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Morristown, New Jersey 07960
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Attorneys for Defendant
Borden, Inc.

LOTTIE MEMICE, Individually and
LOTTIE MEMICE, as Executrix of
the ESTATE OF JOSEPH MEMICE,
Deceased,
Plaintiffs,
v.
PPG INDUSTRIES, INC., et al.
Defendants.

SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: PASSAIC COUNTY
: DOCKET NO. L-20509-86
: Civil Action
: NOTICE OF MOTION FOR
: SUMMARY JUDGMENT

TO: S. Robert Princiotto, Esq.
Marcus & Levy
Valley National Bank Bldg.
80 Broadway (Route 4)
Elmwood Park, NJ 07407
Attorney for Plaintiff

SIRS:

PLEASE TAKE NOTICE that on a date to be set by the Court, the undersigned attorneys for defendant Borden, Inc. shall apply to the Court for an Order granting summary judgment dismissing plaintiff's Complaint as to defendant Borden, Inc.

PLEASE TAKE FURTHER NOTICE that in support of the within application reliance shall be place upon the annexed brief and certification of Robert M. Leonard with exhibits attached thereto.

URL 21639

PLEASE TAKE FURTHER NOTICE that defendant Borden,
Inc. requests oral argument.

SHANLEY & FISHER, P.C.
Attorneys for Defendant
Borden, Inc.

By: Raymond M. Tierney
Raymond M. Tierney, Jr.
A Member of the Firm

DATED: July 17, 1987.

URL 21640

URL 21841

CERTIFICATION

I, Robert M. Leonard certify as follows:

1. I am an attorney-at-law of the State of New Jersey and am associated with the law firm of Shanley & Fisher, P.C. attorneys for defendant Borden, Inc. in the within matter I am fully familiar with the facts set forth herein. I submit this certification in support of Borden's motion for summary judgment dismissing plaintiff's Complaint against defendant Borden, Inc.

2. Attached hereto as Exhibit A are true copies of Borden's answers to interrogatories.

3. Attached hereto as Exhibit B are true copies of Exhibits marked P-20A and P-21A at the deposition of John Ertel.

4. Attached hereto as Exhibit C are true copies of certain excerpts John Ertel's first and second deposition.

5. Attached hereto as Exhibit D is a copy of a memorandum prepared by J.T. Leonard, a former Pantasote purchasing agent.

I hereby certify the the foregoing statements made by me are true. I am aware that if any statement made by me is wilfully false, I may be subject to punishment.

Robert M. Leonard

URL 21842



4. State whether or not this defendant recognizes that VCM could cause or result in cancer and its related maladies in human beings and if so, state the date when this defendant first learned that VCM could cause or result in cancer and the source of the information.

URL 21843

5. State whether or not you have ever entered into a contract or agreement for the sale of VCM with the Pantaso Company. If so, state:

Borden did not enter into any contract or agreement to sell VCM to Pantasote in Passaic, New Jersey prior to plaintiff's retirement in September, 1983.

a. Whether said Contract was fully performed by each party.

b. Whether said Contract was terminated earlier than the termination date. If so, indicate the termination date and the reason for such earlier termination.

c. Whether any of the terms of the Contract were modified orally, in writing or by conduct of the parties.

d. If any Contract was not fully performed, state in detail all alleged nonperformances.

e. Attach hereto a clear copy of said Contract or Agreement together with any modifications or alterations thereof.

f. State the names and address of each individual known by you to be familiar with said contracts or agreements for both vendor and vendee.

URL 21844

6. State whether you ever delivered VCM to the Pantasote Company for its Passaic, New Jersey facility and if so, state, the dates of delivery, the quantity of each delivery, the delivery date and person or persons who have relevant knowledge concerning said sales from vendor and vendee.

6. Borden did not deliver VCM to the Pantasote Company for its Passaic, New Jersey facility until October, 1983, after the date of plaintiff's retirement from Pantasote.

7. For each year from 1960 up to and including 1983, state:

a. Your annual capacity in millions of pounds for VCM. If by some other measurement other than millions of pounds indicate same.

b. Actual production in millions of pounds. If by some other measurement other than millions of pounds, please indicate same.

8. State all manufacturers of VCM for the years 1960 up to and including 1983.

URL 21845

9. State all facts in support of your contention that you did not supply, manufacture or distribute VCM which caused Plaintiff's injury.

Borden has reviewed its records which indicate that it never sold VCM to Pantasote in Passaic, New Jersey until October, 1983 after plaintiff's retirement from Pantasote. The Pantasote purchasing records confirm that Borden was not a supplier of VCM to its facility in Passaic, New Jersey until that time. These records also indicate the suppliers with whom Pantasote had its contracts for the supply of VCM.

URL 21846

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3. *Journal of the American Medical Association*

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MAONE-DIX, JAMES

DESCRIPTION: V	1	PPG	N37	PS
URL 21849	2	CHOTIN IN PPG		
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EQUIPMENT	7			
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DATE	INV.	ORDER NO.	DATE ORD.	QUAN.	V	DUE	REC'D	APP	PRICE		ADDITIONAL INFORMATION:
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				20.00	1	" "		FL	124.15	CHOTIN	
		D 70441	2/13	1,200.00	1	2/13	/	FL	124.15	CHOTIN	
		D 70441	3/14	2,100.00	1	4/78	/	FL	137.50		
		D 70441	4/11	4,200.00	1	6/78		FL	" "		
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		D 70441	6/14	3,400.00	1	7/78		FL	141.50		
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+10% OVER 120.00											

EXHIBIT
P-21A 10
16381 MA

URL 21851

Ertel - direct

1 C. In other words, would you be able to tell me
2 slight, significant, very significant, insignificant,
3 moderate?

4 A. We thought it was significant purchases.

5 Q. Well, with relation to, of course, what
6 Pantasote's purchases were.

7 A. You wish to know did we buy most of our VCM
8 from PPG?

9 C. That's correct.

10 A. If you will ask me that, I will say yes.

11 Q. I'm asking you that.

12 A. But don't beat around the bush.

13 Q. I'm not trying to put words in your mouth.

14 I want your answers.

15 Let me just, for clarification of the record
16 reask the question. For the period 1975 until 1981,
17 did The Pantasote Company make most of its purchases
18 of VCM from PPG Industries, Inc.?

19 A. Yes.

20 Q. Are you able to quantify that in any
21 approximate percentage, 50 percent, 80 percent, 90
22 percent, 95 percent, in that same time period?

23 A. More than 50 percent.

24 Q. And that would be for the time period 1975
25 through and including 1981?

URL 21852

1 J O H N E R T ^{II} L, residing at 4 Harrison
2 Avenue, Montclair, New Jersey, being first duly sworn
3 by the Notary according to law testified as follows:
4

5 DIRECT EXAMINATION BY MR. PRINCIOTTO:
6

7 THE WITNESS: I would like to make an
8 opening statement.

9 MR. SANSON: Do you have a problem with
10 that?

11 MR. PRINCIOTTO: Off the record.

12 (Discussion held off the Record.)

13 MR. PRINCIOTTO: Mr. Ertel has indicate
14 off the record that he did find records referred to in
15 an inter-office memo marked P-2 for identification at
16 the last deposition and has the originals of those
17 records and has made copies for Counsel.
18

19 BY MR. PRINCIOTTO:

20 Q. Mr. Ertel, did you want to make a statement
21 You indicated off the record that you wanted to make
22 statement concerning your prior answer with regard to
23 whether or not the records were reviewed. What is th
24 statement you would like to make?

25 A. My prior answer to the question was that I

URL 21853

Artel - direct

1 did not review the records, and since I had not, I
2 took the time to review the records and found the
3 document from which exhibit P-2 was prepared in
4 summary form, and I have with me today copies of that
5 record, as well as the originals which I have in hand
6 that I do not plan to make part of the record, merely
7 the copies taken there from.

8 MR. PRINCIOTTO: All right.

9 I would ask that the originals be
10 marked for identification, then we'll likewise mark
11 copies that you have produced. We are up to P-19.

12 I don't know how many pieces there are
13 but we can start with P-20.

14 A. P-20 is which?

15 Q. The Reporter will mark them.

16 A. Here are the originals and here are three
17 copies that I have made from the originals.

18 (Exhibits P-20 through P-23 marked
19 for identification).

20 MR. PRINCIOTTO: For the record, P-20
21 is a purchasing card that appears to commence 1981 and
22 goes to 1984. P-21 is a purchasing card that appears
23 to commence in 1978 and goes up to 1981. P-23 is two
24 pages, it is a photocopy of the front and back of P-
25 P-22 is two pages also --

URL 21854

Ertel - cross

1 purchase order was issued, an entry was made on P-20
2 or P-21. Correct?

3 A. Yes.

4 Q. And that was made by whom?

5 A. J.T. Leonard.

6 Q. Who, at the time that he was making these
7 entries, was the purchasing manager of the company?

8 A. That is correct.

9 Q. And it was Mr. Leonard who prepared P-2,
10 that you had relied on at the last time of your
11 deposition. Correct?

12 A. Yes.

13 Q. Now, based on your review of these records
14 that were produced today, that is P-20 and P-21, can
15 you tell me the first time that Borden is identified
16 as a supplier of VCM to Pantasote?

17 A. November 15, 1981.

18 Sorry, I am mistaken. I am mistaken.

19 Q. You made my heart stop.

20 A. I translated the wrong vendor code.

21 May 10, 1983. Oh, no, no, no. October 5,
22 1983, and an undated entry apparently relating to the
23 October 5 purchase order.

24 Q. Well, when you say undated, you mean undated
25 with respect to month and day. Correct?

URL 21855

Ertel - cross

1 A. Yes, but it's marked October.

2 Q. And also -- in what year?

3 A. 1983.

4 Q. And in fact, those are the only two
5 references contained in these purchase records to
6 Borden. Isn't that right?

7 A. That is correct.

8 Q. So that the summary prepared by Mr. Leonard
9 marked P-2 for identification, which lists Borden
10 Chemical as a vendor -- let me withdraw that question

11 Focusing your attention on P-2, is it your
12 understanding that P-2 was prepared by Mr. Leonard
13 based on P-20 and P-21?

14 MR. PRINCIOTTO: P-2?

15 MR. LEONARD: P-2.

16 MR. PRINCIOTTO: I object to the form
17 of your question. Because he didn't -- this witness
18 didn't prepare it.

19 MR. LEONARD: I asked for his
20 understanding of how it was prepared and why it was
21 prepared.

22 MR. PRINCIOTTO: My objection stands.

23 MR. LEONARD: Well, your objection is
24 noted.

25 Q. That memo, P-2, is addressed to you from Mr.

URL 21856

Ertel - cross

II

1 Leonard. Correct?
2 A. That is correct.
3 Q. And was that made at your request?
4 A. Yes.
5 Q. And that memo refers to certain records,
6 does it not?
7 A. It does.
8 Q. And what records, what is your understanding
9 of what records Mr. Leonard is referring to in P-27
10 A. The two cards that we now have in evidence
11 as P-20 and P-21.
12 Q. So is it fair --
13 A. Confirmed to me by Mr. Leonard.
14 Q. Okay. So Mr. Leonard told you that P-2 was
15 based on P-20 and P-21. Correct?
16 A. Based on these cards.
17 Q. And based on these cards, it appears that
18 Borden first supplied Pantasote in 1983. Correct?
19 A. Yes.
20 Q. And at the time of the last deposition, when
21 you mentioned Borden as a supplier, what had refreshed
22 your recollection that Borden supplied Pantasote was
23 the Leonard memo P-2. Correct?
24 MR. PRINCIPOTTO: I object to the form
25 of the question.

URL 21857

Ertel - cross

II

1 Is that so?

2 A. That is correct.

3 Q. Who would have been responsible for keeping
4 any records that there might have been at that time?

5 A. I would like to go off the record a minute.

6 (Discussion held off the Record.)

7 A. My answer to your question back on the
8 record is no one.

9 Q. Let me rephrase that question.

10 Would who would have been responsible for
11 making any record at the time that was made?

12 A. Frank Geraci.

13 Q. And would that be for the entire period, '7
14 through --

15 A. Through his retirement in late '77.

16 Q. And then he was replaced?

17 A. And replaced by J.T. Leonard.

18 Q. For some of that period, you were not there.
19 Is that correct, '75 into '76?

20 A. That is correct.

21 Q. All right.

22 You identified at the first session of this
23 deposition a number of suppliers as suppliers of VCM
24 for that period 1975 through 1981, and I believe you
25 referenced the document P-2 when you did that.

URL 21858

II

1 MR. LEONARD: Okay.

2 MR. PRINCIOTTO: Could I have that
3 question read back, please?

4 (Pending question read back by the
5 Reporter).

6 A. Yes.

7 In case no one heard my answer, the answer
8 was yes.

9 Q. So then as far as you are concerned today,
10 Borden first became a supplier of Pantasote in 1983,
11 supplier of VCM in 1983. Is that correct?

12 A. Yes.

13 Q. Now, you were asked by Mr. Princiotto about
14 an exhibit, a barge agreement. Do you remember that
15 question?

16 A. Yes, I do.

17 Q. And you indicated that you wouldn't answer
18 that question, because it had nothing to do with the
19 Passaic facility. Correct?

20 A. Yes.

21 Q. Did I understand your testimony to be that
22 because say VCM that was shipped to West Virginia
23 would be used in West Virginia, it would have no
24 connection at all with the Passaic facility. Is that
25 right?

URL 21859