

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CATHERINE HASSEY, Individually : CIVIL ACTION
and as Administratrix of the :
Estate of Harry R. Hassey, Dec'd :
v. :
UNIROYAL, INC. :
and :
THE B. F. GOODRICH COMPANY :
and :
THE FIRESTONE TIRE & :
RUBBER COMPANY :
and :
UNION CARBIDE CORPORATION :
and :
AIR PRODUCTS AND CHEMICALS, INC. :
Defendants : NO. 80-43

FIRST AMENDED COMPLAINT

PARTIES

1. Plaintiff, Catherine Hassey, is an individual residing, at 3230 A Street, Philadelphia, Pa., and was appointed Administratrix of the Estate of Harry R. Hassey by the Register of Wills of Philadelphia, Pa. on the 16th day of May, 1980 and brings this action both individually and as Administratrix pursuant to 42 Pa. C.S.A. §8302.

2. Defendant Uniroyal, Inc. (hereinafter "Uniroyal") is a New Jersey corporation (formerly known as U.S. Rubber Co.) with a principal office located in Middlebury, Ct. and at all times relevant to this Complaint was doing business within the Commonwealth of Pennsylvania.

3. Defendant, The B. F. Goodrich Company (hereinafter "Goodrich") is a New York corporation with a principal office located at 277 Park Avenue, NY, NY 10017, and at all times relevant to this Complaint was doing business within the Commonwealth of Pennsylvania.

4. Defendant, The Firestone Tire & Rubber Company (hereinafter "Firestone") is an Ohio corporation with a principal office at 1200 Firestone Parkway, Akron, Ohio 44317, and at all times relevant to this Complaint was doing business within the Commonwealth of Pennsylvania.

5. Defendant, Union Carbide Corporation (hereinafter "Union Carbide"), is a New York corporation with a principal office located at 270 Park Avenue, NY, NY 10017, and at all times relevant to this Complaint was doing business within the Commonwealth of Pennsylvania.

6. Defendant, Air Products and Chemicals, Inc., (hereinafter "AP&C"), is a Michigan corporation with a principal office located at 3535 N. Palofox Street, Pensicola, Florida, and at all times relevant to this Complaint was doing business within the Commonwealth of Pennsylvania.

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7. Non-party Masland Duraleather Company was a Pennsylvania corporation which owned and operated a plant for the production of vinyl sheets at Collins and Allegheny Avenues, Philadelphia, Pa. during the continuous period September, 1951 through December, 1972, and defendant Uniroyal thereafter assumed the ownership and operation of the plant from January, 1973 through August, 1978 inclusive.

JURISDICTION

8. Plaintiff, in all capacities, is a citizen of the Commonwealth of Pennsylvania and all corporate defendants are organized under the laws of a state other than Pennsylvania, and have a principal place of business in a state other than the Commonwealth of Pennsylvania.

The amount in controversy exceeds, exclusive of interest and costs, the sum of \$10,000 and is in excess of \$50,000.

BACKGROUND

9. Plaintiff, Catherine Hassey, at all times material to this Complaint, was the wife of Harry R. Hassey, Deceased, who commenced working at the Masland Duraleather Company plant (hereinafter "Plant") at Collins and Allegheny Avenues, Philadelphia, Pa. on or about September, 1951 and was continuously employed within the several buildings comprising the plant until August, 1978.

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10. During the period 1951 through 1978 inclusive the manufacturing operations at the plant included the combining and processing (hereinafter "Process") of certain chemicals under heat and pressure for the purpose of producing a final product in the form of vinyl sheets, which were sold for ultimate use in products such as lawn furniture fabric.

11. Each of the above named defendants at various times during the period 1951 through 1978 were the suppliers of a certain chemical and hydrocarbon compound known as polyvinyl chloride (hereinafter "PVC") which was used in the process.

12. The properties of the PVC supplied, and the nature of the process involved in producing the vinyl sheets created a working environment which included the presence of the PVC in both a finely disbursed and vaporous state which was inhaled and otherwise ingested into the body systems of employees.

13. Commencing in 1951 and continuing through 1978, Harry R. Hassey, Deceased, was employed in the plant, and his various duty assignments in the plant required his presence in various departments during the various stages of the process.

COUNT I-TRESPASS

14. Plaintiff incorporates herein by reference all allegations of paragraphs 1 through 13 as though fully set forth.

15. At all times material to this Complaint all defendants were manufacturers and producers of PVC which was sold and

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delivered to Masland Duraleather for use in the process at the plant.

16. At all times material to this Complaint, defendants knew, should have known, or could have reasonably determined that the PVC which it manufactured, distributed, supplied, sold and otherwise placed in commerce for use in the production of vinyl sheets was dangerous, deleterious, harmful, potentially deadly and otherwise inherently destructive to the human body systems and functions.

17. At all times material to this Complaint defendants knew, should have known, or could have reasonably determined that the chemicals which they manufactured, supplied and distributed for use in the production of vinyl sheets would in the ordinary use and handling thereof be ingested into the employees' body systems by inhalation of of dust, fumes, vapors or otherwise.

18. At all times material to this Complaint, defendants knew, should have known, or could have reasonably determined that the employees at the plant would not have knowledge of the fact of the aforesaid dangerous characteristics of the PVC when used in the process.

19. Notwithstanding its knowledge and awareness of the above set forth factual circumstances, defendants, in breach of their duties to use reasonably care for the protection, avoidance of harm and prevention of injury to plaintiff, Harry Hassey, by:

(a) failure and omission to adopt monitoring and testing procedures disclosing the necessity of further action to be taken;

(b) failure and omission to initiate or conduct

research or utilize available information which would disclose the necessity of further action to be taken;

(c) failure and omission to provide a working environment which contained or excluded the presence of the injurious agent;

(d) failure and omission to utilize a manufacturing process which would contain or exclude the injurious agent;

(e) failure and omission to provide, or advise as to sufficient safeguards, special equipment or wearing apparel which would contain, exclude or prevent contact with the injurious agent;

(f) failure to provide sufficient warning or advice as would bring notice of the fact of danger by the presence of the injurious agent.

20. At all times material to this Complaint, Harry Hassey worked at the Masland Duraleather plant and was exposed to the PVC in the aforesaid finely disbursed and vaporous PVC in the regular performance of his duties at the plant.

COUNT II - BREACH OF WARRANTY

21. Plaintiff incorporates herein by reference all the allegations of Paragraphs 1 through 20 inclusive as though fully set forth herein.

22. Defendants knew and understood the purposes for which the PVC they sold was intended to be used at the plant.

23. Defendants warranted, both expressly and impliedly, that the PVC product sold and supplied to the plant was reasonably fit and safe for use in the intended production processes taking place in the plant.

24. Defendants breached the aforesaid express and implied warranties of fitness for intended purpose in that:

(a) the PVC sold was harmful and deadly to humans when used in the intended processes at the plant;

(b) the PVC was sold in such form and content as to not contain or prevent its harmful and deadly potentiality.

25. At all times material to this Complaint, Harry Hassey worked at the Masland Dura-leather plant and was exposed to the PVC in the aforesaid finely dispersed and vaporous PVC in the regular performance of his duties at the plant.

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COUNT III - STRICT LIABILITY

26. Plaintiff incorporates herein by reference all the allegations of Paragraphs 1 through 20 inclusive as though fully set forth herein.

27. Defendants manufactured, sold and supplied the aforesaid PVC products to the plant.

28. Defendants knew, should have known, or could have reasonably determined from the facts known to them that the PVC was or was likely to be dangerous for the use for which it was supplied.

29. Defendants had no reason to believe that the employees in the plant to which the product was supplied would realize its dangerous condition.

30. Defendants failed to exercise reasonable care to inform those whom it knew would use the PVC in the ordinary course of the production processes at the plant or otherwise advise and warn them of such conditions or facts which would make the PVC likely to be dangerous.

31. At all times material to this Complaint, Harry Hassey worked at the Masland Duraleather plant and was exposed to the PVC in the aforesaid finely dispersed and vaporous PVC in the regular performance of his duties at the plant.

DAMAGES

32. Plaintiff incorporates herein by reference all the allegations of Paragraphs 1 through 31 inclusive as though fully set forth herein.

33. Plaintiff, Harry Hassey, worked in the plant continuously for the period 1951 through 1979 and in the ordinary course of the performance of his duties as an employee therein was exposed to the PVC as above stated.

34. As a direct and proximate result of the use of the PVC supplied by defendants to the plant as aforesaid, Harry Hassey was caused to contract diseases and injuries to his body parts, organs, tissues, bones, circulatory and metabolic systems, the full extent of which has not been determined but which includes lung diseases, bone diseases, and a metastatic carcinoma, all of which were of a permanent nature and all of which eventually proved to cause severe anxiety, extreme discomfort, disfigurement, limiting

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physical and mental conditions, and eventually proving fatal.

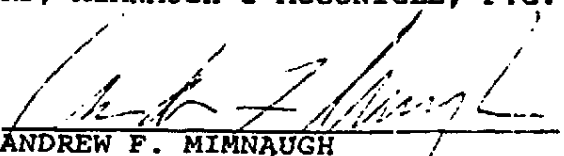
35. As a direct result Harry Hassey had to undergo medical treatment, suffered great physical pain, mental anguish, sustained loss of earnings and earning capacity up to the time of his death, was obligated to expend sums of money to treat the aforesaid conditions, the enjoyment of his life was impaired, and reduced the life span which could normally be expected and resulting loss of income, all of which was a great loss to Harry Hassey and Catherine Hassey.

36. As a direct result of the aforesaid condition, Catherine Hassey, wife of Harry Hassey, was deprived of the society, services consortium and companion ship of her husband, and of income.

WHEREFORE, plaintiffs pray for judgment against each of the defendants, individually, jointly or severally, for damages in a sum in excess of \$10,000 together with interest and costs and such other relief as is just and proper.

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CLARY, MIMNAUGH & MCGONIGLE, P.C.

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF
SERVICE**

I hereby certify that copies of the foregoing Motion for Leave to File First Amended Complaint have been forwarded to all interested counsel this 5th day of November, 1980, via regular U.S. Mail, postage prepaid.


ANDREW F. MIMNAUGH

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