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FILED

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By D. Dunn
DEPUTY

SUMMONS ISSUED

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

JEAN ANDRES,

Plaintiff,

v.

MONSANTO CORPORATION, a Delaware corporation, LEON BILLINGTON, individually and doing business as BILLINGTON MOTOR AND ARMATURE WORKS, and DOES I through LX, inclusive,

Defendants.

NO. 291059

COMPLAINT FOR DAMAGES

Plaintiff alleges:

FIRST CAUSE OF ACTION

I

Plaintiff is, and at all relevant times mentioned herein was, a resident of Sacramento, Sacramento County, State of California.

II

Defendant, MONSANTO CORPORATION, is and at all relevant times mentioned herein was a Delaware corporation authorized to do, and doing business in the State of California.

III

The true names and capacities, whether individual, corporate, associate, or otherwise of defendants DOES I through LX, inclusive, are unknown to plaintiff, who therefore sues such defendants by such fictitious names, and

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will amend this complaint to show their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is and at all relevant times mentioned herein was in the business of manufacturing, fabricating, assembling, inspecting and selling of polychlorinated bithenyls (hereinafter PCBs) or component parts thereof, that each such defendant is responsible in some manner for placing said PCBs, or causing PCBs to be placed, into the stream of commerce, and that plaintiff's injuries as hereinafter alleged were proximately caused by the acts of such defendants, and each of them.

IV

Defendant, MONSANTO CORPORATION, and DOES I through XXV, inclusive, are, and at all relevant times mentioned herein were, engaged in the business of designing, manufacturing, developing, and compounding PCBs for sale to and use by members of the general public, and as part of their business, defendants MONSANTO CORPORATION and DOES I through XXV, inclusive, at all relevant times mentioned herein, designed, manufactured, compounded and developed a line of PCBs, under the following, non-exclusive list of trade names: Aroclor, Pydraul, Therminol, Pyroclor, Santother, Pyralene, Pyranol, Inerteen, Asbestol, Chlorextol, Diachlor, Dykarol, Elemex, Hyrol, No-Flam, Ol, Saf-T-Cuhl, Aroclar B, Clorinol, Clorthen, and Eucarel.

V

Defendant, MONSANTO CORPORATION and DOES XXVI through XL, are and at all relevant times mentioned herein were engaged in the business of designing, fabricating, manufacturing, and compounding certain components of lubricating fluid, PCBs, and other materials and supplied them to defendant MONSANTO CORPORATION and DOES I through XXV, inclusive, and as a part of their business, defendant MONSANTO CORPORATION and DOES XXVI through XL, inclusive, designed, fabricated, manufactured, compounded and

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supplied to defendant MONSANTO CORPORATION and DOES I through XXV, the specific defective products, herein referred to.

VI

Defendant MONSANTO CORPORATION, DOES XLI through L, are, and at all relevant times mentioned herein were, engaged in the business of compounding, inspecting, and selling at retail to members of the general public at their principal place of business the hereinabove described products, including the specific defective products, including lubricating fluid containing PCBs, herein referred to which were designed, manufactured, compounded and developed by defendant, MONSANTO CORPORATION and DOES I through XXV, inclusive.

VIII

Defendant, MONSANTO CORPORATION, DOES I through XXV, inclusive, contended that the above referenced PCBs, including the specific defective product, lubricating fluid containing PCBs, herein referred to, designed, manufactured, compounded and developed by them as hereinabove alleged were to be used in enclosed or semi-enclosed systems in electrical transformers, capacitors, heat transfer systems, hydraulic systems, paints, adhesives, caulking compounds, plasticisers, inks, lubricants, carbonless copy paper, sealants, coatings, and dust control agents; and that defendant MONSANTO CORPORATION and DOES XXVI through XL, inclusive, knew and intended that the component part designed, fabricated, manufactured, compounded and supplied by them to defendant MONSANTO CORPORATION and DOES I through XXV were to be incorporated by the latter into their product.

IX

Defendants and each of them at all times mentioned herein knew and intended that the above-referenced PCBs designed, manufactured, compounded,

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and developed by defendant MONSANTO CORPORATION and DOES I through XXV, inclusive, would be purchased from defendant MONSANTO CORPORATION, DOES XLI through L, inclusive, and used by the purchaser or user without inspection for defects therein or in any of its component parts.

X

Plaintiff was employed by LEON BILLINGTON, doing business as BILLINGTON MOTOR AND ARMATURE WORKS, from 1968 to 1970 and from January 3, 1977, through September 19, 1979.

XI

At all relevant times mentioned herein, defendant, LEON BILLINGTON, doing business as BILLINGTON MOTOR AND ARMATURE WORKS, was engaged in the business of treating, storing, dismantling, draining, and otherwise acting upon certain electrical transformers and other devices which contained certain lubricating fluids, which lubricating fluids were permeated with high and dangerous amounts of PCBs. LEON BILLINGTON, doing business as BILLINGTON MOTOR AND ARMATURE WORKS further was engaged in the business of treating, storing, draining, incinerating, and otherwise acting upon lubricating fluid containing a high and dangerous amount of PCBs.

XII

The electrical transformers and other devices containing the above-referenced lubricating fluids were, and at the time LEON BILLINGTON, doing business as BILLINGTON MOTOR AND ARMATURE WORKS, performed services on, and used these lubricating fluids containing PCBs as herein alleged, and at such time as plaintiff, in the employ of LEON BILLINGTON, doing business as BILLINGTON MOTOR AND ARMATURE WORKS, performed services on and used said items as herein alleged, said items were defective and unsafe for their intended purpose in that said lubricants and PCBs would and do produce serious and substantial incipient medical problems as hereinafter alleged.

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XIII

During the course of plaintiff's employment with LEON BILLINGTON, doing business as BILLINGTON MOTOR AND ARMATURE WORKS, plaintiff was acting upon transformers and other electrical devices and was exposed to lubricating fluids which came into contact with her skin and fumes which were in the air therefrom for the purpose of treating, storing, dismantling, draining, incinerating, and disposing of said items. Further, plaintiff was exposed to PCBs which become concentrated in the ground. During the course of this use, and as a proximate result of the defects hereinafter alleged, plaintiff suffered the damages hereinafter alleged.

XIV

The lubricating fluids containing concentrations of PCBs, and fumes containing PCBs, when coming in contact with the human organism and when exposed to the human organism result in gastric disorders, reproductive system disorders, carcinogenic tumors, hair loss, skin lesions and other serious medical problems.

XV

That during the course of plaintiff's employment with LEON BILLINGTON doing business as BILLINGTON MOTOR AND ARMATURE WORKS plaintiff as hereinabove alleged/was continually exposed to and came into contact with lubricating fluids containing PCBs and with PCBs in the normal use of said lubricating fluid containing PCBs and PCBs.

XVI

That defendants, MONSANTO CORPORATION, and DOES I through L, inclusive, were aware of the above-referenced dangerous physical characteristics of PCBs but concealed said dangers from the Environmental Protection Agency, the general public, and all other regulatory bodies.

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XVII

That defendants, MONSANTO CORPORATION, and DOES I through L, inclusive, placed or caused to be placed into the stream of commerce the above-referenced lubricating fluids containing PCBs and PCBs without adequate warning as to the use of said products and dangers of said products to prevent them from being dangerous to the user; and unsafe for the user when used for their intended purpose in that exposure to lubricating fluids and other materials containing PCBs result in serious medical problems as hereinabove alleged and that absent warnings given to users in the position of plaintiff, the use of and exposure to said products by plaintiff is dangerous to plaintiff's health and well being.

XVIII

That on or about September 15, 1979, plaintiff obtained from the Environmental Protection Agency a certain pamphlet entitled: "EPA's Final PCB Ban Rule". Upon examination of said pamphlet, plaintiff became aware of the dangerous physical characteristics of the chemical compound designated as PCBs. Plaintiff became aware of these dangerous physical characteristics of the chemical compound which could cause incipient, prolonged and serious medical problems to those exposed to the compound which can and do result in reproductive failures, gastric disorders, skin lesions, hair loss, carcinogenic tumors, tumors, and other health problems.

XIX

Defendants, and each of them, knowingly withheld vital safety information from plaintiff concerning the physical characteristics and known dangers of PCBs, purposely intending that plaintiff rely on defendants, and each of them, to disclose all material facts, and that plaintiff would believe the facts actually disclosed were complete and straightforward.

. . .

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XX

Plaintiff relied on the veracity, honesty, and integrity of the defendants, and each of them, and continued her employment in a circumstance where she was exposed to PCBs believing such exposure and employment to be safe. Plaintiff was justifiably induced to act by reason of the nondisclosure of the dangerous propensities of PCBs and plaintiff's conduct was reasonable and prudent under the circumstances in that the dangers of PCBs were latent and not apparent to any visual inspection and plaintiff was not competent to make such a determination concerning such defects.

XXI

As a proximate result of the defect and prolonged and continued exposure as herein alleged, plaintiff sustained skin lesions, hair loss, other medical problems, resulting in serious and permanent injuries to her health, strength and activity and severe shock to her nervous system, and was caused to suffer severe and extreme physical and mental pain all to her general damage in an amount above the minimum jurisdiction of this court.

XXII

As a further proximate result of the defect and injury sustained by plaintiff as herein alleged, plaintiff was required to and did employ physicians, surgeons and other medical personnel and incurred expenses therefor and incurred additional medical expenses for health bills and other incidental medical expenses, all to her further damage in a sum not fully ascertained; plaintiff will seek leave to amend this complaint to insert the true amount when ascertained.

XXIII

As a further proximate result of the defect and injury sustained by plaintiff as herein alleged, plaintiff will be prevented from attending to her usual occupation in the electrical industry.

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XXIV

As a further proximate result of the defect of the above-referenced items which came into contact with plaintiff's skin in the course of her employment, which were breathed by plaintiff due to fumes in the work place, and which permeated the work place ground upon which plaintiff treat, plaintiff was forced to terminate her employment with BILLINGTON MOTOR AND ARMATURE WORKS.

WHEREFORE, plaintiff prays judgment as hereinafter alleged.

SECOND CAUSE OF ACTION

I

Plaintiff refers to and incorporates by this reference paragraphs I through XXIV inclusive of her First Cause of Action as though fully pled herein verbatim.

II

Plaintiff is informed and believes and thereon alleges that defendant, MONSANTO CORPORATION, and DOES I through L, inclusive, knew that the products containing PCBs manufactured, compounded, designed and distributed by them were defective and dangerous in the manner alleged above and defendants knew that because of the defects the products could not safely be used for the purposes for which they were intended; that defendants knowing that the products containing PCBs were defective and dangerous, and in conscious disregard for the safety of the public placed them on the market without sufficient warning to the unknowing public of the defects; and knew wh they did so that it would be sold to and used by the general public without inspection for defect; that defendants, by placing the defective products containing PCBs on the market impliedly represented that they were safe for the purposes for which they were intended; and that defendants by placing them on the market and otherwise representing them as able to perform safely,

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intended that customers and the unknowning public should rely on their representations. Plaintiff, in using and being exposed to the defective products containing PCBs as herein alleged, did rely on defendants' above representations, all to her damage as hereinabove alleged. In doing the things aforementioned, defendants were guilty of malice, oppression, and fraud, and plaintiff is therefore entitled to recover exemplary or punitive damages in the sum of $250,000.00.

WHEREFORE, plaintiff prays judgment as hereinafter set forth.

THIRD CAUSE OF ACTION

I

Plaintiff refers to and incorporates by this reference paragraphs I through XXIV, inclusive, of her First Cause of Action as though fully pled herein verbatim.

II

In doing the acts above referred to, defendants, and each of them acted negligently in that defendants, and each of them, did not adequately test, monitor, and control the items containing PCBs and permitted said items to go into the stream of commerce while aware that persons in plaintiff's position would come into contact with and be exposed to said items.

III

In permitting the products above-referenced to enter the stream of commerce, defendants, and each of them, negligently failed to provide adequate warnings to prevent persons in plaintiff's position from coming into contact with and being exposed to said items.

FOURTH CAUSE OF ACTION

0537131

I

Plaintiff is informed and believes and thereon alleges that defendant LEON BILLINGTON is and at all relevant times mentioned herein was a resident

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of Sacramento County, State of California.

II

Defendant LEON BILLINGTON doing business as BILLINGTON MOTOR AND ARMATURE WORKS conducts and at all relevant times conducted said business at Sacramento County, State of California.

III

Plaintiff is uncertain whether defendant LEON BILLINGTON, doing business as BILLINGTON MOTOR AND ARMATURE WORKS carried and was insured by a workmen's compensation policy at all or any relevant times mentioned herein.

IV

Plaintiff refers to and incorporates by this reference paragraphs X through XXIV, inclusive, of her First Cause of Action as though fully pleaded herein verbatim.

V

The true names and capacities, whether individual, corporate, associate, or otherwise of defendants DOES LI through LX, inclusive, are unknown to plaintiff, who therefore sues said defendants by such fictitious names, and will amend this complaint to show their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that plaintiff's damages as herein alleged were proximately caused by such defendants.

VI

Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein each of the defendants was the agent and employee of each of the remaining defendants, and in doing the things hereinafter alleged, was acting within the scope of such agency.

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VII

Defendant, LEON BILLINGTON, individually and doing business as BILLINGTON MOTOR AND ARMATURE WORKS, as the employer of plaintiff at all relevant times mentioned herein, owed plaintiff the duty to provide plaintiff a safe place of work.

VIII

Defendant, LEON BILLINGTON, individually and doing business as BILLINGTON MOTOR AND ARMATURE WORKS, breached said duty to plaintiff in that defendant LEON BILLINGTON, individually and doing business as BILLINGTON MOTOR AND ARMATURE WORKS, caused his workplace where plaintiff was employed to become contaminated with various substances containing high and dangerous concentrations of PCBs; and caused plaintiff, in the normal course of her employment, to come into contact with said substances by permitting said substances to be on the premises of the workplace, by permitting said substances to permeate the ground of said workplace, by permitting fumes from said substances to enter the air of said workplace, by structuring plaintiff's normal course of employment so that plaintiff was caused to continually handle items permeated with, containing, and exuding said substances.

WHEREFORE, plaintiff prays judgment as hereinafter set forth.

FIFTH CAUSE OF ACTION

I

Plaintiff refers to and incorporates by this reference paragraphs I through VIII, inclusive, of her Fourth Cause of Action as though fully pleaded herein verbatim.

II

Plaintiff is informed and believes and thereon alleges that from on or about January 1, 1979, defendant LEON BILLINGTON, individually and doing

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business as BILLINGTON MOTOR AND ARMATURE WORKS was aware of the dangers posed by exposure to the human organism of concentrations of PCBs.

III

Defendant, LEON BILLINGTON, individually and doing business as BILLINGTON MOTOR AND ARMATURE WORKS, intentionally, fraudulently, maliciously and wantonly failed to disclose said danger to his employees. Defendant, LEON BILLINGTON, individually and doing business as BILLINGTON MOTOR AND ARMATURE WORKS, in failing to make such disclosure with the intent that his employees rely on his representation that his workplace was a safe place in which his employees could continue to perform their services.

IV

The representations and nondisclosures of defendant LEON BILLINGTON, individually and doing business as BILLINGTON MOTOR AND ARMATURE WORKS, were in fact false. The true facts were that the workplace wherein substances containing concentrations of PCBs creates a substantial danger to persons exposed to said substances.

V

Plaintiff relied on the representations and nondisclosures of LEON BILLINGTON, individually and doing business as BILLINGTON MOTOR AND ARMATURE WORKS, and as a result of said reliance, plaintiff continued her employment with BILLINGTON MOTOR AND ARMATURE WORKS and by reason of said employment was exposed to substances containing high concentrations of PCBs with the resultant damages proximately caused as herein alleged.

VI

Had plaintiff known the true facts, plaintiff would not have continued said employment.

VII

In doing the things herein alleged, defendant LEON BILLINGTON

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individually and doing business as BILLINGTON MOTOR AND ARMATURE WORKS acted intentionally, maliciously, wantonly, recklessly and fraudulently and was guilty of malice, oppression, and fraud, and plaintiff is therefore entitled to recover exemplary or punitive damages in the sum of $250,000.00.

WHEREFORE, plaintiff prays judgment as hereinafter set forth.

Plaintiff prays judgments as follows against defendants, and each of them:

FIRST CAUSE OF ACTION:

1. That plaintiff recover general damages in an amount above the minimum jurisdiction of the court;

2. That plaintiff recover special damages according to proof;

3. That plaintiff recover costs of suit herein incurred; and

4. Plaintiff have such other and further relief as the court deems just and proper.

SECOND CAUSE OF ACTION:

1. That plaintiff recover general damages in an amount above the minimum jurisdiction of the court;

2. That plaintiff recover special damages according to proof;

3. That plaintiff recover exemplary or punitive damages in the amount of $250,000.00;

4. That plaintiff recover costs of suit herein incurred; and

5. That plaintiff have such other and further relief as the court deems proper.

THIRD CAUSE OF ACTION: 0537135

1. That plaintiff recover general damages in an amount above the minimum jurisdiction of the court;

2. That plaintiff recover special damages according to proof;

3. That plaintiff recover costs of suit herein incurred; and

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4. That plaintiff have such other and further relief as the court deems proper.

FOURTH CAUSE OF ACTION:

1. That plaintiff recover general damages in an amount above the minimum jurisdiction of this court;

2. That plaintiff recover special damages according to proof;

3. That plaintiff recover costs of suit herein incurred; and

4. That plaintiff have such other and further relief as the court deems proper.

FIFTH CAUSE OF ACTION:

1. That plaintiff recover general damages according to proof;

2. That plaintiff recover special damages according to proof;

3. That plaintiff recover exemplary or punitive damages in the amount of $250,000.00;

4. That plaintiff recover costs of suit herein incurred; and

5. That plaintiff have such other and further relief as the court deems just and proper.

DATED: August 28, 1980

RUST, ARMENIS & SCHWARTZ
Professional Corporation

By _____
EDWARD R. BRENNER

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