

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EILEEN A. DUNN, Executrix of
the Estate of William F. Dunn,
deceased, and in her own behalf;
and CAROLINE M. DUNN,

Plaintiffs,

v.

MONSANTO COMPANY; THE DOW
CHEMICAL CO.; THE B.F. GOODRICH CO.;
GREAT AMERICAN CHEMICAL CORP.,

Defendants.

Civil Action
No. 85-0377-F

DEFENDANTS' JOINT MOTION FOR SANCTIONS

The defendants, Monsanto Company, The Dow Chemical Company, and the The B.F. Goodrich Company, hereby move this Court to assess costs, fees, and other sanctions against plaintiffs' counsel, Silverplate, Gertner, Baker, Fine and Good, pursuant to Rule 11 of the Federal Rules of Civil Procedure. As grounds for their motion, the defendants have set forth the relevant facts and applicable law in their accompanying memorandum, and also state as follows:

1. On August 8, 1985, Nancy Gertner, plaintiffs' counsel, instituted the within action on behalf of Eileen A. Dunn, individually and as executrix of the estate of William-A. Dunn (the "decedent"), and Caroline M. Dunn

("plaintiffs"). Eileen A. Dunn is the decedent's widow; Caroline is his daughter. The amended complaint alleges that on December 14, 1980, Mr. Dunn, a former employee of defendant Monsanto Company, died as a result of his exposure to polyvinyl chloride ("PVC") and vinyl chloride ("VC"), allegedly manufactured and supplied by the other defendants. Amended complaint, introductory para.

2. Plaintiffs assert that their claims are timely notwithstanding a three-year statute of limitations, because, they allege, they "did not know of the association between [Mr. Dunn's] cancer and his exposure to VC and PVC until less than three years prior to initiating this action [on August 8, 1985]". Amended complaint, Para. 8.

3. Defendants have discovered evidence indicating that the above quoted allegation is false. In December of 1981, more than three and one half years before the commencement of the present action, three worker's compensation claims (against three of Monsanto Company's insurance carriers "on the risk" during the period of Mr. Dunn's employment) were filed by Eileen A. Dunn, through counsel, each of which expressly stated, in response to the question "How did injury occur?," that it had occurred by "repeated exposures to and aggravation by materials at work, including polyvinylchloride". (emphasis added). See Exhibit B to Affidavit of Philip A. Brooks, Esquire, filed herewith.

4. Defendants have also obtained copies of correspondence, together with an accompanying affidavit, indicating that Nancy Gertner, plaintiffs' counsel in the present action, was acting during 1983 and 1984 as counsel for Eileen A. Dunn in connection with the above worker's compensation claims. Thus, prior to bringing the present action in August 1985, Ms. Gertner well knew (or in the alternative is charged with the knowledge that a minimum reasonable inquiry would have disclosed) that plaintiff Mrs. Dunn had become aware of the possible alleged association between Mr. Dunn's cancer and his exposure to polyvinyl chloride more than three years prior to the commencement of the present action. See Affidavit of Philip A. Brooks, Esquire.

5. In violation of both Rule 11 of the Federal Rules of Civil Procedure and 28 U.S.C. § 1927, plaintiffs' counsel brought the present action on behalf of Eileen A. Dunn based upon false and unfounded factual allegations, and have thereby unjustifiably caused the defendants to incur substantial costs in the defense of a meritless action.

WHEREFORE, defendants move:

- (1) That plaintiff's counsel be adjudged in violation of Rule 11 of the Federal Rules of Civil Procedure and of 28 U.S.C. § 1927;

(2) That the Court impose such sanctions upon
plaintiffs' counsel as will reasonably recompense
defendants for their costs; and
(3) That the Court grant such other and further relief
as is just and equitable.

THE DOW CHEMICAL COMPANY

THE B.F. GOODRICH COMPANY

By its attorneys,

Lane McGovern
Paul V. Kelly

Lane McGovern
Paul V. Kelly
ROPES & GRAY
225 Franklin Street
Boston, MA 02110
(617) 423-6100

By its attorneys,

Allan van Gestel

Allan van Gestel
Timothy J. Langella
GOODWIN, PROCTER & HOAR
28 State Street
Boston, MA 02109
(617) 523-5700

MONSANTO COMPANY

By its attorneys,

Robert P. Powers

Thomas W. Porter, Jr.
Robert P. Powers
MELICK & PORTER
11 Arlington Street
Boston, MA 02116
(617) 267-7502

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EILEEN A. DUNN, Executrix of
the Estate of William F. Dunn,
deceased, and in her own behalf;
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Plaintiffs,

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MONSANTO COMPANY; THE DOW CHEMICAL
CO.; THE B.F. GOODRICH CO.;
GREAT AMERICAN CHEMICAL CORP.,

Defendants.

Civil Action
No. 85-0377-F

MEMORANDUM IN SUPPORT OF DEFENDANTS'
JOINT MOTION FOR SANCTIONS

Statement of Facts

On August 8, 1985, Eileen A. Dunn, acting as executrix of the estate of William F. Dunn and on her own behalf, and Caroline M. Dunn brought suit against the defendants Monsanto Company ("Monsanto"), The Dow Chemical Company ("Dow"), The B.F. Goodrich Company ("B.F. Goodrich") and Great American Chemical Corporation, seeking \$25,000,000 in damages in connection with Mr. Dunn's death on December 14, 1980. Eileen A. Dunn is the decedent's widow; Caroline is his daughter. Plaintiffs claim that Mr. Dunn died of lung cancer resulting from his long-term occupational exposure to polyvinyl chloride ("PVC") and vinyl chloride ("VC"),

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✓ substances allegedly supplied to Mr. Dunn's employer, Monsanto, by the other defendants.

The amended complaint includes the statement that "plaintiffs did not know of the association between [Mr. Dunn's] cancer and his exposure to VC and PVC until less than three years prior to initiating this action." Amended Complaint, para. 8.

Defendants have discovered evidence that the above statement was false, and that as early as 1981 plaintiff Eileen A. Dunn was of the view that there existed an alleged causal connection between the decedent's cancer and his exposure to VC and PVC. Three worker's compensation claims were filed by Eileen A. Dunn, through counsel, on December 11, 1981.¹ These claims expressly alleged that Mr. Dunn's death occurred by "repeated exposures to and aggravations by materials at work including polyvinylchloride." (emphasis added) See Exhibits A and B to Affidavit of Philip A. Brooks ("Brooks Affidavit"), filed herewith. An earlier letter from Eileen A. Dunn to Monsanto, dated April 29, 1981, had requested documents concerning her husband's exposure to occupational chemicals, including PVC. See Exhibit C to Brooks Affidavit.

¹ Separate claims were apparently filed against each of Monsanto's worker's compensation carriers "on the risk" during the years of Mr. Dunn's employment -- Liberty Mutual Insurance Co. (Exhibit B-1 to Brooks Affidavit), Travelers Insurance Co. (Exhibit B-2), and INA (Exhibit B-3).

With respect to the same worker's compensation claims alleging the causal association between PVC exposure and Mr. Dunn's death, defendants have obtained copies of correspondence between Philip A. Brooks, counsel for both the insurer (Travelers Insurance Company) and the employer (Monsanto) in the worker's compensation matter, and Nancy Gertner, plaintiffs' counsel in the present action. This correspondence includes (1) a letter dated February 9, 1984 from Mr. Brooks to Ms. Gertner indicating that Mrs. Dunn's 1981 workmen's compensation claims had been filed by another attorney "on your [Ms. Gertner's] behalf," and (2) a letter dated April 25, 1984 from Ms. Gertner to Mr. Brooks, discussing the scheduling of various depositions and the trial date in the same workmen's compensation matter. See Exhibits D and E to Brooks Affidavit.

It is apparent that Mrs. Dunn believed, as long ago as 1981, more than three years before commencement of the present action, that she had enough information which led her to believe that there was an alleged causal connection between PVC exposure and her husband's cancer to warrant making this the basis of three worker's compensation claims.

It is also apparent that prior to commencing the present action in August 1985, Nancy Gertner, who had during 1983 and 1984 acted on Mrs. Dunn's behalf in connection with these same worker's compensation claims, knew about these claims, knew about their attribution of Mr. Dunn's death to "repeated exposures to . . . polyvinylchloride" (or in the

alternative is charged with the knowledge that even a minimum reasonable inquiry would have disclosed), and therefore knew at the time of filing suit that there was not "well grounded" factual support (Fed. R. Civ. P. 11) for the allegation in the plaintiffs' amended complaint that

"plaintiffs did not know of the association between [Mr. Dunn's] cancer and his exposure to VC and PVC until less than three years prior to initiating this action."

Amended Complaint, para. 8.

Argument

Under Rule 11 of the Federal Rules of Civil Procedure, as amended in 1983,² a defendant is entitled to an award of attorneys' fees if a plaintiff brings or maintains an unfounded action in bad faith or without making a reasonable

² Rule 11 provides in pertinent part:

The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Fed. R. Civ. P. 11 (emphasis added).

inquiry into the operative facts.³ Mohammed v. Union Carbide Corp., 606 F. Supp. 252, 260 (E.D. Mich. 1985); see also Nemeroff v. Abelson, 704 F.2d 652 (2nd Cir. 1983) (prior to the 1983 amendment of Rule 11, bad faith was primary ground for imposing sanctions); accord. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 258-259 (1975). "'Bad faith' is evident where a party's claims are entirely without color and made for reasons of harrassment or delay or for other improper purposes." Nemeroff v. Abelson, 620 F.2d 339, 348 (2nd Cir. 1980). What constitutes a "reasonable inquiry" depends "largely on the particular facts and circumstances of a given claim." Mohammed v. Union Carbide Corp., 606 F. Supp. at 261.

In the present case, there is ample evidence that, prior to the filing of the original complaint, plaintiffs' counsel knew -- or should have known upon the slightest reasonable inquiry -- that Eileen A. Dunn had attributed her husband's death to polyvinyl chloride in December 1981 (more than three years before commencement of the action), and that accordingly her action was time-barred, even if one were to

³ An alternative ground for the within motion is found in 28 U.S.C. § 1927, which provides for sanctions against an attorney who "multiplies the proceedings in any case as to increase costs unreasonably and vexatiously." Roadway Express, Inc. v. Piper, 447 U.S. 753, 758-760 (). Sanctions under Section 1927 have been applied in instances similar to the present one. See Van Berkel v. Fox Farm and Road Machinery, 581 F. Supp. 1248 (D. Minn. 1984).

apply the novel "discovery rule" proposed by the plaintiffs. Sanctions are therefore appropriate.

Courts have regularly dealt with cases such as the present one by assessing both costs and attorneys' fees. In a case directly on point, Van Berkel v. Fox Farm and Road Machinery, 581 F. Supp. 1248 (D. Minn. 1984), the plaintiffs filed a personal injury suit claiming that the injury occurred within the applicable six-year period of limitation. When the defendants uncovered clear evidence that the injury had occurred nearly one year prior to the six-year limit, they moved to dismiss the action and for sanctions. In granting both motions and assessing costs and attorney's fees, the court held that plaintiff's counsel had violated Rule 11 by failing to "make a 'reasonable inquiry' upon which to base a belief that the allegations of the complaint were true." Id. at 1251. Plaintiff's counsel was also found in violation of 28 U.S.C. § 1927 because he "unjustifiedly failed to dismiss th[e] lawsuit after learning that it was barred by the statute of limitations." Id.

In a similar case, Huettig & Schromm v. Landscape Contractors Council, 582 F. Supp. 1519 (N.D. Cal. 1984), plaintiffs brought a suit which on its face was meritless. The court dismissed the complaint and awarded sanctions in the form of the defendant's costs and attorneys' fees. In language appropriate to the present case, the court condemned the conduct of plaintiff's counsel:

Rule 11 is a response to a widely felt need to end abuse of the litigation process such as occurred here. If the Court were to tolerate this kind of conduct, the capacity of the judicial system to serve the ends of justice would soon become impaired. Sanctions must therefore be imposed by the Court but counsel should realize that the heaviest sanction they will suffer is the one they have inflicted on themselves -- loss of the courts' confidence in their probity.

Huettig & Schromm v. Landscape Contractors Council, 582 F. Supp. at 1522.

In the present case, Mrs. Dunn's 1981 request for chemical exposure information from Monsanto, her 1981 filing of workmen's compensation claims based on exposure to PVC, and the 1984 letters to and from Ms. Gertner, collectively demonstrate that Ms. Gertner knew or is charged with knowing that the key allegations of the complaint were not "well grounded in fact" and that Mrs. Dunn's action was barred by the statute of limitations before she brought it. Even if Ms. Gertner did somehow believe that a valid claim existed, sanctions would nonetheless be appropriate due to the absence of an objective basis for the belief. Mohammed v. Union Carbide Corp., 606 F. Supp. 252, 260-262 (E.D. Mich. 1985) (Rule 11 sanctions granted where plaintiff's attorney failed to make reasonable inquiry into the facts); Wells v. Oppenheimer & Co., 101 F.R.D. 358, 359 (S.D.N.Y. 1984) (Court may impose sanctions where there is no objective basis for an attorney's belief that his client's claims are well grounded in fact.).

In light of the improper institution of this action, and the substantial time and money which Ms. Gertner knew the defendants would spend in defending it, sanctions of attorney's fees and costs are appropriate. Peltier v. Peltier, 548 F.2d 1083 (2nd Cir. 1977); Miller v. Affiliated Financial Corp., 600 F. Supp. 987, 991 (N.D. Ill. 1984).

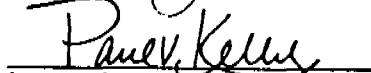
Conclusion

For the foregoing reasons, the Defendants' Joint Motion For Sanctions should be allowed.

THE DOW CHEMICAL COMPANY

By its attorneys,




Lane McGovern
Paul V. Kelly
Ropes & Gray
225 Franklin Street
Boston, MA 02110
(617) 423-6100

THE B.F. GOODRICH COMPANY

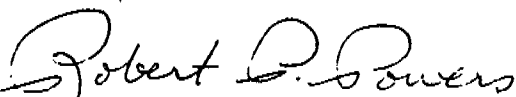
By its attorneys,



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28 State Street
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MONSANTO COMPANY

By its attorneys,



Thomas W. Porter, Jr.
Robert P. Powers
Melick & Porter
11 Arlington Street
Boston, MA 02116
(617) 267-7502

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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EILEEN A. DUNN, Executrix of the
Estate of WILLIAM F. DUNN, Deceased,
and in her own behalf; and CAROLINE
M. DUNN

Plaintiffs,

v.

MONSANTO COMPANY; THE DOW CHEMICAL
COMPANY, B.F. GOODRICH CO.; GREAT
AMERICAN CHEMICAL CORP.

Defendants.

.....

CIVIL ACTION
No. 85-0377-F

AFFIDAVIT OF PHILIP A. BROOKS, ESQUIRE

I, Philip A. Brooks, do hereby depose upon oath and say:

1. I am a partner at the law firm of Brooks, Mulcahy &
Sanborn, with offices at 1387 Main Street in Springfield,
Massachusetts. I have been a member of the Massachusetts
Bar since 1957.

2. In April 1982, I was retained by Travelers Insurance
Company ("Travelers") on behalf of Monsanto Company
("Monsanto") in connection with Monsanto's defense of a
workers' compensation claim filed with the Massachusetts
Division of Industrial Accidents by Eileen Dunn, widow of
William F. Dunn, on or about December 11, 1981. In that
claim, Mrs. Dunn alleged that the cause of William Dunn's

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injury and death was "repeated exposures to and aggravation by materials at work, including polyvinylchloride." Copies of the workers' compensation claim forms filed on behalf of Eileen Dunn are attached as Exhibits "A" and "B".

3. During the course of the workers' compensation proceedings, I received from Monsanto a copy of a letter from Eileen Dunn to James Shriver, a Monsanto employee, dated April 29, 1981, which requested that Monsanto provide her with records regarding William Dunn, including medical records and x-ray films, data regarding jobs and exposure to chemical substances while performs those jobs, and material safety data sheets. The letter specifically refers to the chemical substance "PVC" (polyvinylchloride). A copy of this letter is attached as Exhibit "C".

4. On February 9, 1984, I sent a letter of the same date to Nancy Gertner, Esq., attorney for Eileen Dunn in her workers' compensation claim against Monsanto, regarding the status of the case. On or about April 27, 1984, I received a letter from Ms. Gertner dated April 25, 1984, which further discussed the status of Eileen Dunn's workers' compensation action. A copy of these letters are attached as Exhibit "D" and Exhibit "E," respectively.

5. The filing of the workers' compensation claims and the exchange of correspondence among Eileen Dunn, Nancy

Gertner, Monsanto and myself took place before Ms. Gertner filed the instant action on behalf of Ms. Dunn.

I declare under the penalty of perjury that the foregoing is true and correct.

EXECUTED on October 28, 1985, in Springfield,
Massachusetts.

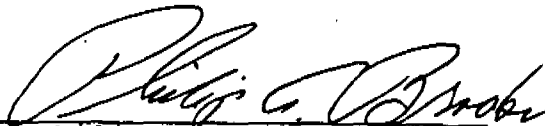

Philip A. Brooks

Exhibit A

Laurence S. Locke
Maryel F. Locke
William H. Troupe
William J. McCarthy, Jr.
Carolynn N. Fischel
George T. Strzelinski
Thomas A. Boyle III
Richard S. Dutka

Law offices of

PETKUN & LOCKE, Inc.

40 Court Street, Suite 510
Boston, Massachusetts 02108
(617) 742-7146

Bertram A. Petkun
1906-1978

McGABE/ESROCH P.S.

OCT 2 1985

S.W.R.

December 11, 1981

Insurer: Travelers Insurance Co.
120 Maple Street
Springfield, MA

RE: Employee: William F. Dunn (dec'd)
Employer: Monsanto Chemical Co.
Insurer: Travelers Insurance Co.

IAB# _____
Insurer# _____
Date of injury: March 1, 1971 to April 1, 1978

Gentlemen:

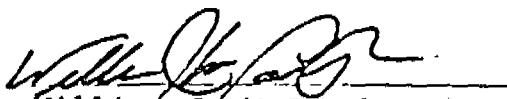
Kindly note our appearance for the employee and the enclosed correspondence sent this date to the Industrial Accident Board.

In accordance with G.L. c. 152, §§7B, 20, 20A, and 45, will you please send us copies of your medical reports and any signed statements of the employee.

Please return a completed copy of IAB form 31 to this office.

Thank you for your cooperation in this matter.

Very truly yours,


William J. McCarthy, Jr.
WJM:jmd

enclosures

GACC 00301

cc: Edward T. Dangel, III, 60 State Street, Boston, MA 02109

The Commonwealth of Massachusetts

DIVISION OF INDUSTRIAL ACCIDENTS
 LEVERETT SALTONSTALL BUILDING
 GOVERNMENT CENTER, 100 CAMBRIDGE STREET
 BOSTON, MASSACHUSETTS 02202

WORKMEN'S COMPENSATION ACT: GENERAL LAWS (TER. ED.), CHAPTER 152

Employee: William F. Dunn (dec'd) Board Number:
 Employer: Monsanto Chemical Co.
 Insurer (Self-Insurer): Liberty Mutual Insurance Co. Insurer's Number:

CLAIM — REQUEST — APPEARANCE

Note: The original of this form must be completed and filed with the Division and three (2) copies thereof must be sent to the insurance company or self-insurer. Failure to comply with this procedure will result in delayed action on an employee's claim and request. Claim should be made within one year after the injury. General Laws, Chapter 152, Sections 41 and 49.

TO BE COMPLETED BY EMPLOYEE (OR PERSON IN HIS BEHALF)

1. Date and Time of Injury February 28, 1955 to March 1, 1971
2. Place of Injury (Describe Building, Premises, Address) employer's premises: Monsanto Ave.
Indian Orchard, MA
3. How did injury occur? (Describe in detail) repeated exposures to and aggravat
by materials at work, including
polyvinylchloride
4. When and to whom did you report injury?
5. State nature of injury adenocarcinoma, fatal, c/h/a by above exposur
6. Is hearing requested at this time? (Check): Yes (X) No () & aggravations
7. If hearing is requested, indicate period(s) of compensation claimed (such as total, partial, total and permanent, specific
pendency), or other reason for Request fatal benefits under Sections 31, 33 & 36A from
12/14/80 and continuing

APPEARANCE OF COUNSEL / IN ASSOCIATION WITH:

Petkam & Locke, Inc. / Edward T. Dangel, III, BY: *William F. Dunn* her att

(Signature of Attorney)

Esq.

(Signature of Employee or Claimant)

40 Court Street / 60 State Street
(Street and Number)74 Orchard Street
(Street and Number)

Boston, MA 02108 / Boston, MA 02109

Westfield, MA 01085

(City or Town)

(City or Town)

742-7146 / 227-8200

December 11, 1981

(Telephone Number)

(Date of Claim)

INSURER'S REPLY

Note: Within 21 days of the receipt of this Claim, the Insurer or Self-Insurer must complete this portion, in triplicate, for
 ing one copy to the Division, one copy to the employee (or his counsel, if any), and retain one copy.

A. Insurer Admits:

(Check or Insert)

1. Personal Injury

2. Disability From

To

3. Causal Relation

4. Dependency

5. Other

B. Insurer Denies:

(Check or Insert)

1. Personal Injury

2. Disability From

To

3. Causal Relation

4. Proper Notice

5. Proper Claim

6. Other

GACC 00302

BY

Michael D. Foye

The Commonwealth of Massachusetts

DIVISION OF INDUSTRIAL ACCIDENTS
LEVERETT SALTONSTALL BUILDING
GOVERNMENT CENTER, 100 CAMBRIDGE STREET
BOSTON, MASSACHUSETTS 02202

WORKMEN'S COMPENSATION ACT: GENERAL LAWS (TER. ED.), CHAPTER 152

Employee: William F. Dunn (dec'd)
Employer: Monsanto Chemical Co.
Insurer (Self-Insurer): Travelers Insurance Co.

Board Number:

Insurer's Number:

CLAIM — REQUEST — APPEARANCE

Note: The original of this form must be completed and filed with the Division and three (3) copies thereof must be sent to the insurance company or self-insurer. Failure to comply with this procedure will result in delayed action on the employee's claim and request. Claim should be made within one year after the injury. General Laws, Chapter 152, Sections 41 and 49.

TO BE COMPLETED BY EMPLOYEE (OR PERSON IN HIS BEHALF)

1. Date and Time of Injury March 1, 1971 to April 1, 1978
2. Place of Injury (Describe Building, Premises, Address) employer's premises: Monsanto Ave., Indian Orchard, MA
3. How did injury occur? (Describe in detail) repeated exposures to and aggravation by materials at work, including polyvinylchloride
4. When and to whom did you report injury?
5. State nature of injury adenocarcinoma, fatal, c/h/a by above exposures & aggravations
6. Is hearing requested at this time? (Check): Yes (X) No ()
7. If hearing is requested, indicate period(s) of compensation claimed (such as total, partial, total and permanent, specific, dependency), or other reason for Request fatal benefits under Sections 31, 33 and 36A from 12/14/80 and continuing

EILEEN DUNN (widow)

APPEARANCE OF COUNSEL / IN ASSOCIATION WITH:

Petkun & Locke, Inc. / Edward T. Dangel, III, BY:

Esq.

her atty
(Signature of Employee or Claimant)

(Signature of Attorney)

40 Court Street / 60 State Street

(Street and Number)

74 Orchard Street

(Street and Number)

Boston, MA 02108 / Boston, MA 02109

(City or Town)

Westfield, MA 01085

(City or Town)

742-7146 / 227-8200

(Telephone Number)

December 11, 1981

(Date of Claim)

INSURER'S REPLY

Note: Within 21 days of the receipt of this Claim, the Insurer or Self-Insurer must complete this portion, in triplicate, forwarding one copy to the Division, one copy to the employee (or his counsel, if any), and retain one copy.

A. Insurer Admits:

(Check or Insert)

1. Personal Injury

2. Disability From

To

3. Causal Relation

4. Dependency

5. Other

B. Insurer Denies:

(Check or Insert)

1. Personal Injury

2. Disability From

To

3. Causal Relation

4. Proper Notice

5. Proper Claim

6. Other

BY

TITLE

GACC 00303

The Commonwealth of Massachusetts

DIVISION OF INDUSTRIAL ACCIDENTS

LEVERETT SALTONSTALL BUILDING

GOVERNMENT CENTER, 100 CAMBRIDGE STREET

BOSTON, MASSACHUSETTS 02202

WORKMEN'S COMPENSATION ACT: GENERAL LAWS (TER. ED.), CHAPTER 152

Employee: William F. Dunn (dec'd)

Board Number:

Employer: Monsanto Chemical Co.

Insurer (Self-Insurer): INA

Insurer's Number:

CLAIM — REQUEST — APPEARANCE

Note: The original of this form must be completed and filed with the Division and three (3) copies thereof must be sent to the insurance company or self-insurer. Failure to comply with this procedure will result in delayed action on the employee's claim and request. Claim should be made within one year after the injury. General Laws, Chapter 152, Sections 41 and 49.

TO BE COMPLETED BY EMPLOYEE (OR PERSON IN HIS BEHALF)

1. Date and Time of Injury April 1, 1978 to June 13, 1978.
2. Place of Injury (Describe Building, Premises, Address) employer's premises: Monsanto Avenue,
Indian Orchard, MA
3. How did injury occur? (Describe in detail) repeated exposures to and aggravations
by materials at work including
polyvinylchloride
4. When and to whom did you report injury?
5. State nature of injury adenocarcinoma, fatal, c/h/a by above exposures and
aggravations
6. Is hearing requested at this time? (Check): Yes (X) No ().
7. If hearing is requested, indicate period(s) of compensation claimed (such as total, partial, total and permanent, specific,
dependency), or other reason for Request fatal benefits under Sections 31, 33 & 36A
from 12/14/80 and continuing

APPEARANCE OF COUNSEL/ IN ASSOCIATION WITH:

Petkun & Locke, Inc. / Edward T. Dangell, III
(Signature of Attorney) Esq.

40 Court Street 60 State Street
(Street and Number)

Boston, MA 02108 Boston, MA 02109
(City or Town)

742-7146 / 227-8200
(Telephone Number)

EILEEN DUNN (widow)

BY: *[Signature]* her atty
(Signature of Employer or Claimant)

74 Orchard Street
(Street and Number)

Westfield, MA 01085
(City or Town)

December 11, 1981
(Date of Claim)

INSURER'S REPLY

Note: Within 21 days of the receipt of this Claim, the Insurer or Self-Insurer must complete this portion, in triplicate, forwarding one copy to the Division, one copy to the employee (or his counsel, if any), and retain one copy.

A. Insurer Admits:

(Check or Insert)

1. Personal Injury
2. Disability From
To
3. Causal Relation
4. Dependency
5. Other

B. Insurer Denies:

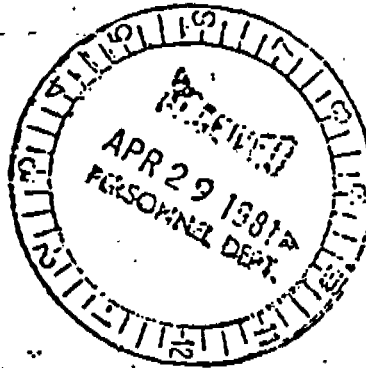
(Check or Insert)

1. Personal Injury
2. Disability From
To
3. Causal Relation
4. Proper Notice
5. Proper Claim
6. Other

GACC 00304

116 B

April 29, 1981



Mr. James Shriver
Monsanto Company
730 Worcester Street
Indian Orchard, Mass.
01151

Dear Mr. Shriver:

Under Regulation 20C.F.R.1910.20, I write to request copies of the following records of my late husband, William F. Dunn:

- #1 Medical records, including X-ray film
- #2 Exposure monitoring results
- #3 Jobs held and dates
- #4 Chemical substances exposed to while working at #3 above (i.e.) styrene, PVC Departments, Pilot Plant, plant labs, etc.
- #5 Material Safety Data Sheets

Thanking you in advance for your helpfulness.

Eden A. Dunn

Mrs. William F. Dunn
75 Orchard Street
Westfield, Mass.
01085

cc: OSHA

Check:

12-28-55

11-3-61

2-4-74

1-20-65

6-7-78 (Rae over)

2 PA + 1 LAT.

*SOME LISTED
ON ENVELOPE
ARE MISSING:*

GACC 00305

4-4-57

4-27-78

5-18-78

Exhibit D

BROOKS, MULCAHY & SANBORN
COUNSELLORS AT LAW
1387 MAIN STREET
SPRINGFIELD, MASSACHUSETTS 01103

CLARENCE R. BROOKS-19041970
PHILIP A. BROOKS
EUGENE J. MULCAHY
DAVID W. SANBORN
H. GREGORY WILLIAMS

SUITE 822
THIRD NATIONAL BANK BUILDING
TELEPHONE 413/734 2155

February 9, 1984

File

Atty. Nancy Gertner
Silvergate, Gertner, Baker & Fine
88 Broad Street
Boston, MA 02110

Re: William Dunn
Monsanto Company
Travelers, Liberty & INA

- Employee
- Employer
- Insurers

Dear Ms. Gertner:

This case, which was originally filed by Mr. Locke's office on your behalf back in December of 1981, is now on a Holyoke list to be assigned for hearing during the week of February 21. All four claims against the three insurers appear as case #34 on that list.

Although Atty. McCarthy of the Petkun and Locke office is still listed as counsel for the claimant, I note that you were aware of their withdrawal back in August of last year, at which time you requested that the case be taken off Commissioner Cleary's August 29 list while you secured other trial counsel.

At our meeting back on November 28, I believe you indicated that Atty. Novick would be handling this case.

As counsel for the Travelers (in place of Mr. Guinan who is listed), I would be glad to serve as liaison to the other defense counsel to work out an agreeable hearing date for the week of February 21. I notice that by assigning four commissioners to Holyoke for that week, the Board is making a determined effort to clear up the Holyoke backlog and that hearings are expected to "go forward without any postponements."

GACC 00306

BROOKS, MULCAHY & SANBORN

Atty. Nancy Gertner

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February 9, 1984

I look forward to hearing from you on an agreeable date.
If you have decided not to pursue this claim, we would
appreciate your advice as soon as possible so that we don't
waste time in needless preparation.

Very truly yours,

Philip A. Brooks

PAB/lap.

cc: Charles W. Brides, Esq.
Edward V. Leja, Esq.

bcc Mr. Chester P. Strzepa
Mr. Ronald J. Maier

GACC 00307

Exhibit E

SILVERGLATE, GERTNER, BAKER & FINE

ATTORNEYS-AT-LAW

Harvey A. Silverglate
Nancy Gertner
Jeanne Baker
David J. Fine

Fifth Floor
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Judith H. Mizner
Susan P. Sturm
Gail S. Strassfeld
David L. Kelston

April 25, 1984

Philip A. Brooks
Brooks, Mulcahy & Sanborn
1387 Main Street
Springfield, Massachusetts 01103

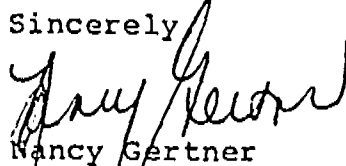
Re: William Dunn, v. Monsanto Chemical

Dear Mr. Brooks:

I wanted to write to you with respect to the above entitled case, so as to forestall any scheduling problem. As you must have realized by now, I am interested in having these cases tried as soon as we can, but have only requested that that be done in an orderly fashion. In the meeting that we had in Commissioner Martin's office several months ago, I had understood you to agree with my position and that of Ms. Emily Novick that the Dunn case should be tried after the Bycenski case. We had come to that conclusion for several reasons: first, it was anticipated that the Bycenski case would involve some of the same issues as the Dunn case and therefore it would make sense to take those depositions and that testimony only once. We could then adopt those portions of the Bycenski record which were appropriate to Dunn. Second, these cases were very complicated and entailed a considerable amount of work. In the interest of resources, we suggested that one case be tried after the other.

I walked away from that meeting assuming that you agreed. If you do, I will get in touch with the Industrial Accident Board to make those arrangements. I plan to be at the deposition at Ms. Novick's office next week, so that perhaps we can confer on that occasion.

Sincerely


Nancy Gertner

cc: Edward Lega
Edward Guinan
Charles Brids

GACC 00308

CERTIFICATE OF SERVICE

I, Paul V. Kelly, one of the attorneys for defendant The Dow Chemical Company, hereby certify that on this date I served a copy of the within responsive pleadings and motions, on all parties to this action, by sending a copy of the same, by first-class mail, postage prepaid, to:

Nancy Gertner, Esq.
Keith S. Halpern, Esq.
Silvergate, Gertner, Baker
& Fine
88 Broad Street
Boston, MA 02110

Allan van Gestel, Esq.
Timothy J. Langella, Esq.
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Thomas W. Porter, Jr., Esq.
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Paul V. Kelly
Paul V. Kelly
Ropes & Gray
225 Franklin Street
Boston, MA 02110
(617) 423-6100

Dated: November 8, 1985

GACC 00309