

UNION CARBIDE CORPORATION 437 MacCORKLE AVENUE, S.W., P.O. BOX 8004, SOUTH CHARLESTON, WV 25303
LAW DEPARTMENT

GARY J. TRIPLETT
SENIOR REGIONAL COUNSEL
304-747-3557

April 15, 1987

EXPRESS MAIL

F. Walter Conrad, Jr., Esq.
Baker & Botts
One Shell Plaza
910 Louisiana
Houston, Texas 77002

Re: Jerlean Clay v. American Motorists Insurance
Company, Union Carbide Corporation and
Foley Provenzano

122nd Judicial District Court
Galveston County, Texas
Civil Action No. 87-CV-0488

Dear Walter:

Thank you for agreeing to represent the Corporation and Foley Provenzano in this alleged vinyl chloride death case seeking "punitive damages" against us and workers' compensation benefits against American Motorists Insurance Company. I understand that you have already received the suit papers from Jeff Wargo (through Phil John), and that your associate, Kay Burkhalter, will be assisting you in this case.

The suit papers were served on Foley Provenzano on April 14, 1987. I assume Union Carbide and American Motorists will be served later through the usual means (for UCC, through CT Corporation).

I am not sure who will be representing American Motorists Insurance Company, our workers' compensation insurance carrier. (It is my recommendation it consider your law firm because you already represent us.) As discussed with Kay Burkhalter, it appears that American Motorists should file an answer and thereafter move for a severance on the ground that the claims (workers' compensation benefits against American and punitive damages against us) cannot be joined in this court proceeding under Texas law.

PRIVILEGED AND
"CONFIDENTIAL MATERIAL
SUBJECT TO PROTECTIVE
ORDER"

UCC 070955

April 15, 1987

By copy of this letter, I am asking Ms. Margaret Marchie and Frank B. Daniels to address the representation question and advise us as soon as possible of their choice on the law firm to represent American Motorists.

Your contact at the Texas City plant will be Mr. Jeffrey M. Wargo; I shall be your contact in the Law Department, and you and Kay should report to me fully, as you have done in the other cases you have handled for us.

Very truly yours,

G. J. Triplett
G. J. Triplett

GJT/pe

Attachment

c: Mr. F. B. Daniels - Kemper, Houston (w/att.)
Mr. E. D. DeLoughy (")
R. P. Lawlor, Esq. (")
Ms. M. Marchie - Kemper, NJ (")
Mr. F. S. Provenzano (")
Mr. J. M. Wargo (")

Kay Burkhalter, Esq. (w/o att.)

Note to Mr. McGuire:

Tom, as mentioned in this letter, Union Carbide will apparently be served through CT Corporation. As we mentioned to your secretary, Judy Hilborn, you should send those papers (by overnight carrier) to me.

GJT
GJT

PRIVILEGED AND
"CONFIDENTIAL MATERIAL
SUBJECT TO PROTECTIVE
ORDER"

UCC 070956

APR 15 1987

G. J. TRIPLETT

NO. 87CV0486

JERLEAN CLAY : IN THE DISTRICT COURT OF
VS. : GALVESTON COUNTY, TEXAS
AMERICAN MOTORISTS INSURANCE :
COMPANY, UNION CARBIDE :
CORPORATION and FOLEY PROVENZANO : 122nd JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes, JERLEAN CLAY, hereinafter called Plaintiff, complaining of AMERICAN MOTORISTS INSURANCE COMPANY, UNION CARBIDE CORPORATION and FOLEY PROVENZANO, hereinafter called Defendants, and for cause of action, would respectfully show unto the Court and Jury the following:

I.

Plaintiff is a resident citizen of Galveston County, Texas.

The Defendant, AMERICAN MOTORISTS INSURANCE COMPANY, is an insurance corporation duly organized under and by virtue of law and maintains an office and agent in the City of Austin, Travis County, Texas. Defendant, AMERICAN MOTORISTS INSURANCE COMPANY, may be served with service of process by serving its registered agent, Commissioner of Insurance, 1110 San Jacinto, Austin, Travis County, Texas 78701-1998. At all times material to this suit the Defendant, AMERICAN MOTORISTS INSURANCE COMPANY, was engaged in the business of writing Worker's Compensation Insurance under and by virtue of the provisions of the Worker's Compensation Act of Texas.

The Defendant, UNION CARBIDE CORPORATION, is a New York corporation licensed to do business in the State of Texas who may be served with service of process by serving its registered agent, C. T. Corporation Systems, 811 Dallas Avenue, Houston, Harris County, Texas.

The Defendant, FOLEY PROVENZANO, is the plant manager at Union Carbide Corporation and may be served with service of

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process by serving him at his place of employment at 3301 5th Avenue South, Texas City, Galveston County, Texas.

II.

At the time of the injuries and death herein complained of, the Defendant had in full force and effect a policy of Worker's Compensation Insurance with the employer of deceased, which policy of insurance insured the deceased and the job upon which he was working in accordance with the provisions of the Worker's Compensation Act of Texas. At all times material to this suit the deceased's employer, Union Carbide Corporation, had in its employ more than three employees of the class of the deceased and was eligible to be a subscriber under the Worker's Compensation Act of Texas.

III.

During the course of his employment for UNION CARBIDE, CLAUSBY A. CLAY, was exposed to vinyl chloride. His last day of work, which was his last day of exposure, was February 15, 1985. He was diagnosed as having liver cancer which is believed to be a result of his vinyl chloride exposure. On April 9, 1985, he died from this disease.

IV.

Within thirty (30) days of the occurrence of his injuries and death, the deceased's employer had actual notice and knowledge of them. Within the statutory time Plaintiff filed formal Notice of Injury and Claim for Compensation before the Accident Board of Texas. In the event the Notice of Injury and claim for compensation was not filed before the Industrial Accident Board within the time required by law, Plaintiff would show that he good cause for a late filing. Thereafter, the Industrial Accident Board, on or about the 1st day of April, 1987, made an Award on the claim, a copy of which is attached hereto as Exhibit "A" for jurisdictional purposes only. Within the time allowed by law, Plaintiff gave written notice of dissatisfaction with the Award of the Board and thereafter, with the

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statutory time, filed this suit in this Court of competent jurisdiction for further prosecution of his claim for Worker's Compensation insurance. Before the Industrial Accident Board and in this Court Plaintiff made claim for Worker's Compensation benefits in excess of One Thousand (\$1,000.00) Dollars exclusive of interest and costs.

V.

For at least two hundred ten (210) days of the year immediately preceding his injuries, the deceased worked in the employment in which he was working, for the same or another employer, and during the days so employed, earned an average daily wage of \$100.00.

In the alternative, if the deceased did not work in such employment for at least two hundred ten (210) days of the year immediately preceding his injuries, he would show that there was another employee of the same class as the deceased who had worked at least two hundred ten (210) days of the year immediately preceding the injuries and death of the deceased in the same or similar employment in the same or a neighboring place and that such other employee had an average daily wage during that time he actually worked of \$100.00 per day.

If the deceased did work as above stated, and another employee did not work as above stated, then in that event the deceased's average weekly wage as of the date of the injury, which would be fair and just to both the deceased and Defendant Insurance Corporation would be and is \$500.00 per week.

VI.

In order to properly prosecute her claim for Worker's Compensation Insurance it became necessary for the Plaintiff to employ counsel; she has so employed the undersigned attorneys to represent her in this causes and has agreed to pay them the statutory fee of twenty-five (25%) percent of the net recovery as attorneys' fees. Such fees are reasonable for the services rendered and to be rendered in said cause and should be allowed.

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VII.

Pursuant to the revised Civil Statutes, Article 8306, Section 8, Plaintiff is entitled to death benefit payments until her death or remarriage at the rate of 66-2/3% of the aforesaid average weekly wage rate of \$500.00, and that in event of such remarriage she is entitled to a lump sum payment amounting to the sum of such weekly benefit payments over a two year period.

VIII.

As a result of the injuries and death which occurred to the deceased, it became necessary for him to secure and obtain medical services. Charges have been made for these services and subsequent funeral and burial services which were and are the usually, reasonable and customary charges made for like and similar services which they were rendered. Plaintiff here now sues for reasonable past medical services and for costs of funeral and burial.

IX.

The hazards of exposure to vinyl chloride were and have been well known to UNION CARBIDE CORPORATION for many years. UNION CARBIDE CORPORATION monitored the Plaintiff and was aware of his developing problems. In reckless and conscious disregard of his rights, they exposed and continued to expose him to vinyl chloride. Such conduct was beyond ordinary negligence and constitutes gross negligence for which punitive damages should be accessed against the Defendant, UNION CARBIDE CORPORATION.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendants be cited in terms of law to appear and answer herein and upon final trial of this cause they have judgment against the Defendants for weekly death benefit compensation payments beginning February 15, 1985 at the rate of Two Hundred Three and No/100 (\$203.00) Dollars until Plaintiff's death or remarriage; for reasonable past medical services, and Three Thousand and No/100 Dollars (\$3,000.00) for decedent's burial expenses as allowed by the Worker's Compensation Laws of the

State of Texas; that in the event of Plaintiff's remarriage, she recover a lump sum payment from the Defendants amounting to the sum of such weekly disability over a two year period; that she recover punitive damages against the Defendant, UNION CARBIDE CORPORATION; that she recover legal interest on all past due installments of compensation; that she recover her costs in this behalf expended; that she have interest on the judgment at the legal rate; and for such other and further relief, general and special in law and in equity, to which she may show herself justly entitled and she in duty bound will ever pray.

Respectfully submitted,

BROWN, DAVENPORT & APFFEL

By: Gordon E. Davenport, Jr.
GORDON E. DAVENPORT, JR.
1600 East Highway 6, Suite 418
Alvin, Texas 77511
713/331-4441
SBOT #: 05414500

ATTORNEYS FOR PLAINTIFF

EXHIBIT "A"

TEXAS INDUSTRIAL ACCIDENT BOARD

1st FLOOR, 200 EAST RIVERSIDE DRIVE, AUSTIN, TEXAS 78704

AWARD OF THE BOARD

EMPLOYEE

Causby A. Clay, Deceased
Jerlean Clay, Widow
7011 Woodrow
Texas City, Texas 77590



INSURANCE NUMBER	BOARD NUMBER
710CM 330071X0D	85-178694-
DATE OF INJURY	
on or about 02-15-85	
EMPLOYER	
Union Carbide Corporation	

INSURANCE
CARRIER

Brown, Davenport & Apffel, Attorneys
1600 East Highway 6, Suite 418
First National Bank Building
Alvin, Texas 77511

cc: Causby Clay, Jr.
(address unknown)
cc: Clara Ivy
(address unknown)
cc: Sharon Knoxson
(address unknown)
cc: Carl Clay
(address unknown)
cc: Don Clay
(address unknown)
cc: Joel Clay
(address unknown)
cc: Kelvin Clay
(address unknown)
Flahive & Ogden, Austin, Texas

American Motorists Insurance Company
Post Office Box 2478
Garland, Texas 75041

dy

On date of hearing after due notice to all parties, came the above claim for compensation to be considered by the Industrial Accident Board and the Board finds and orders: (only Findings, Orders, etc. X'd in appropriate spaces below apply)

1. X	Findings that on the date of injury said employer was either a subscriber, authorized self-insured, or had provided workers' compensation coverage in Texas by virtue of Article 8308, Section 18, R.C.S. That said employer was insured with the insurance carrier, or self-insured, named above.
2.	Findings that on the date of injury, the said employee sustained an injury or occupational disease in the course of employment with said employer.
3.	Findings that on the date of injury the named individual was an employee of the employer named above.
4.	Findings that the employee's average weekly wage on date of injury was \$ _____ which produced a compensation rate of \$ _____
5.	Orders named carrier or self-insured to pay employee \$ _____ per week for _____ consecutive weeks for total temporary disability beginning on _____
6.	Orders named carrier or self-insured to pay employee \$ _____ per week for _____ consecutive weeks (following payment compensation, if any for total disability) for _____
7.	Findings that manifest hardship and injustice would result by the denial of a lump sum payment. Therefore, named carrier or self-insured ordered to pay compensation awarded herein in lump sum payment, less previous payments of compensation, if any. (Statutory 4% annual compound discount is allowed on unaccrued compensation ordered paid in lump sum.)
8.	The Board hereby approves an attorney(s) fee of _____ of the unpaid portion of this award, excluding medical expenses, and attorney expenses in the amount of \$ _____
8. X	Special Findings and Orders: FINDS: That evidence submitted fails to establish that the deceased sustained an injury in the course of employment that resulted in death as alleged. Therefore, claim by the Estate, if any, and claims for death benefits by Jerlean Clay, widow, independent claimant, are denied. That claims, if any, by Causby Clay, Jr., Clara Ivy, Sharon Knoxson, Carl Clay, Don Clay, Joel Clay, and Kelvin Clay, independent claimants, are denied.
Award of the Board continued...	

This is the final award of the board. If you are dissatisfied with this award and desire to appeal it, you must give the Board written notice within twenty (20) days from the date the award is entered and, in addition, you must within twenty (20) days after giving such notice, bring suit in a proper court to perfect the appeal.
This award is entered on the 1st day of April, 1987

INDUSTRIAL ACCIDENT BOARD

JOSEPH C. GAGEN

Chairman

BOBBY J. BARNES

Member

N.J. HUERTIS

Member

If you have any questions, contact Awards Division at (512) 448-7870
200 E. Riverside Dr., 1st Floor, Austin, Texas 78702-1987

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