

United States District Court

EASTERN

DISTRICT OF TEXAS, BEAUMONT DIVISION

WINZY VASSAR, JR., ET AL
AS INDIVIDUALS ON BEHALF OF
THEMSELVES AND ALL OTHERS SIMILARLY
SITUATED

SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER:

No. 1:94CV593

AIR PRODUCTS AND CHEMICAL, INC., ET AL

TO: (Name and Address of Defendant)

GREAT AMERICAN CHEMICAL CORPORATION
BY AND THROUGH SERVING THE SECRETARY OF STATE, AUSTIN, TEXAS AT
DEFENDANT'S LAST KNOWN ADDRESS AND PRINCIPAL PLACE OF BUSINESS:
PRENTICE HALL, 84 STATE STREET, BOSTON, MASSACHUSETTS, 02105.

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

JEFF BRANICK
PROVOST AND UMPHREY LAW FIRM, L.L.P.
490 PARK STREET
BEAUMONT, TX 77701
409-835-6000
409-838-8888 (FAX)

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint.

FEB 7 1995

DELIVERED THIS 7 DAY OF FEBRUARY, 1995

BRUCE ELFANT

CONSTABLE, PREC. 5, TRAVIS COUNTY, TEXAS

BY

DEPUTY

DAVID J. MALAND

CLERK

DATE

JAN 30 1995

BY DEPUTY CLERK

GACC 00655

JAN 27 1995

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DAVID J. MALAND, CLERK
BY
DEPUTY _____

WINZY VASSAR, JR., ET AL \$
as individuals on behalf of \$
themselves and all others \$
similarly situated, \$

v. \$

AIR PRODUCTS AND CHEMICAL, \$
INC., ALLIED CHEMICAL \$
CORPORATION, AMERICAN CHEMICAL \$
MANUFACTURING CO., INC., \$
BORDEN CHEMICALS \$
AND PLASTICS LIMITED \$
PARTNERSHIP, BORDEN, INC., \$
BRIDGESTONE/FIRESTONE, INC., \$
B.P. AMERICAS (BRITISH \$
PETROLEUM CHEMICAL), CERTAINTEEDS \$
CORPORATION, CHEVRON U.S.A. \$
INC., GENCORP INTERNATIONAL, \$
INC. (FORMERLY KNOWN AS \$
DIVERSITECH GENERAL \$
INTERNATIONAL CO.), \$
THE DOW CHEMICAL COMPANY, E. I. \$
DUPONT DeNEMOURS & COMPANY, \$
ETHYL CORPORATION, FORMOSA \$
CHEMICALS & FIBRE CORPORATION, \$
AMERICA, GENCORP INC., GEORGIA \$
GULF CORPORATION, THE B.F. \$
GOODRICH COMPANY, THE GOODYEAR \$
TIRE & RUBBER COMPANY, GREAT \$
AMERICAN CHEMICAL CORPORATION, \$
KEYSOR CENTURY, \$
MONSANTO COMPANY, OCCIDENTAL \$
CHEMICAL CORPORATION, OCCIDENTAL \$
ELECTROCHEMICALS CORPORATION, \$
OLIN CORPORATION, \$
PPG INDUSTRIES, INC., ROBINTECH \$
INCORPORATED, SHELL OIL COMPANY, \$
TENNECO OIL COMPANY, UNION \$
CARBIDE CORPORATION, UNIROYAL, \$
INC., W. R. GRACE & CO. - CONN., \$
ZENECA INC., THE CHEMICAL \$
MANUFACTURERS ASSOCIATION, \$
THE SOCIETY OF PLASTICS \$
INDUSTRY, THE VINYL INSTITUTE, \$
CONOCO INC., VISTA CHEMICAL \$
COMPANY AND MAXUS ENERGY \$
CORPORATION \$

No. 1:94CV593

CLASS ACTION COMPLAINT FOR
MEDICAL MONITORING AND
DAMAGES

(JURY TRIAL DEMANDED)

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiffs, WINZY VASSAR, JR., JAMES WHITMIRE, and JACK GREEN, on behalf of themselves and all others similarly situated, demand a trial by jury and complain as follows:

PARTIES

1. a. Plaintiff and class representative, WINZY VASSAR, JR., is a domiciliary of Calcasieu Parish, Louisiana, and has worked as a dock worker at Defendant Conoco Inc.'s refinery in Calcasieu Parish, Louisiana, between 1967 and the present. As a dock worker, Plaintiff, WINZY VASSAR, JR., worked with and was exposed to vinyl chloride and/or substances containing it.

b. Plaintiff and class representative, JAMES WHITMIRE, is a domiciliary of Calcasieu Parish, Louisiana, and worked as an operator at Defendant Conoco Inc.'s vinyl chloride monomer manufacturing facility in Calcasieu Parish, Louisiana, between 1967 and 1984, and also for Defendant Vista Chemical Company (which purchased Conoco's Calcasieu Parish VCM plant in 1984) from 1984 until the time he retired in January, 1994. In the course of his work as an operator, Plaintiff, JAMES WHITMIRE, was exposed to vinyl chloride and/or substances containing it.

c. Plaintiff and class representative, JACK GREEN, is a domiciliary of Sabine Parish, Louisiana, and worked as a contract employee (pipefitter) on an intermittent basis in the early and mid 1970's at a vinyl chloride monomer manufacturing facility in Calcasieu Parish owned by Defendant, Conoco Inc. As a contract employee, Plaintiff, JACK GREEN, worked with and was exposed to vinyl chloride and/or substances containing it.

d. Plaintiff and class representative, CHARLES H. ATHERTON, JR., is a domiciliary of Calcasieu Parish, Louisiana, and worked as a temporary (1967-1969) direct employee of Defendant, Conoco Inc., at its vinyl chloride manufacturing facility in Calcasieu Parish, Louisiana. In the course of his work as a temporary direct employee, Plaintiff, CHARLES H. ATHERTON, JR, was exposed to vinyl chloride or substances containing it.

e. Plaintiff and class representative, MITCHELL YOUNG, JR., is a domiciliary of Calcasieu Parish, Louisiana, and worked both as a contract employee (pipefitter) and a business invitee (pipefitter union business agent) at Defendant, Conoco Inc.'s, vinyl chloride manufacturing facility in Calcasieu Parish, Louisiana between approximately 1967 and 1982. In the course of his work as a contract employee and business invitee, Plaintiff, MITCHELL YOUNG, JR, was exposed to vinyl chloride or substances containing it.

2. The defendants in this case are the following;

a. Air Products and Chemicals, Inc., is properly before this Honorable Court.

b. Allied Chemical Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with the following agent for service in the State of Texas: C. T. Corporation Systems, 350 N. St. Paul Street, Dallas, Texas, 75201. This Defendant has previously been served.

c. Borden Chemicals and Plastics Operating Limited Partnership is properly before this Honorable Court.

d. Borden, Inc., is properly before this Honorable Court.

e. Bridgestone/Firestone, Inc. ("Firestone Plastics Company"), individually and as successor in interest to The Firestone Tire & Rubber Company and Firestone Plastics Company, a division of The Firestone Tire & Rubber Company, is properly before this Honorable Court.

f. B.P. Americas ("British Petroleum Chemical"), is a corporation organized and existing under and by virtue of the laws of some state other than the State of Texas and does not maintain a place of residence in this state nor a designated agent upon whom service can be made. By virtue of its acts and representations to Plaintiffs which have resulted in reasonable foreseeable damages within Texas and whereby such torts arose in whole or in part in Texas thereby constituting minimum contact within the State of Texas, Defendant has designated the Secretary of State of Texas as its authorized agent for service, and, therefore, said Defendant may be served by serving the Secretary of State of Texas with duplicate copies of the citation with the Petition attached, and having the Secretary of State forward to Defendant a copy of the process by registered mail, return receipt requested. Defendant's mailing address is: B.P. Americas, 200 Public Square, Cleveland, Ohio, 44114. This Defendant has previously been served.

g. Certainteed Corporation is properly before this Honorable Court.

h. Chevron U.S.A. Inc., individually and as successor in interest to Gulf Oil Corporation, is properly before this Honorable Court.

i. Gencorp International Inc., (formerly known as Diversitech General International Co.), is a corporation organized and existing under and by virtue of the laws of some state other than the State of Texas and does not maintain a place of residence in this state nor a designated agent upon whom service can be made. By virtue of its acts and representations to Plaintiffs which have resulted in reasonable foreseeable damages within Texas and whereby such torts arose in whole or in part in Texas thereby constituting minimum contact within the State of Texas, Defendant has designated the Secretary of State of Texas as its authorized agent for service, and, therefore, said Defendant may be served by serving the Secretary of State of Texas with duplicate copies of the citation with the Petition attached, and having the Secretary of State forward to Defendant a copy of the process by registered mail, return receipt requested. Defendant's mailing address is: Charles R. Ennis, 175 Ghent Road, Fairlawn, Ohio, 44333. This Defendant has previously been served.

j. The Dow Chemical Company is properly before this Honorable Court.

k. E.I. Dupont DeNemours & Company, is properly before this Honorable Court.

l. Ethyl Corporation, is properly before this Honorable Court.

m. Formosa Chemicals & Fibre Corporation, America, is properly before this Honorable Court.

n. Gencorp Inc., ("General Tire & Rubber Co."), individually and as successor in interest to The General Tire & Rubber Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio, with the following agent for service in the State of Texas: C. T. Corporation Systems, 350 N. St. Paul Street, Dallas, Texas, 75201. This Defendant has previously been served.

o. Georgia Gulf Corporation is properly before this Honorable Court.

p. The BFGoodrich Company is properly before this Honorable Court.

q. The Goodyear Tire & Rubber Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with the following agent for service in the State of Texas: C. T. Corporation Systems, 350 N. St. Paul Street, Dallas, Texas, 75201. This Defendant has previously been served.

r. Great American Chemical Corporation, which is listed as withdrawing in 1989, is a corporation organized and existing under and by virtue of the laws of some state other than the State of Texas and does not maintain a place of residence in this state nor a designated agent upon whom service can be made. By virtue of its acts and representations to Plaintiffs which have resulted in reasonable foreseeable damages within Texas and

whereby such torts arose in whole or in part in Texas thereby constituting minimum contact within the State of Texas, Defendant has designated the Secretary of State of Texas as its authorized agent for service, and, therefore, said Defendant may be served by serving the Secretary of State of Texas with duplicate copies of the citation with the Petition attached, and having the Secretary of State forward to Defendant a copy of the process by registered mail, return receipt requested. Defendant's principal place of business is: Prentice Hall Corporation, 84 State Street, Boston, Massachusetts, 02105.

s. Keysor Century, is a corporation organized and existing under and by virtue of the laws of some state other than the State of Texas and does not maintain a place of residence in this state nor a designated agent upon whom service can be made. By virtue of its acts and representations to Plaintiffs which have resulted in reasonable foreseeable damages within Texas and whereby such torts arose in whole or in part in Texas thereby constituting minimum contact within the State of Texas, Defendant has designated the Secretary of State of Texas as its authorized agent for service, and, therefore, said Defendant may be served by serving the Secretary of State of Texas with duplicate copies of the citation with the Petition attached, and having the Secretary of State forward to Defendant a copy of the process by registered mail, return receipt requested. Defendant's mailing address is: P. O. Box 924, Santa Clarita, California, 91380-9024. This Defendant has previously been served.

t. Monsanto Company, is properly before this Honorable Court.

u. Occidental Chemical Corporation, individually and as successor in interest to Hooker Chemicals & Plastics Corporation and Hooker Chemical Corporation, a corporation organized and existing under and by virtue of the laws of the State of New York, with the following agent for service in the State of Texas: Prentice-Hall Corporation System, 400 North St. Paul Street, Dallas, Texas, 75201. This Defendant has previously been served.

v. Olin Corporation, is properly before this Honorable Court.

w. PPG Industries, Inc, is properly before this Honorable Court.

x. Robin Technologies Inc., individually and as successor in interest to Universal PVC Resins, is a corporation organized and existing under and by virtue of the laws of some state other than the State of Texas and does not maintain a place of residence in this state nor a designated agent upon whom service can be made. By virtue of its acts and representations to Plaintiffs which have resulted in reasonable foreseeable damages within Texas and whereby such torts arose in whole or in part in Texas thereby constituting minimum contact within the State of Texas, Defendant has designated the Secretary of State of Texas as its authorized agent for service, and, therefore, said Defendant may be served by serving the Secretary of State of Texas with duplicate copies of the citation with the Petition attached, and having the Secretary of State forward to Defendant a copy of the process by registered mail, return receipt requested. Defendant's principal place of business is: 11810 Parklawn Drive, Rockville, MD, 20850.

y. Shell Oil Company ("Shell Chemical Company"), individually and as successor in interest to Shell Chemical, Inc. and Shell Chemical Company, is properly before this Honorable Court.

z. Tenneco Oil Company ("Tenneco Chemicals, Inc."), individually and as successor in interest to Tenneco Chemicals, Inc., is properly before this Honorable Court.

aa. Union Carbide Corporation is properly before this Honorable Court.

bb. Uniroyal, Inc., is properly before this Honorable Court.

cc. W. R. Grace & Co.-Conn., individually and as successor in interest to W.R. Grace & Co. and The Davison Chemical Corporation, is properly before this Honorable Court.

dd. Zeneca Inc., individually and as successor in interest to ICI Americas, Inc. and ICI Chemicals, Inc. and Imperial Chemicals Industries, Ltd., is properly before this Honorable Court.

ee. The Chemical Manufacturers Association, individually and as successor in interest to the Manufacturing Chemists Association, is properly before this Honorable Court.

ff. The Society of The Plastics Industry, is a corporation organized and existing under and by virtue of the laws of some state other than the State of Texas and does not maintain a place of residence in this state nor a designated agent upon whom service can be made. By virtue of its acts and representations to Plaintiffs which have resulted in reasonable foreseeable damages within Texas and whereby such torts arose in whole or in

part in Texas thereby constituting minimum contact within the State of Texas, Defendant has designated the Secretary of State of Texas as its authorized agent for service, and, therefore, said Defendant may be served by serving the Secretary of State of Texas with duplicate copies of the citation with the Petition attached, and having the Secretary of State forward to Defendant a copy of the process by registered mail, return receipt requested. Defendant's mailing address is: 335 Lexington Avenue, New York, New York, 10017. This Defendant has previously been served.

gg. Conoco Inc., is properly before this Honorable Court.

hh. Vista Chemical Company is properly before this Honorable Court.

ii. Minnesota Mining and Manufacturing Company (hereinafter sometimes referred to as "3M"), is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with a registered agent for service of process in the State of Texas, to-wit: C. T. Corporation Systems, 350 N. St. Paul Street, Dallas, TX, 75201.

3.a. On information and belief, the following Defendants were engaged in the manufacture of vinyl chloride monomer ("VCM") and polyvinyl chloride ("PVC"), and other chlorinated hydrocarbons containing vinyl chloride monomer and/or have been employers of individuals occupationally exposed to vinyl chloride in the States of Louisiana and Texas during all or part of the time between 1967 and the present:

i. Allied Chemical Corporation (manufacturer of VCM in Baton Rouge, La.);

- ii. Borden, Inc. and Borden Chemicals and Plastics, Limited Partnership (manufacturer of PVC and VCM in Geismar, Louisiana);
- iii. Certainteed Corporation (manufacturer of PVC in Westlake, Louisiana);
- iv. E.I. DuPont DeNemours & Company (manufacturer of VCM in Westlake, Louisiana);
- v. Ethyl Corporation (manufacturer of VCM in Baton Rouge, Louisiana);
- vi. Formosa Chemicals and Fiber Corporation (manufacturer of VCM in Baton Rouge, Louisiana, and Point Comfort, Texas);
- vii. Georgia Gulf Corporation (manufacturer of VCM and PVC in Plaquemine, Louisiana);
- viii. Occidental Chemical Corporation and/or Occidental Electrochemicals Corporation (manufacturer of PVC in Addis, Louisiana; Deer Park, Texas; Pasadena, Texas and manufacturer of VCM in Deer Park, Texas);
- ix. PPG Industries, Inc. (manufacturer of VCM in Westlake, Louisiana);
- x. Shell Oil Company (manufacturer of VCM in Deer Park, Texas and Norco, Louisiana);
- xi. Tenneco Oil Company (manufacturer of PVC in Pasadena, Texas and manufacturer of VCM in Houston, Texas);
- xii. The B.F. Goodrich Company (manufacturer of PVC in Plaquemine, Louisiana and Deer Park, Texas and manufacturer of VCM in LaPorte, Texas);
- xiii. The Dow Chemical Company (manufacturer of VCM in Freeport, Texas; Oyster Creek, Texas; and Plaquemine, Louisiana);

xiv. Union Carbide Corporation (manufacturer of PVC and VCM in Texas City, Texas); and,

xv. Vista Chemical Company (manufacturer of VCM in Westlake, Louisiana).

3.b. The defendants which, on information belief, plaintiffs allege to be manufacturers of vinyl chloride or products containing it who placed their products in the stream of commerce to be sold in the States of Louisiana and Texas, as well as the other United States are listed below. Although plaintiffs are as yet unaware of precisely which of these manufacturing defendants supplied PVC or VCM to the particular employers of the named Plaintiffs and the owners of the work sites where they were employed, on information and belief, all of these defendants gave substantial aid and assistance to the continued uninterrupted supply of vinyl chloride or products containing vinyl chloride to the plaintiffs' work sites by reason of their participation in the conspiracy described more fully below, including but not limited to their membership in or participation in the trade association or components thereof described in this Complaint. These manufacturing defendants include the following:

i. Air Products and Chemical, Inc. (manufacturer of PVC in Calvert City, Kentucky and Pensacola, Florida);

ii. American Chemical Corporation (manufacturer of VCM in Long Beach, California);

iii. Borden, Inc. and Borden Chemicals and Plastics, Ltd. Partnership and Borden, Inc. (manufacturer of PVC in Illiopolis, Illinois; Geismar, Louisiana; Leominster, Massachusetts; and

Springfield, Massachusetts and manufacturer of VCM in Geismar, Louisiana);

iv. Bridgestone/Firestone, Inc. (manufacturer of PVC in Pottstown, Pennsylvania and Perryville, Maryland);

v. E.I. DuPont DeNemours & Company (manufacturer of PVC in Oklahoma City, Oklahoma; and Aberdeen, Mississippi, and manufacturer of VCM in Westlake, Louisiana);

vi. GenCorp International, Inc. (manufacturer of PVC in Point Pleasant, West Virginia, and Ashtubla Ohio);

vii. Great American Chemical Corp. (manufacturer of PVC in Fitchburg, Massachusetts);

viii. Keysor Century (manufacturer of PVC in Santa Clarita and Saugas, California);

ix. Monsanto (manufacturer of PVC in Springfield, Massachusetts);

x. Olin Corporation (manufacturer of PVC in Assonet, Massachusetts);

xi. Robintech, Inc. (manufacturer of PVC in Painesville, Ohio);

xii. The Goodyear Tire and Rubber Company (manufacturer of PVC in Niagara Falls, New York); and,

xiii. Uniroyal, Inc. (manufacturer of PVC in Painesville, Ohio).

3.c. The following defendants (including predecessor entities) are sometimes collectively referred to as the "conspiring defendants":

i. Air Products and Chemicals, Inc.;

ii. Allied Chemical Corporation;

- iii. American Chemical Corporation;
- iv. B.P. Americas;
- v. Borden Chemicals;
- vi. Certainteed Corporation;
- vii. Chevron USA, Inc.;
- viii. Diamond Shamrock Corporation;
- ix. Diversitech General, Inc.;
- x. E.I. DuPont de Nemours and Co., Inc.;
- xi. Ethyl Corporation;
- xii. Firestone Plastics Company;
- xiii. Formosa Chemicals and Fiber Corporation, America;
- xiv. Gencorp, Inc. and Gencorp, International;
- xv. Georgia Gulf Corporation;
- xvi. Great American Chemical Corporation;
- xvii. Gulf Oil Corporation;
- xviii. ICI Chemicals, Inc.;
- xix. Keysor Century;
- xx. Minnesota Mining and Manufacturing Company;
- xxi. Monsanto Company;
- xxii. Occidental Chemical Corporation;
- xxiii. Olin Corporation;
- xxiv. PPG Industries, Inc.;
- xxv. Robintech Inc.;
- xxvi. Shell Chemical Company;
- xxvii. Tenneco Chemicals, Inc.;
- xxviii. The B.F. Goodrich Company;
- xxvix. The Dow Chemical Company;
- xxx. The Goodyear Tire and Rubber Company;

- xxxi. Union Carbide Corporation;
- xxxii. Uniroyal, Inc.;
- xxxxiii. Vista Chemical Company; and,
- xxxiv. W. R. Grace & Co. Conn.

CLASS ACTION ALLEGATIONS

4. Plaintiffs bring the claims alleged herein as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all others similarly situated. The class consists of all persons in the States of Texas and Louisiana who were occupationally exposed to vinyl chloride and/or substances containing it for which one or more of the defendants may bear legal liability and who as of October 1, 1994, have not been diagnosed as suffering from any cancer or other injury or disease as a result of their vinyl chloride exposure, but suffer an increased risk of acquiring such cancer and other adverse health effects as a result of that exposure.

5. This action is properly maintainable as a class action for the following reasons:

a. On information and belief, the class consists of thousands of persons and hence is so numerous that joinder of all class members is impracticable.

b. There are questions of law and fact common to the members of the class. The common questions include, among others, the health hazards of vinyl chloride and products containing it; defendants' knowledge of these hazards; the lack of sufficient warnings concerning such hazards; and whether defendants conspired to conceal the hazardous nature of vinyl chloride from class members and whether defendants conspired to conceal the

nature and extent of the exposure of class members to vinyl chloride.

c. The claims of the plaintiffs are typical of the claims of the members of the proposed class, and the plaintiffs will fairly and adequately represent and protect the interests of the proposed class. The plaintiffs have no interests antagonistic to those of the remainder of the class. The plaintiffs' attorneys are qualified, experienced and able to conduct the proposed litigation.

d. The questions of law and fact common to members of the proposed class predominate over any questions affecting only individual members.

e. A class action is superior to other methods for the fair and efficient adjudication of the claims here asserted, and no unusual difficulties are likely to be encountered in the management of this class action. The likelihood of many of the individual class members prosecuting separate claims is remote.

f. Defendants have acted or refused to act on grounds generally applicable to all members of the proposed class, thereby making injunctive relief with respect to the class as a whole an effective remedy.

g. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications and might be dispositive of the interests of other class members who are not parties to those adjudications or may substantially impair or impede their ability to protect their interests.

JURISDICTION AND VENUE

6. This Court possesses diversity jurisdiction under 28 U.S.C. §1332 in that the suit involves citizens of different states and the matter in controversy exceeds \$50,000, exclusive of costs and interests. Venue is proper under 28 U.S.C. §1391.

FACTUAL ALLEGATIONS WITH RESPECT TO CLASS REPRESENTATIVES

7. Defendants are corporations engaged in the business of the production, distribution and/or marketing of vinyl chloride monomer or products containing it; trade associations of corporations engaged in activities to further the business of the production, distribution, and/or marketing of vinyl chloride monomer or products containing it; and, the Minnesota Mining and Manufacturing Company (3M), the Company supplying devices to monitor the occupational exposure of workers to vinyl chloride monomer or product containing it.

8. During the periods of their employment, plaintiff class representatives while in the course and scope of employment by their respective employers were occupationally exposed to vinyl chloride or products containing it. As explained herein, vinyl chloride is a carcinogen, as well as a cause of other adverse medical conditions. The exposure that occurred was a substantial contributing cause of the injuries, disease, and damages of plaintiffs as described herein.

COMMON FACTUAL ALLEGATIONS

9. Defendants knew, or should have known, that vinyl chloride is deleterious, poisonous, carcinogenic, and highly harmful to the body and health of class members and that the

class members were and would continue to be in a position of peril as a result of their occupational exposure to vinyl chloride and were unaware of the nature and extent of the risk posed by their exposure to vinyl chloride. Notwithstanding this, defendants, with conscious indifference to the well-being of the class members, wholly failed and omitted to provide them with sufficient knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment, or with appliances to protect themselves from being poisoned and injured by exposure to vinyl chloride and/or substances containing it.

10. Defendants knew, or should have known, that vinyl chloride is deleterious, poisonous, carcinogenic, and highly harmful to the body and health of class members. Notwithstanding this, defendants other than the trade associations named herein and Minnesota Mining and Manufacturing Company, with conscious indifference to the well-being of the class members, manufactured, processed, and/or used vinyl chloride so that in the ordinary handling by class members, they would come into contact with and would be injured by this chemical compound and/or substances containing it.

11. Defendants knew, or should have known, that vinyl chloride is deleterious, poisonous, carcinogenic, and highly harmful to the body and health of class members. Notwithstanding this, defendants, with conscious indifference to the well-being of the class members, failed to take proper care to warn them of said danger and/or to instruct them in the proper handling of vinyl chloride and/or substances containing it, or to take care

to protect them from harm and failed to take proper care to adopt and enforce a safe plan and method of handling or working near vinyl chloride and/or substances containing it.

12. Defendants, with conscious indifference to the well-being of the class members, failed to take proper care in discharging their duty to examine available research material, compiled by experts, pertaining to the safe or dangerous nature of vinyl chloride and/or substances containing it and act thereon to render their use and handling by class members as safe as could reasonably have been done under the circumstances prior to subjecting them to exposure thereto.

13. Plaintiffs would further show that at all material times, defendants other than the trade associations named herein were fully aware of their chemical emissions and knew that they released vinyl chloride and/or substances containing it into the ambient air, and knew that such contaminants would be inhaled by persons, such as the class members. Plaintiffs would show that defendants knew, actually or constructively, or should have known, that vinyl chloride and/or substances containing it have the potential for causing cancer and other medical conditions that could result in death or serious bodily disease. A substantial portion of such emissions were unnecessary, and therefore, such emissions could have been substantially reduced, thereby reducing the class members' injuries or risks of injury.

14. Although class members have not yet sustained bodily harm as a result of their vinyl chloride exposure, Plaintiffs would further show that the defendants are jointly and severally liable for all necessary costs for Plaintiffs' medical

monitoring. Plaintiffs would moreover show that the vinyl chloride and/or substances containing it which caused the need for their medical monitoring was abnormally hazardous substances and ultrahazardous substances and were unreasonably dangerous per se.

15. Plaintiffs would further show that the defendants were negligent in failing to warn class members of the release of vinyl chloride and/or substances containing it. Defendants had a duty to warn class members of the presence of the carcinogenic and/or toxicological properties of vinyl chloride and/or substances containing it.

16. Plaintiffs specifically allege that the defendants were aware of the following facts by at least the early to mid 1970s:

- a. That vinyl chloride is a multi-potential carcinogen, that is, a carcinogen which is capable of causing different types of cancer at different sites of the human body including, but not limited to, the brain, the lungs, the liver, the biliary system, and lymphatic system.
- b. That the multi-potential carcinogenicity of vinyl chloride had been demonstrated in numerous animal toxicological studies and bioassays conducted under the auspices of European vinyl chloride manufacturers, which the defendants promised to keep secret and did keep secret from the United States government, from plaintiffs and others similarly situated, and from the public at large.

- c. That vinyl chloride had in fact already been found to be associated with cancer as well as other adverse health effects, such as systemic immunological dysfunction, acroosteolysis, emphysema, and central nervous system dysfunction, among class members.
- d. That the United States governmental agencies regulating exposure of American workers (the United States Department of Labor and the Occupational Safety and Health Administration) ("OSHA") and the American public at large (such as the Environmental Protection Agency and the Consumer Products Safety Commission) were completely unaware of the secret European studies demonstrating the association between exposure to vinyl chloride and the development of cancer.
- e. That the information regarding the health effects of vinyl chloride which the defendants, individually and through their trade association, the Manufacturing Chemists Association ("MCA"), was furnishing to the United State government on a more or less continuous basis was incomplete and deliberately misleading with regard to the state of defendants' knowledge of the carcinogenic or other adverse health potential of vinyl chloride and that the government would be misled and lulled into inaction by their deliberate omission of any reference to the secret European animal studies.
- f. That vinyl chloride was and had been reported in the toxicological and epidemiological literature to be a multi-potential carcinogen. The defendants were aware

of such studies, reviewed such studies in detail and, indeed, some of them had secretly (from their employees' perspective) conducted epidemiological studies of their own workers. These studies — demonstrated the statistically significant increased development of a wide variety of cancers in workers exposed to vinyl chloride in the vinyl industry for more than one year.

- g. That class members had, without their knowledge, themselves been the subject of at least four major epidemiological studies of cancer in the vinyl industry which demonstrated significant associations between employment in the vinyl industry for as little as one year and the development of various forms of cancer.
- h. That class members who were the subject of these secret industry-sponsored/conducted epidemiological studies were completely unaware, not only of the results of these studies, but also even of the fact that they themselves had been used as "subject" of such studies in the first place; plaintiffs allege that virtually none of the unwitting subjects of these studies was ever told the results of these studies.
- i. That, prior to conducting industrial hygiene monitoring for the purpose of measuring the amount of vinyl chloride present in the working environment of class members, all defendants were required by O.S.H.A. and by good practice to conduct validation tests on personal monitoring devices and methods employed for

the atmospheric analysis of vinyl chloride monomer in the work place of class members; and further, that the purpose of such validation tests included the evaluation of the ability of such monitoring devices to accurately detect the level of vinyl chloride in the atmosphere, and that, in fact, all defendants did use such monitoring devices in order to comply with numerous government regulations pertaining to vinyl chloride. Specifically, defendants were aware that such monitoring devices were employed by defendants for such crucial matters as determining the extent of class members' exposures to vinyl chloride, determining the defendants' compliance with governmental regulations, determining which class members were subject to special medical and industrial hygiene and reporting requirements imposed by law, determining when class members would be informed of their overexposure to vinyl chloride, what class members would be told about their vinyl chloride exposures and many other important legal requirements which defendants knew would be triggered by industrial hygiene atmospheric monitoring results reflecting vinyl chloride exposures of class members above specific "Action levels" and "Permissible exposure limits" set by O.S.H.A.

- j. That charcoal, when used for industrial hygiene atmospheric monitoring for vinyl chloride, was completely inappropriate, unreliable, and in fact would consistently underestimate the true levels of vinyl

chloride exposure to which class members were exposed; and further knew that the actual levels of vinyl chloride to which class members were exposed was significantly higher than an analysis of the charcoal-based monitoring devices employed by defendants would reveal or report made by defendants to class members based upon such an analysis of such devices would reveal.

- k. That any organic monitor or other personal monitoring device which relied upon charcoal as the collection medium for vinyl chloride was defective and totally inappropriate for monitoring all but the very lowest and shortest exposures of vinyl chloride. Defendants were specifically aware that charcoal was extremely "lossy" and exhibits poor "retentivity" for vinyl chloride and exhibited other deficiencies which made it a virtual certainty that the use of such devices to "monitor" the vinyl chloride exposures of class members would result in the consistent underestimation of the actual levels of vinyl chloride encountered by the monitored class members.
- l. That, despite their knowledge of the unsuitability of charcoal-based monitoring methods for vinyl chloride, defendants collectively, repeatedly, expressly and implicitly represented that the use of charcoal as an adsorbent media had been "validated" by O.S.H.A. and/or NIOSH, and/or industry. Defendants all the while knew that methods of personal monitoring which employed

charcoal as an adsorbent media had not been validated by any of them and that the method defendants used to appear to have "validated" the charcoal-based monitoring devices was to compare such devices with what they knew were the inaccurate results achieved used "traditional" (for other organic compounds) charcoal tube based sampling methods which defendants knew were grossly inaccurate and in fact consistently underestimated the exposure of class members to vinyl chloride.

- m. That the results of vinyl chloride monitoring conducted using charcoal-based monitoring devices were used by virtually all defendants and by other employers in the vinyl industry, including specifically the employers of all class members, as the basis for vinyl chloride exposure information conveyed to class members and that, because of defendants' fraudulent concealment of the fact that such methods consistently underestimated the exposure of class members to vinyl chloride, such class members would have absolutely no idea that the results of the monitoring conducted using such inappropriate monitoring devices did in fact consistently underestimate their true exposures to vinyl chloride.
- n. That defendants were collectively and fraudulently providing class members with misleading, fraudulent and out-and-out phony "personal monitoring reports" which defendants conducted using monitoring devices and

methods they knew consistently underestimated the true extent of class members' exposure to vinyl chloride; for over twenty years, defendants have deliberately failed to inform class members of essential facts concerning the unreliability of the monitoring methods and devices defendants have used so as to appear to have monitored the exposure of class members; that vinyl chloride several times higher than the "Permissible exposure limit" set by O.S.H.A. would appear (based on the phony charcoal-based personnel monitoring employed by defendants) to be below the Permissible exposure limit; that even overexposure would often appear to reflect exposures even below O.S.H.A.'s "Action level" which is used to initiate governmentally required medical monitoring, further industrial hygiene monitoring, and other legal requirements designed to protect workers such as class members from exposure to vinyl chloride.

- o. That, as a result of defendants' fraudulent use of monitoring for vinyl chloride which they knew consistently underestimated the exposure of class members to vinyl chloride; practically all of the thousands and thousands of "personal monitoring reports" defendants would generate and cynically disseminated to class members over the next 20 years would be misleading, falsely reassuring and consistently lower than vinyl chloride exposures actually encountered by the "monitored" class member.

- p. That, as a result of the foregoing fraudulent use of monitoring methods which consistently underestimated the exposure of class members to vinyl chloride, class members had been and were being misinformed as to the true degree of their industrial exposure to vinyl chloride; specifically, defendants knew that class members who, in truth, had been and would be exposed over the action and permissible exposure limits had been and would not be provided proper medical and industrial hygiene information and had been battered and damaged as described above.
- q. That the information the defendants were providing to their employees, to the United States government and to the general public concerning the health risks associated with exposure to vinyl chloride and/or substances containing it was false, incomplete, and intentionally and fraudulently misleading. In a concerted action to conceal the true facts from their employees, the United States government and the general public, the defendants told their employees and the public only enough about the link between vinyl chloride exposure and "cancer" to assuage any concerns which might arise from the mere use of the word in labels defendants were eventually forced by the government to place on some of their products (and then fraudulently removed from many of them). When class members were told anything, they generally were told no more than that vinyl chloride had been reported to be

associated with an extremely rare form of liver cancer, angiosarcoma, as a result of levels of exposure much higher than they were likely to encounter or to have encountered and nothing more. Defendants knew that this was untrue and incomplete and have known it since at least the early 1970s. Their employee and public educational efforts were in truth nothing more than deliberate misinformation campaigns conducted with the utterly fraudulent intent to mislead their employees, their customers, the United States government and the general public as to the true nature and extent of the risk posed by the exposure to vinyl chloride.

r. That the information the defendants provided to their employees and the general public with regard to the extent and nature of their known (from the perspective of the defendants) exposure to the vinyl chloride and/or substances containing it was false, intentionally inaccurate, and fraudulently misleading.

s. That the truth about the cancer risk of vinyl chloride and/or substances containing it and the truth about the nature and extent of class members' and the general public's exposure to the vinyl chloride, defendants, other than the trade associations named herein emitted into the air would be bad for their business in general and for their labor, governmental and public relations in particular.

17. All of the foregoing knowledge was fraudulently withheld and concealed from class members with the specific

intent that they, the United States government and the public should be and remain ignorant of the true facts regarding the carcinogenic chemicals manufactured, distributed, or marketed by the defendants.

18. At various times between 1960 and the present, the conspiring defendants conspired among themselves, and conspired with their trade association-which included the Manufacturing Chemists Associations ("MCA"), the Chemical Manufacturers Association ("CMA"), the Vinyl Chloride Safety Association ("VCSA"), the Society of the Plastics Industries ("SPI"), as well as the various committees, subcommittees, task groups, and program panels of the MCA, CMA, VCSA, and SPI, including but not limited to the SPI Vinyl Institute ("VI"), the VI Health Safety, and Environment Committee ("HSEC"), the MCA Medical Advisory Committee, the MCA and CMA Occupational Health Committee, the MCA VCM Toxicity Subcommittee, the MCA Ad Hoc Planning Group For Vinyl Chloride Research ("AHPGVCR"), the MCA Technical Task Group on Vinyl Chloride Research ("TTGVCR") and the CMA Vinyl Chloride Panel ("VCP"), the MCA and the CMA Vinyl Chloride Research Coordinators ("VCRC"), the Medical Subcommittee or Sub-Task Group of the TTGVCR, the Industrial Hygiene and Monitoring Subcommittee or Sub-Task Group of the TTGVCR, the Work Practices Subcommittee or Sub-Task Group of the TTGVCR, and the Industrial Bio-test Audit Task Group of the TTGVCR (collectively "their trade associations") and conspired with Minnesota Mining and Manufacturing Company, to commit intentional and/or willful acts:

- a. The conspiring defendants, along with and through their trade associations, intentionally and/or willfully

untruthfully misrepresented their present and historical knowledge of the nature and extent of the hazards posed by vinyl chloride and the disease caused by vinyl chloride, including the vinyl chloride monomer. They did this in concert with one another through their trade associations because of their common interest in minimizing the expense of providing their employees with a safe place to work, minimizing government regulation of their industry, minimizing their cost of doing business, minimizing difficulties with unions and work forces, and generally minimizing all costs which they knew they would be forced to incur if and when the true nature and extent of the hazards posed by vinyl chloride and/or substances containing it became known by plaintiffs and other workers in the vinyl chloride industry, the medical community, the industrial hygiene community, the toxicology community, the press, and the general public;

- b. Although the conspiring defendants, along with and through their trade associations, were aware that vinyl chloride was a multi-potential carcinogen capable of causing different types of cancer at different sites of the human body at least as early as 1970, at all times since then, they have intentionally and/or willfully failed to disclose this information to the public, to the United States government, and to the workers in the vinyl chloride industry, including plaintiffs, and have also failed to properly medically monitor such workers

for diseases they have every reason to suspect will occur in such workers;

- c. Although the conspiring defendants, along with and through their trade associations, were aware that the multi-potential carcinogenicity of vinyl chloride had been demonstrated in numerous toxicological studies and bioassays conducted in Europe in the 1960s and early 1970s, the conspiring defendants agreed among themselves, along with and through their trade associations, to keep this information secret from the public, the United States government, and vinyl chloride workers, including plaintiffs. Thus, although the conspiring defendants, along with and through their trade associations, were aware of the carcinogenic effects and/or potential carcinogenic effects of vinyl chloride exposure, at least as early as the early 1970s, the conspiring defendants, along with an through their trade associations, intentionally and/or willfully kept this information secret;
- d. In 1972, the chemical safety data sheet "SD-56" on vinyl chloride was published by the MCA under authority of the conspiring defendants. This was a document that the conspiring defendants, along with and through their trade associations, intended to be relied upon by the United States government, the public, and workers in the vinyl industry, including plaintiffs. However, this publication intentionally and/or willfully misrepresented the information known at that time

regarding the nature and extent of health hazards of vinyl chloride exposure and/or did not include information pertinent thereto. Through this publication, the public, the United States government, and vinyl chloride workers were intentionally and/or willfully misled regarding the nature and extent of health hazards of vinyl chloride and/or substances containing it. Moreover, SD-56 continued to be published and released despite the knowledge of the conspiring defendants, along with and through their trade associations, that cancers had been reported as a result of low-dose exposure to vinyl chloride.

- e. Although the conspiring defendants, along with and through their trade associations, sent representatives to meet with United States government agencies in July of 1973, the conspiring defendants, along with and through their trade associations, developed and followed a prearranged script to withhold information regarding the nature and extent of health hazards of vinyl chloride exposure and/or to mislead the government officials regarding the nature and extent of health hazards of vinyl chloride exposure;
- f. When proposing their own studies and despite their knowledge that their studies were "cancer" studies, the conspiring defendants, along with and through their trade associations, agreed among themselves to remove any reference to cancer and/or carcinogenicity in information disseminated about the studies and to

"defocus" the cancer aspect of the studies. Thus, they intentionally and/or willfully misled the government and the public regarding the true nature, intent, and significance of the studies;

- g. Despite their knowledge of the carcinogenic hazards of exposure to vinyl chloride, the conspiring defendants, along with and through their trade associations, intentionally and/or willfully delayed and/or suppressed research projects concerning these hazards. Specifically, they intentionally and/or willfully decided to postpone epidemiological studies until they had done animal studies even though they were aware that animal studies in Europe had already shown carcinogenic results of exposure to vinyl chloride and/or substances containing it.
- h. The conspiring defendants, along with and through their trade associations, intentionally and/or willfully avoided the sponsorship of product-oriented research. Specifically, they required "board" approval before undertaking product oriented research in order to minimize the chance of results unfavorable to the industry about vinyl chloride exposure. In this regard, they intentionally and/or willfully failed to sponsor and/or publish studies they deemed unfavorable to themselves and pursued studies in concert with each other only if they had "up side potential" to the vinyl industry;

- i. The conspiring defendants, along with and through their trade associations, intentionally and/or willfully sponsored inaccurate and misleading studies which were published in medical literature and relied upon by the medical profession, safety experts, professionals in the field of industrial hygiene, occupational medicine, toxicology, epidemiology, and public health, the government, organized labor, management, and by the general public. These studies intentionally and/or willfully misrepresented the nature and extent of the diseases caused by vinyl chloride and/or substances containing it in workers such as plaintiffs;
- j. In writing the protocols for their various studies concerning the health hazards of vinyl chloride exposure, the conspiring defendants, along with and through their trade associations, intentionally and/or willfully changed and manipulated the protocols so as to produce more favorable, albeit misleading, results;
- k. The conspiring defendants, along with and through their trade associations, intentionally and/or willfully made substantive changes on final copies and drafts of the results of various research projects, thereby intentionally and/or willfully manipulating and/or changing the results so as to diminish the nature and extent of the hazards posed by vinyl chloride and/or substances containing it;
- l. The conspiring defendants, along with and through their trade associations, intentionally and/or willfully

- withheld, suppressed, and misrepresented knowledge regarding the nature and extent of the hazards of vinyl chloride exposure. As a result, workers exposed to vinyl chloride and/or substances containing it, including plaintiffs, were intentionally and/or willfully exposed to unsafe levels of vinyl chloride;
- m. Therefore, the conspiring defendants, along with their trade associations, intentionally and/or willfully collectively and concertively formulated and disseminated misleading, incomplete, and false information concerning the nature and extent of the hazards posed by vinyl chloride and/or substances containing it, including cancer, all the while intentionally and/or wilfully concealing the truth from the government, from the medical community, from vinyl chloride workers, from plaintiffs, and from the general public.
- n. At various times between 1970 and the present, the conspiring defendants, along with 3M, intentionally and/or willfully, collectively and concertively unreasonably used charcoal to monitor employees' exposure to vinyl chloride in the atmosphere as follows:
- (1) The conspiring defendants, individually and through their trade associations, along with 3M, were aware that the passive dosimeters used to monitor employee exposure to vinyl chloride manufactured by 3M, contained charcoal.

- (2) The conspiring defendants, individually and through their trade associations, along with 3M, conducted or were aware of validation tests being conducted as early as the mid-1970's to determine the accuracy of 3M's charcoal containing passive dosimeters.
- (3) The conspiring defendants, individually and through their trade associations, along with 3M, knew that the validation tests conducted on the 3M passive dosimeters showed that charcoal was extremely "lossy" for vinyl chloride and that the use of charcoal to monitor exposure to vinyl chloride would consistently underestimate the actual levels of vinyl chloride encountered by the monitored employee.
- (4) The conspiring defendants, individually and through their trade associations, along with 3M, were aware that the actual levels of vinyl chloride in the workplace atmosphere were significantly higher than the passive dosimeters revealed.
- (5) The conspiring defendants, individually and through their trade associations, along with 3M, kept the results of the validation tests in confidence.
- (6) Therefore, despite the knowledge of the conspiring defendants, individually and through their trade associations, along with 3M, of the

ineffectiveness and inappropriateness of the 3M passive dosimeter to monitor employees and monitor the atmosphere for vinyl chloride exposure, 3M continued to manufacture and sell the passive dosimeters for such use the conspiring defendants continued to buy and use the passive dosimeters for such use.

- (7) Despite their knowledge to the contrary, the conspiring defendants, individually and through their trade associations, along with 3M, repeatedly expressly and implicitly represented that the use of charcoal as an absorbent medium had been validated by government entities and the industry, all the while knowing that the use of charcoal had not been truly validated. In fact, the conspiring defendants and 3M, individually and through their trade associations, used other inaccurate charcoal sampling methods to improperly "validate" the passive dosimeters.
- (8) Thus, despite their knowledge to the contrary, the conspiring defendants, individually and through their trade associations, along with 3M, used the inaccurate charcoal monitoring methods to obtain inaccurate monitoring results for vinyl chloride exposure, all the while knowing that these monitoring results were to be used to determine such crucial matters as the extent of employee exposure to vinyl chloride, to determine the

employers' compliance with governmental exposure regulations determining which employees were subject to special medical and industrial hygiene monitoring and reporting requirements imposed by law, to determine when employees would be informed of their overexposure to vinyl chloride, and to comply with other legal requirements which defendants knew were triggered by the employee monitoring results.

- (9) As such, the conspiring defendants, individually and through their trade associations, along with 3M, intentionally and willfully failed to accurately and reasonably monitor employees in the vinyl industry for exposure to vinyl chloride, resulting in intentional and willful overexposures, intentional and willful bypass of governmental regulations, intentional and willful endangerment of employee health, and intentional and willful damage to employee health.

FIRST CLAIM FOR RELIEF

(Intentional Failure To Warn)

19. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 to 18 above, and further allege:

20. The conspiring defendants, other than the trade associations and 3M, have supplied, produced, manufactured, distributed and/or marketed vinyl chloride and/or substances

containing it at their respective facilities for many years. At all times relevant thereto, said defendants and 3M have been aware of the dangers inherent in the manufacture and use of vinyl chloride and/or substances containing it. Defendants possessed medical and scientific data, along with other knowledge, which clearly indicated that vinyl chloride and other related chemicals, including ethylene dichloride, was hazardous to the class members including plaintiffs, who were required to work with and around these chemicals.

21. The conspiring defendants, as the employers of class members, and/or as the owners of the premises where class members were employed, had a duty to disclose and/or properly represent their true medical condition, the true nature and extent of their exposures to vinyl chloride and/or substances containing it, the dangers associated with vinyl chloride and/or substances containing it, and the true nature of the risks associated with working in a work place polluted with vinyl chloride and/or substances containing it.

22. Defendants intentionally did not disclose to class members, including plaintiffs, any or all of the foregoing information and/or fraudulently misrepresented any or all of the foregoing information to class members.

23. Because of the fraudulent misrepresentations and/or nondisclosure, class members, including plaintiffs, justifiably went to work and relied on the misconception that they were not being harmed by exposure to the vinyl chloride and/or substances containing it manufactured, distributed, or marketed by defendants.

24. As a result of class members', including plaintiffs', justifiable reliance upon defendants' nondisclosure and/or fraudulent misrepresentations, they are at increased risk of contracting various vinyl chloride related diseases and conditions and/or in need of medical monitoring.

25. The foregoing described deceit makes defendants liable to class members for the cost of medical monitoring proximately caused to them as a result of their exposure to vinyl chloride and/or substances containing it.

SECOND CLAIM FOR RELIEF

(Negligent Failure To Warn)

26. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 to 25 above, and further allege:

27. The defendants, other than the trade associations named herein and 3M, during all times relevant hereto, caused vinyl chloride and/or substances containing it to be placed in the stream of commerce on job sites at which plaintiffs and others similarly situated were employed, with the result that plaintiffs and those similarly situated were occupationally exposed to this hazardous substance.

28. As the proximate result of their exposure to defendants' vinyl chloride and/or substances containing it, plaintiffs and those similarly situated are at increased risk of contracting cancer. As a proximate result of their exposures, plaintiffs and those similarly situated have incurred (and will incur) expenses for the medical surveillance necessary to detect

the onset of the previously-described vinyl chloride-related diseases or conditions.

29. During all times relevant hereto, each and every defendant knew or should have known that exposure to vinyl chloride or substances containing it could cause cancer and other disease in plaintiffs and all those similarly situated.

30. During all times relevant hereto, each and every defendant failed to take reasonable steps to provide to plaintiffs and those similarly situated: (a) adequate warnings of the known or potential dangers from exposure to vinyl chloride or vinyl chloride-containing products and (b) adequate instructions on how to safely use vinyl chloride or vinyl chloride-containing products so as to reduce the risk of vinyl chloride-related diseases or conditions. The failure by each and every defendant to provide such warnings and instructions constitutes negligence and proximately caused the injuries or potential injuries to plaintiffs and those similarly situated as described above.

31. The failure of each and every defendant to provide plaintiffs and those similarly situated with both adequate warnings of the danger associated with exposure to vinyl chloride and/or substances containing it and adequate instructions on how to use vinyl chloride and/or substances containing it so as to reduce the danger was reckless, wanton, and willful and in conscious disregard of class members' safety and health.

32. The foregoing described acts make defendants liable to class members for expenses necessary for their medical monitoring

resulting from their exposure to vinyl chloride and/or substances containing it.

THIRD CLAIM FOR RELIEF

(Battery)

33. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 to 32 above and further allege:

34. As described in the foregoing paragraphs, defendants deliberately failed to enlighten, educate, or share their knowledge of the hazards of vinyl chloride exposure and the deficiencies in methods of monitoring they employed to detect the level of vinyl chloride in plaintiffs' work environment. Thus, plaintiffs and those similarly situated were unaware of the true nature and extent of their industrial exposure to vinyl chloride and were not aware of the ill-health effects defendants knew were associated with plaintiffs' exposure to vinyl chloride and, further, were not aware that the methods defendants employed to monitor their work environment were inaccurate and, in fact, consistently underestimated their exposure to vinyl chloride. Therefore, although plaintiffs and those similarly situated went to work voluntarily, they were unaware of both the potential danger of their occupational exposure to vinyl chloride and the true extent of their occupational exposure to vinyl chloride. Defendants kept their knowledge of the nature, extent, and significance of the exposure of class members secret from class members. Thus, class members did not voluntarily subject

themselves to the dangers and ill-health problems associated with exposure to vinyl chloride and/or substances containing it.

35. Thus, all defendants conspired and acted in concert in exposing class members to vinyl chloride and/or substances containing it without their consent. Any consent to work by class members was vitiated by defendants' concealment of scientific, medical, and other data, indicating the dangerous propensities of vinyl chloride, deficiencies in monitoring methods employed by defendants to monitor the work environment of class members, and the true nature and extent of the occupational exposure to vinyl chloride sustained by class members. Such unconsented exposure constituted an intentional infliction of harmful and/or offensive contact to the persons of plaintiffs and those similarly situated without their consent, thereby constituting the intentional tort of battery.

36. By committing the foregoing acts since at least the early 1970s, defendants consciously desired to commit and did in fact commit repeated, harmful, and unconsented battery upon the persons of class members. Moreover, as a result of these acts, such defendants desired and knew that it was substantially certain that class members would be harmed as a result of these acts and deliberate omissions and would sustain injury and disease as a result, requiring their medical monitoring.

37. As a result of the aforementioned fraudulent battery, defendants are liable unto plaintiffs and those similarly situated for all damages foreseen and unforeseen, suffered by them as a result of exposure to vinyl chloride and/or substances containing it.

FOURTH CLAIM FOR RELIEF

(Strict Product Liability)

38. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 to 37 above and further allege:

39. At all relevant times, the vinyl chloride or products containing vinyl chloride manufactured, supplied, produced, distributed, marketed, and/or installed by the defendants other than the trade associations or 3M were expected to and did reach plaintiffs and those similarly situated without substantial change in their manufactured condition.

40. At all relevant times, plaintiffs and those similarly situated utilized defendants' vinyl chloride or vinyl chloride-containing products in the manner and for the purpose intended.

41. The vinyl chloride or vinyl chloride-containing products manufactured, supplied, produced, distributed, marketed, and/or installed by each and every defendants other than the trade associations and 3M were defective and unreasonably dangerous to human health: (a) because they were sold without any warnings or adequate warnings as to their dangers and without adequate instructions on how to use the products so as to reduce those dangers, or (b) because defendants failed to develop alternative products with safer designs even though such products were feasible. Those defects were the proximate cause of the injuries to plaintiffs and those similarly situated, as described herein.

42. The manufacture, supply, production, distribution, marketing, or installation by each and every defendant other than the trade associations or 3M of defective vinyl chloride or vinyl chloride-containing products were reckless, wanton, and willful and in conscious disregard of the safety and health of plaintiffs and those similarly situated.

FIFTH CLAIM FOR RELIEF

(Intentional Infliction of Emotional Distress)

43. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 to 42 above, and further allege:

44. During all times relevant hereto, each and every defendant intentionally and willfully failed to take reasonable steps to provide to plaintiffs and those similarly situated: (a) adequate warnings of the danger from exposure to vinyl chloride or vinyl chloride-containing products and (b) adequate instructions on how to use vinyl chloride or vinyl chloride-containing products so as to reduce the danger.

45. In addition to intentionally failing to provide the aforementioned warnings and instructions, defendants committed the following other intentional acts which caused plaintiffs and others similarly situated to suffer the increased risk of ill-health effects associated with exposure to vinyl chloride and/or substances containing it:

- a. Intentionally failing to provide necessary protection to plaintiffs and others similarly situated;

- b. Intentionally failing to provide to plaintiffs and others similarly situated proper safety equipment and proper industrial hygiene and medical monitoring and controls;
- c. Intentionally failing to provide clean, respirable air and proper ventilation to plaintiffs and others similarly situated;
- d. Intentionally failing to provide proper medical monitoring and medical information to plaintiffs and others similarly situated;
- e. Intentionally failing to adequately and accurately monitor the extent of discharges of vinyl chloride and/or substances containing it into the work place;
- f. Intentionally failing to warn plaintiffs and others similarly situated of the dangers associated with vinyl chloride and/or substances containing it and to apprise them of the results of toxicological studies of animals and epidemiological studies of themselves and other workers similarly situated;
- g. Intentionally inducing plaintiffs and others similarly situated to work in a work place polluted with vinyl chloride and/or substances containing it;
- h. Intentionally failing to keep vinyl chloride emissions into the work place at safe levels;

- i. Intentionally misleading plaintiffs and others similarly situated as to the nature, extent of the likely and potential effects of their occupational exposure to vinyl chloride and/or substances containing it;
- j. Intentionally leading plaintiffs and others similarly situated to believe that the results of vinyl chloride monitoring programs were reliable and actually reflected the extent of their exposure to vinyl chloride, all the while knowing the complete falsity of this representation and knowing, specifically, that the method of personal monitoring defendants employed consistently underestimated the vinyl chloride exposures their employees were actually sustaining and that the employees were actually coming into contact with vinyl chloride at levels which exceeded the Action Level and which exceeded the Permissible Exposure Limits set by Occupational Health and Safety Administration and yet were being told by defendants that their exposures did not exceed those levels; and
- k. Intentionally lying to and misleading as well as concealing relevant information from class members, the United States government, the medical community and the community at large both as to the extent and nature of their vinyl chloride

emissions and the extent and nature of the risk posed thereby.

46. The failure by each and every defendant to take the steps described above constitutes intentional and willful conduct that proximately caused the injuries to plaintiffs and those similarly situated and their need for medical monitoring.

47. The failure of each and every defendant to take the steps described above, thus subjecting plaintiffs and those similarly situated to an increased risk of adverse health effects, was intentionally undertaken in conscious disregard of class members' safety and health.

SIXTH CLAIM FOR RELIEF

(Intentional Tort Of Conspiracy)

48. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 to 47 and further allege:

49. In addition to their individual acts, all defendants herein conspired with each other to commit the negligent and/or intentional or willful acts more specifically pleaded herein, thereby damaging plaintiffs and all other similarly situated. Each defendant conspired to commit the following willful or intentional acts, among others:

- a. Intentionally and/or willfully exposing plaintiffs and those similarly situated to vinyl chloride and/or substances containing it without their consent, thereby intentionally inflicting

unconsented harmful and/or offensive contact with them.

- b. Intentionally and/or willfully misrepresenting or failing to disclose to plaintiffs and those similarly situated their true medical condition and/or the dangers associated with exposure to vinyl chloride and/or substances containing it.
- c. Intentionally and/or willfully inducing plaintiffs and those similarly situated to work in an environment that defendants knew was hazardous to their health.
- d. Intentionally and/or willfully failing to provide adequate protection to plaintiffs and those similarly situated to reduce or eliminate the dangerous effects of vinyl chloride.
- e. Intentionally and/or willfully failing to provide adequate warnings to plaintiffs and those similarly situated regarding the dangers and ill-health effects of exposure to vinyl chloride and/or substances containing it.
- f. Intentionally and/or willfully hiding, altering, and destroying the medical and industrial hygiene monitoring records associated with the exposure by plaintiffs and others similarly situated to vinyl chloride and/or substances containing it.
- g. Intentionally and/or willfully failing to provide adequate medical monitoring in the vinyl chloride workplace;

- h. Intentionally and/or willfully failing to provide an accurate industry standard for monitoring levels of vinyl chloride exposure sustained by class members.
- i. Intentionally and/or willfully failing to test or investigate the dangerous propensities associated with exposure to vinyl chloride and/or substances containing it.
- j. Intentionally and/or willfully participating in an industry-wide conspiracy to fail to test or investigate the potential adverse health effects posed by use of vinyl chloride in the workplace, including the deliberate and intentional misrepresentation, misclassification, alteration and suppression of epidemiological and toxicologic studies, data, and other information concerning the carcinogenicity of vinyl chloride and/or substances containing it.
- k. Intentionally and/or willfully participating in an industry-wide conspiracy to conscientiously fail to warn plaintiffs and others similarly situated of the potential cancers and/or ill-health effects associated with exposure to vinyl chloride and/or substances containing it, including the deliberate misrepresentation, misclassification, alteration and suppression of epidemiological and toxicological studies, data and other information

relating to the carcinogenicity of vinyl chloride and/or substances containing it.

1. Intentionally and/or willfully participating in an industry-wide conspiracy to improperly influence, manipulate, alter and misclassify epidemiologic data, toxicologic data and scientific findings as reported by research concerning the health risks of vinyl chloride and/or substances containing it in the medical and trade literature.
- m. Intentionally and/or willfully participating in a concerted effort to misrepresent and underestimate the true extent and nature of vinyl chloride exposures which were reported to plaintiffs and others similarly situated.
- n. Intentionally and/or willfully participating in a concerted effort to hide from plaintiffs and those similarly situated industry-sponsored epidemiological studies of cancer in the vinyl industry which had repeatedly demonstrated that class members already have sustained significant excess mortality from various types of cancers and other diseases in persons employed in the vinyl industry for more than one year.
- o. Intentionally and/or willfully concealing relevant information concerning the carcinogenic potential of vinyl chloride from the United States government and the public and lying to the government and the public about same in order to

minimize the potential monetary loss they would incur if they had revealed the truth.

50. The following tortious acts, among others, were committed on plaintiffs and others similarly situated by at least one defendant:

- a. Intentionally and/or willfully exposing plaintiffs and others similarly situated to vinyl chloride and/or substances containing it without their consent, thereby intentionally inflicting unconsenting harmful and/or offensive contact with them.
- b. Misrepresenting and/or failing to disclose to plaintiffs and others similarly situated their true medical condition and/or the dangers associated with exposure to vinyl chloride and/or substances containing it.
- c. Inducing plaintiffs and others similarly situated to work in an environment that was hazardous to their health.
- d. Failing to provide adequate protection to plaintiffs and others similarly situated to reduce or eliminate the dangerous effects of vinyl chloride and/or substances containing it.
- e. Failing to provide adequate warnings to plaintiffs and others similarly situated in the industry regarding the dangers and ill-health effects of exposure to vinyl chloride and/or substances containing it.

- f. Hiding, altering, and destroying the medical monitoring records associated with the exposure by plaintiffs and others similarly situated to vinyl chloride and/or substances containing it;
- g. Failing to provide adequate medical monitoring in the vinyl chloride work place.
- h. Failing to provide an accurate industry standard for monitoring levels of vinyl chloride exposure sustained by class members.
- i. Failing to test or investigate the dangerous propensities associated with exposure to vinyl chloride and/or substances containing it.
- j. Participating in an industry-wide concerted effort to fail to test or investigate the potential adverse health effects posed by use of vinyl chloride and/or substances containing it in the work place, including the concerted effort to misrepresent, misclassify, alter, and suppress epidemiological and toxicological studies, data, and other information concerning the carcinogenicity of vinyl chloride and/or substances containing it.
- k. Participating in an industry-wide concerted effort to conscientiously fail to warn plaintiffs and others similarly situated of the potential cancers and/or ill-health effects associated with exposure to vinyl chloride including the misrepresentation, misclassification, alteration, and suppression of

epidemiological and toxicological studies, data, and other information relating to the carcinogenicity of vinyl chloride and/or substances containing it.

1. Participating in an industry-wide concerted effort to improperly influence, manipulate, alter, and misclassify, epidemiological and toxicologic data and scientific findings as reported by research concerning the health risks of vinyl chloride and/or substances containing it in the medical and trade literature;
- m. Participating in a concerted effort to misrepresent and underestimate the true extent and nature of vinyl chloride exposures which were reported to plaintiffs and others similarly situated;
- n. Participating in a concerted effort to prevent plaintiffs and others similarly situated and others workers from learning that they themselves were members of a cohort in secret (from the perspective of the subjects of the study) industry-sponsored epidemiological studies of cancer in the vinyl industry which had been repeatedly and consistently demonstrated to them to have already sustained significant excess mortality from various types of cancer and other diseases in persons employed in the vinyl industry for more than one year.

- o. Participating in a concerted effort to "keep the lid" on their employees', the government's, and the general public's knowledge concerning the carcinogenicity of vinyl chloride and/or substances containing it.

51. Each of the foregoing tortious acts was performed by defendants:

- a. In concert with each other;
- b. Pursuant to a common design;
- c. Under the knowledge of each defendant that the other defendants' conduct constituted a breach of duty to which each defendant gave substantial assistance or encouragement.
- d. With substantial assistance of the other defendants to accomplish the tortious result of harming class members, with substantial assistance constituting a breach of duty by each defendant to class members.

52. As such, each defendant named herein is liable for the actions and omissions of all defendants in furtherance of the foregoing conspiracy.

53. Each of the unlawful, tortious, willful, or intentional acts described above constitutes an individual conspiracy to which each defendant gave assistance or encouragement, thereby causing plaintiffs and others similarly situated to be exposed to and damaged by vinyl chloride and/or substances containing it.

54. As a result of the foregoing conspiracy, each defendant is liable for the damage proximately caused by all acts in

furtherance of the conspiracy, including each and every act listed above.

SEVENTH CLAIM FOR RELIEF

(Enhanced Risk Of Future Condition)

55. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 to 54 above, and further allege:

56. During all times relevant hereto, each and every defendant knew or should have known that exposure to vinyl chloride or vinyl chloride-containing products could cause an enhanced risk of contracting vinyl chloride-related conditions in plaintiffs and those similarly situated, which would make it necessary for them to undergo medical surveillance in order to monitor for the development of vinyl chloride-related diseases or conditions and permit medical diagnosis or treatment of any such diseases or conditions.

57. During all times relevant hereto, each and every defendant knew or should have known that exposure to vinyl chloride or vinyl chloride-containing products would make it necessary for plaintiffs and those similarly situated to undergo medical surveillance in order to monitor for the development of vinyl chloride-related conditions and permit medical diagnosis or treatment of any such conditions.

58. The failure by each and every defendant to provide such warnings and instructions constitutes negligence and proximately caused the injuries to plaintiffs and those similarly situated as described above.

59. The failure of each and every such defendant to provide plaintiffs and those similarly situated with both adequate warnings of the danger from exposure to vinyl chloride or vinyl chloride-containing products and adequate instructions on how to use vinyl chloride or vinyl chloride-containing products, thus subjecting plaintiffs and those similarly situated to the enhanced risk of contracting vinyl chloride-related diseases or conditions, was reckless, wanton, and willful and in conscious disregard of class members' safety and health.

EIGHTH CLAIM FOR RELIEF

(Medical Monitoring)

60. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in paragraphs 1 to 59 above, and further allege:

61. During all times relevant hereto, each and every defendant knew or should have known that exposure to vinyl chloride or vinyl chloride-containing products could cause an enhanced risk of contracting vinyl chloride-related conditions in plaintiffs and those similarly situated, which would make it necessary for them to undergo medical surveillance in order to monitor for the development of vinyl chloride-related diseases or conditions and permit medical diagnosis or treatment of any such diseases or conditions.

62. The failure of each and every defendant to provide plaintiffs and those similarly situated with both adequate warnings of the danger from exposure to vinyl chloride or vinyl chloride-containing products and adequate instructions on how to

use vinyl chloride or vinyl chloride-containing products has made it necessary that plaintiffs and those similarly situated undergo regular medical surveillance in order to monitor for the development of vinyl chloride-related conditions and permit early medical diagnosis or treatment of any such conditions.

63. The failure of each and every such defendant to provide plaintiffs and those similarly situated with both warnings of the danger from exposure to vinyl chloride or vinyl chloride-containing products and adequate instructions on how to safely use vinyl chloride or vinyl chloride-containing products has rendered it necessary for plaintiffs and those similarly situated to undergo medical surveillance. Such conduct by each and every defendant was reckless, wanton, and willful and in conscious disregard of class members' safety and health.

64. The failure of each and every such defendant to provide plaintiffs and those similarly situated with both warnings of the danger from exposure to vinyl chloride or vinyl chloride-containing products and adequate instructions on how to safely use vinyl chloride or vinyl chloride-containing products has rendered it necessary for plaintiffs and those similarly situated to undergo medical surveillance. Such conduct by each and every defendant was reckless, wanton, and willful and in conscious disregard of class members' safety and health.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and all others similarly situated, prays for judgment against defendants, and each of them, jointly, severally and in solido as follows:

1. For an order certifying the class and any appropriate subclass thereof under Federal Rule of Civil Procedure 23, and appointing plaintiffs and their counsel to represent the class;
2. For an order requiring defendants to be financially responsible for notifying all class members of the potential health hazards arising from exposure to their vinyl chloride or vinyl chloride-containing products;
3. For an order requiring defendants to create a medical monitoring fund, under the continuing jurisdiction and supervision of the Court, to monitor the health of plaintiffs and class members and to pay or reimburse class members for all medical expenses already incurred by plaintiffs and class members in medical monitoring and surveillance;
4. For an order requiring defendants to create a fund for the independent and accurate personal monitoring of the class members still exposed to vinyl chloride using appropriate monitoring devices and/or methods which accurately reflect and do not consistently underestimate the exposure of class members to vinyl chloride, under the continuing jurisdiction and supervision of the Court, in order to accurately monitor the degree of vinyl chloride exposure sustained

by those class members still exposed to vinyl chloride in the course of their employment;

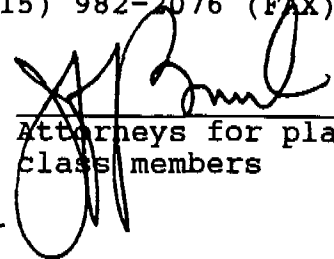
5. For damages, both actual and punitive, as the evidence may show proper;
6. For attorney's fees in an amount deemed sufficient to cover the prosecution of this action;
7. For all costs of these proceedings and interest from date of judicial demand; and,
8. For all equitable or other relief the Court may deem just and proper.

Respectfully submitted,

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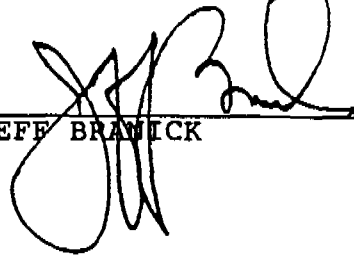
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By 

Attorneys for plaintiffs and
class members

CERTIFICATE OF SERVICE

I hereby certify that the foregoing instrument has been mailed to opposing counsel by certified mail, return receipt requested, on this the 2nd day of JANUARY, 1995.



JEFF BRAVICK

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

WINZY VASSAR, JR., ET AL \$
as individuals on behalf of \$
themselves and all others \$
similarly situated, \$

No. 1:94CV593

v. \$

AIR PRODUCTS AND CHEMICAL, \$
INC., ALLIED CHEMICAL \$
CORPORATION, AMERICAN CHEMICALS\$
MANUFACTURING CO., INC., \$
BORDEN CHEMICALS \$
AND PLASTICS LIMITED \$
PARTNERSHIP, BORDEN, INC., \$
BRIDGESTONE/FIRESTONE, INC., \$
B.P. AMERICAS (BRITISH \$
PETROLEUM CHEMICAL), CERTAINTEEDS\$
CORPORATION, CHEVRON U.S.A. \$
INC., GENCORP INTERNATIONAL, \$
INC. (FORMERLY KNOWN AS \$
DIVERSITECH GENERAL \$
INTERNATIONAL CO.), \$
THE DOW CHEMICAL COMPANY, E. I.\$
DUPONT DeNEMOURS & COMPANY, \$
ETHYL CORPORATION, FORMOSA \$
CHEMICALS & FIBRE CORPORATION,\$
AMERICA, GENCORP INC., GEORGIA\$
GULF CORPORATION, THE B.F. \$
GOODRICH COMPANY, THE GOODYEAR\$
TIRE & RUBBER COMPANY, GREAT \$
AMERICAN CHEMICAL CORPORATION,\$
KEYSOR CENTURY, \$
MONSANTO COMPANY, OCCIDENTAL \$
CHEMICAL CORPORATION, OCCIDENTAL\$
ELECTROCHEMICALS CORPORATION, \$
OLIN CORPORATION, \$
PPG INDUSTRIES, INC., ROBINTECH\$
INCORPORATED, SHELL OIL COMPANY,\$
TENNECO OIL COMPANY, UNION \$
CARBIDE CORPORATION, UNIROYAL,\$
INC., W. R. GRACE & CO. - CONN.,\$
ZENECA INC., THE CHEMICAL \$
MANUFACTURERS ASSOCIATION, \$
THE SOCIETY OF PLASTICS \$
INDUSTRY, THE VINYL INSTITUTE,\$
CONOCO INC., VISTA CHEMICAL \$
COMPANY AND MAXUS ENERGY \$
CORPORATION \$

CLASS ACTION COMPLAINT FOR
MEDICAL MONITORING AND
DAMAGES

(JURY TRIAL DEMANDED)

GACC 00717

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, plaintiffs hereby demand trial by jury on all issues so triable.

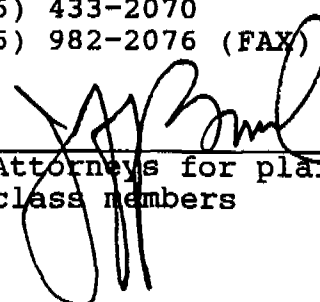
DATED: _____, 1995.

Respectfully submitted,

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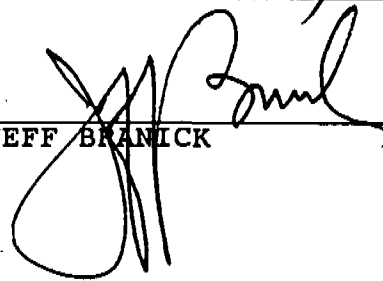
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By 

Attorneys for plaintiffs and
class members

CERTIFICATE OF SERVICE

I hereby certify that the foregoing instrument has been mailed to opposing counsel by certified mail, return receipt requested, on this the 23rd day of January, 1995.



JEFF BRANICK

GACC 00719