiver of objection, after a due and diligent search, such records as have been located with respect to the Niagara Falls plant after a due and diligent search are being produced.

ITEM 29

Records that refer or relate to any efforts by Goodyear or at Goodyear's direction from 1955 to 1981 to reduce or eliminate worker exposure to vinyl chloride monomer.

RESPONSE TO ITEM 29

See General Objections. Goodyear further objects to the terms "refer or relate" as overly broad, unduly burdensome and unreasonable. Goodyear further objects to the scope of this item as not limited to the records of the Niagara Falls plant at Goodyear, where it is alleged plaintiff's decedent was employed. Without waiver of objection,

various records itemizing and describing such efforts at the Niagara Falls plant have been located and are being produced.

#### ITEM 30

Documents that refer or relate to communications, either oral or written, between employees and representatives of Goodyear and employees and representatives of Shell, The Dow Chemical Company ("Dow") and PPG Industries, Inc. ("PPG") concerning (1) worker exposure to vinyl chloride monomer, (2) the toxicity and possible adverse health effects of vinyl chloride monomer, or (3) personal protective equipment to be used with respect to vinyl chloride monomer.

#### RESPONSE TO ITEM 30

See General Objections. Goodyear further objects to the terms "refer or relate" as overly broad, unduly burdensome and unreasonable. Without waiver of objection, after a reasonable and diligent search, no such documents have been located except as are otherwise being produced.

#### ITEM 31

Documents that refer or relate to Goodyear's membership, involvement or participation in any group or committee or the Chemical Manufacturing Association ("CMA") dealing with vinyl chloride monomer and industrial hygiene procedures, personal protective equipment and material safety data sheets regarding vinyl chloride monomer.

#### RESPONSE TO ITEM 31

See General Objections. Goodyear further objects to the terms "refer or relate" as overly broad, unduly burdensome and unreasonable. Without waiver of objection, after a reasonable and diligent search,

such documents as have been located are being produced.

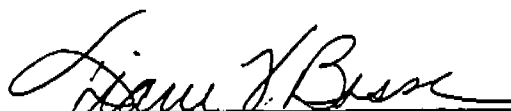
ITEM 32

The press releases issued by Goodyear with regard to the March 1 and 22, 1974 diagnoses of angiosarcoma of the liver of two employees of Goodyear's Niagara Falls, New York plant.

RESPONSE TO ITEM 32

One such document has been located and is being produced.

DATED: Buffalo, New York  
April 22, 1993



DIANE F. BOSSE  
VOLGENAU & BOSSE  
Attorneys for Third-Party Defendant  
THE GOODYEAR TIRE & RUBBER COMPANY  
1400 Main Seneca Buidling  
237 Main Street  
Buffalo, New York 14203-2782  
716/856-8200

TO: PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER  
Attorneys for Defendants and Third-Party Plaintiff  
SHELL OIL COMPANY  
3400 Marine Midland Center  
Buffalo, New York 14203

cc: STEVEN WODKA, ESQ.  
Attorney for Plaintiff  
21 Rosslyn Court  
Little Silver, New Jersey 07739

JOHN N. LIPSITZ, ESQ.  
Local Attorney for Plaintiff  
1066 Ellicott Square Building  
Buffalo, New York 14203

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