

ROBINSON DONOVAN MADDEN & BARRY, P.C.

ATTORNEYS AT LAW
1500 MAIN STREET - SUITE 1400
POST OFFICE BOX 15609
SPRINGFIELD, MASSACHUSETTS 01115
(413) 732-2301
FAX No. (413) 785-4658

MILTON J. DONOVAN
JOHN H. MADDEN, JR.
EDWARD J. BARRY
GORDON H. WENTWORTH
JAMES H. TOURTELOTTE
CHARLES K. BERGIN, JR.
VICTOR ROSENBERG
RONALD C. KIDD
JEFFREY W. ROBERTS
JEFFREY L. MCCORMICK
JAMES M. RABBITT
JAMES F. MARTIN
ROBERT P. CUNNINGHAM
JOHN C. SIKORSKI
NANCY FRANKEL PELLETIER

PAUL S. WEINBERG
HENRY C. CROUSEY
FREDERICA H. MCCARTHY
JAMES O'S. MORTON
NEVA I. KAUFMAN
DOUGLAS F. BOYD
KEITH A. MINOFF
JAMES K. BODURTHA
KIMBERLY DAVIS CREAR
ANNE SWATEK
MICHAEL T. KOGUT
JOHN W. LAKE
JONATHAN P. RICE
EDMUND J. GORMAN
MATTHEW J. KING

January 9, 1991

HOMANS ROBINSON
1894-1973
LAWRENCE M. SINCLAIR
1942-1986

Dow Chemical Company
c/o Sharon Burger, Esq.
Nutter, McClennan & Fish
1 International Place
Boston, MA 02110

Re: John L. Warren and Alice L. Warren

Dear Ms. Burger:

As you know, this law firm represents Alice L. Warren in connection with claims brought by her as Administratrix of the estate of her late husband, John L. Warren, against the Dow Chemical Company ("Dow") based on Mr. Warren's exposure to vinyl chloride and vinyl chloride related products sold or supplied by Dow. Those claims are currently the subject of a civil action now pending in the United States District Court for the District of Massachusetts, Alice L. Warren, Administratrix of the Estate of John L. Warren, Deceased v. The Dow Chemical Co. et. al., Civil Action No. 89-30201-F.

This letter shall serve as a written demand for relief pursuant to M.G.L. Chapter 93A, Section 9, brought on behalf of Mrs. Warren, both individually and as Administratrix of the Estate of John L. Warren. Mrs. Warren claims that the Dow Chemical Company sold or supplied John H. Warren's employer, Monsanto Chemical Company, with vinyl chloride monomer and vinyl chloride related products, that Mr. Warren was exposed to such products and that as a direct and proximate result, he became ill with angiosarcoma of the liver and died of that disease on January 29, 1988. Mrs. Warren claims that her late husband's illness and death were as a result of unfair acts and deceptive practices proscribed by M.C.L. Chapter 93A.

EXHIBIT

UCC 080966

ROBINSON DONOVAN MADDEN & BARRY, P.C.

ATTORNEYS AT LAW

1500 MAIN STREET - SUITE 1400

POST OFFICE BOX 15609

SPRINGFIELD, MASSACHUSETTS 01115

(413) 732-2301

FAX No. (413) 785-4658

MILTON J. DONOVAN
JOHN M. MADDEN, JR.
EDWARD J. BARRY
GORDON H. WENTWORTH
JAMES H. TOURTELOTTE
CHARLES K. BERGIN, JR.
VICTOR ROSENBERG
RONALD C. KIDD
JEFFREY W. ROBERTS
JEFFREY L. MCCORMICK
JAMES M. RABBITT
JAMES F. MARTIN
ROBERT P. CUNNINGHAM
JOHN C. SIKORSKI
NANCY FRANKEL PELLETIER

PAUL S. WEINBERG
HENRY C. CROUSEY
FREDERICA H. MCCARTHY
JAMES O'S. MORTON
NEVA I. KAUFMAN
DOUGLAS F. BOYD
KEITH A. MINOFF
JAMES K. BOOURTHA
KIMBERLY DAVIS CREAR
ANNE SWIATEK
MICHAEL T. KOGUT
JOHN W. LAKE
JONATHAN P. RICE
EDMUND J. GORMAN
MATTHEW J. KING

Ms. Burger
January 9, 1991
page 2

HOMANS ROBINSON
1894-1973
LAWRENCE M. SINCLAIR
1942-1986

Specifically, Mrs. Warren claims that Dow Chemical Company engaged in the following unfair acts and deceptive practices:

1. Dow was negligent in that it knew or should have known that the vinyl chloride products, including vinyl chloride monomer, which it manufactured and/or supplied to Monsanto were inherently and unreasonably dangerous and defective by reason of toxicity when ingested, breathed or absorbed.
2. Dow knew or should have known that Mr. Warren and other similarly situated chemical workers during the usual course of their employment and through the ordinary foreseeable use and processing of said vinyl chloride products and vinyl chloride monomer would be exposed to and would inhale, absorb and ingest fumes and vapors emanating from said products and chemicals on a regular basis. Dow was negligent in processing, testing, designing, manufacturing, distributing, marketing, supplying and selling the said vinyl chloride products and vinyl chloride monomer.
3. Dow was negligent in failing to provide proper, adequate and correct warnings and instructions for proper and safe use concerning the dangers posed to the persons using, handling or exposed to their vinyl chloride products and vinyl chloride monomer, including Mr. Warren.
4. Dow was negligent in failing to properly test and investigate the dangers posed to chemical workers such as Mr. Warren by its vinyl chloride products and vinyl chloride monomer.
5. Dow was negligent in failing to reduce, minimize, eliminate or eradicate the health hazards posed by its vinyl chloride products and monomer.

UCC 080967

ROBINSON DONOVAN MADDEN & BARRY, P.C.

ATTORNEYS AT LAW

1500 MAIN STREET - SUITE 1400

POST OFFICE BOX 15609

SPRINGFIELD, MASSACHUSETTS 01115

(413) 732-2301

FAX No. (413) 785-4658

MILTON J. DONOVAN
JOHN H. MADDEN, JR.
EDWARD J. BARRY
GORDON H. WENTWORTH
JAMES H. TOURTELOTTE
CHARLES K. BERGIN, JR.
VICTOR ROSENBERG
RONALD C. KIDD
JEFFREY W. ROBERTS
JEFFREY L. MCCORMICK
JAMES M. RABBITT
JAMES F. MARTIN
ROBERT P. CUNNINGHAM
JOHN C. SIKORSKI
NANCY FRANKEL PELLETIER

PAUL S. WEINBERG
HENRY C. CROUSEY
FREDERICK H. MCCARTHY
JAMES O'S. MORTON
NEVA I. KAUFMAN
DOUGLAS F. BOYD
KEITH A. MINOFF
JAMES K. BODURTHA
KIMBERLY DAVIS CREAR
ANNE SWIADEK
MICHAEL T. KOGUT
JOHN W. LAKE
JONATHAN P. RICE
EDMUND J. GORMAN
MATTHEW J. KING

Ms. Burger.
January 9, 1991
page 3

HOMANS ROBINSON
1894-1973
LAWRENCE M. SINCLAIR
1942-1986

6. Dow breached express and implied warranties of merchantability and fitness for a particular purpose in that the vinyl chloride products and monomer it supplied were not of merchantable quality, were unfit for their intended uses and were defective and unreasonably dangerous by way of toxicity.

Mrs. Warren claims that as a result of the unfair and deceptive acts and practices committed by Dow, as listed above, her late husband, John H. Warren, developed angiosarcoma of the liver which was first diagnosed in the summer of 1987, that Mr. Warren was permanently disabled and suffered conscious physical and emotional pain and suffering until his death on January 29, 1988, that Mr. Warren died as a result of angiosarcoma of the liver, and that Mr. Warren also suffered loss of earnings and loss of earning capacity.

In addition, Mrs. Warren claims that as a result of the foregoing unfair and deceptive acts and practices engaged in by Dow, she and her two sons, Daniel and John, sustained damages including but not limited to loss of reasonably expected net income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice, pain, suffering and mental anguish, funeral and burial expenses and other incidental and consequential damages.

You should be aware, if you are not already, that the Supreme Judicial Court of Massachusetts recently held in the case of Maillet v. ATF-Davidson Co., Inc., 407 Mass. 185 (1990), that where a business is found both to have breached its warranty of merchantability, in addition to tort damages, the business is also liable for an award under G.L. c. 93A. The SJC cited regulations promulgated by the Attorney General providing that "[i]t shall be an unfair or deceptive act or practice to fail to perform or fulfill any promises or obligations arising under a warranty." 940 Code Mass. Regs.

UCC 080968

ROBINSON DONOVAN MADDEN & BARRY, P.C.

ATTORNEYS AT LAW

1500 MAIN STREET - SUITE 1400

POST OFFICE BOX 15609

SPRINGFIELD, MASSACHUSETTS 01115

(413) 732-2301

FAX No. (413) 785-4658

MILTON J. DONOVAN
JOHN H. MADDEN, JR.
EDWARD J. BARRY
GORDON H. WENTWORTH
JAMES H. TOURTELOTTE
CHARLES K. BERGIN, JR.
VICTOR ROSENBERG
RONALD C. KIDD
JEFFREY W. ROBERTS
JEFFREY L. MCCORMICK
JAMES M. RABBITT
JAMES F. MARTIN
ROBERT P. CUNNINGHAM
JOHN C. SIKORSKI
NANCY FRANKEL PELLETIER

PAUL S. WEINBERG
HENRY C. CROUSEY
FREDERICA H. MCCARTHY
JAMES O'S. MORTON
NEVA I. KAUFMAN
DOUGLAS F. BOYD
KEITH A. MINOFF
JAMES K. BODURTHA
KIMBERLY DAVIS CREAR
ANNE SWIATEK
MICHAEL T. KOGUT
JOHN W. LAKE
JONATHAN P. RICE
EDMUND J. GORMAN
MATTHEW J. KING

Mrs. Burger
January 9, 1991
page 4

HOMANS ROBINSON
1894-1973
LAWRENCE M. SINCLAIR
1942-1986

§ 3.08(2) (1986); Id. at 100. The Court noted in its opinion that Section 9 of Chapter 93A provides a cause of action to "any person . . . who has been injured by another person's use" of an unfair or deceptive trade practice. "We see no reason," said the Court, "to exclude injury to the person from the category of injuries cognizable under G.L. Chapter 93A." Id. at 99. The SJC in Maillet also restated the rule that it is not a defense to a Chapter 93A claim that the defendant's conduct was negligent rather than intentional, citing Linthicum v. Archambault, 379 Mass. 381 (1979).

If the pending civil action were amended to add claims under Chapter 93A against the Dow Chemical Company, Mrs. Warren would be entitled to recover up to two to three times the damages set forth above plus her attorney's fees based on Dow's willful and knowing violations of Chapter 93A, § 2. Our investigation has already revealed that Dow, along with other vinyl chloride manufacturers, knew as early as 1970 of the cancer-causing effects of vinyl chloride exposure and intentionally withheld this information from governmental regulatory agencies such as NIOSH and from chemical workers such as Mr. Warren who were regularly exposed to vinyl chloride supplied by Dow.

More specifically, information which we have obtained shows that Dow along with other chemical companies who were members of the Manufacturing Chemists' Association were privy to research studies conducted by an Italian researcher, Publio L. Viola, who had announced at the Tenth International Cancer Congress in Houston, Texas in 1970 that his findings revealed that vinyl chloride exposure caused cancer in laboratory animals. Dow, along with the other members of MCA, engaged in a deliberate cover-up of Dr. Viola's findings and agreed among themselves to withhold this information from NIOSH and from the general public for fear that it would have serious economic consequences for the vinyl chloride industry. In addition, as

UCC 080969

ROBINSON DONOVAN MADDEN & BARRY, P.C.

ATTORNEYS AT LAW
1500 MAIN STREET - SUITE 1400
POST OFFICE BOX 15609
SPRINGFIELD, MASSACHUSETTS 01115
(413) 732-2301
FAX No. (413) 785-4658

MILTON J. DONOVAN
JOHN H. MADDEN, JR.
EDWARD J. BARRY
GORDON H. WENTWORTH
JAMES H. TOURTELLOTTE
CHARLES K. BERGIN, JR.
VICTOR ROSENBERG
RONALD C. KIDD
JEFFREY W. ROBERTS
JEFFREY L. MCCORMICK
JAMES M. RABBITT
JAMES F. MARTIN
ROBERT P. CUNNINGHAM
JOHN C. SIKORSKI
NANCY FRANKEL PELLETIER

PAUL S. WEINBERG
HENRY C. CROUSEY
FREDERICA H. MCCARTHY
JAMES O'S. MORTON
NEVA I. KAUFMAN
DOUGLAS F. BOYD
KEITH A. MINOFF
JAMES K. BODURTHA
KIMBERLY DAVIS CREAR
ANNE SWATEK
MICHAEL T. KOGUT
JOHN W. LAKE
JONATHAN P. RICE
EDMUND J. GORMAN
MATTHEW J. KING

Ms. Burger
January 9, 1991
page 5

HOMANS ROBINSON
1894-1973
LAWRENCE M. SINCLAIR
1942-1986

early as 1961, a toxicologist employed by Dow Chemical, T.R. Torkelson, found that laboratory animals exposed to varying concentrations of vinyl chloride developed degenerative changes in their livers. The Viola studies reported nine years later served to confirm the Torkelson findings.

On behalf of Mrs. Warren, we hereby demand that the Dow Chemical Company pay Two Million Dollars (\$2,000,000.) in full settlement of these claims. The statute requires that Dow make a written tender of settlement within thirty days of receiving this demand for relief.

We look forward to your response.

Sincerely,

James H. Tourtelotte

JHT/cjr/1477p

UCC 080970