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March 29, 1991
18371-1

John R. Downey, Esquire
Union Carbide Chemicals and
Plastics Company, Inc.
39 Old Ridgebury Road
Danbury, CT 06817-6269

Judith Elledge, Esquire
Conoco Inc.
600 North Derry Ashford
Post Office Box 2197
Houston, TX 77252-2197

Mary Sundt, Esquire
The Dow Chemical Company
D30 Willard H. Dow Center
Midland, MI 48674

Re: Alice L. Warren, Administratrix v. The Dow
Chemical Company, Union Carbide, et al.;
Your File No. D-16183

Dear Counsel:

Enclosed are plaintiff's second amended complaint and our proposed draft answers to same. The answers are identical to the original answers prepared by prior counsel, except with regard to plaintiff's Chapter 93A allegations which begin at paragraph 41.

If all is in order, please let me know so that the answers can be filed and served.

Very truly yours,


Susan L. Parsons

SLP:ncg
08801

Enclosure

PRIVILEGED AND
"CONFIDENTIAL MATERIAL
SUBJECT TO PROTECTIVE
ORDER"

UCC 080892

HYANNIS, MASSACHUSETTS
COUNSEL: AMSTERDAM • LONDON • TOKYO

1991
MAR 30 1991
J. R. DOWNY

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

ALICE L. WARREN, Administratrix)
of the Estate of John H. Warren,)
Deceased,)
 Plaintiff)
VS.)
THE DOW CHEMICAL COMPANY,)
B.F. GOODRICH COMPANY,)
WHITTAKER DEVELOPMENT CO.,)
(formerly GREAT AMERICAN CHEMICAL)
CORPORATION), UNION CARBIDE)
COMPANY, AMERICAN CYANAMID)
CORPORATION and CONTINENTAL)
OIL COMPANY,)
 Defendants)

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Alice L. Warren, Administratrix of the Estate of John H. Warren, deceased, for her complaint against defendants, The Dow Chemical Company, B.F. Goodrich Company, Great American Chemical Corporation, Union Carbide, Inc. and American Cyanamid Corporation, hereby states as follows:

THE PARTIES

1. Plaintiff, Alice L. Warren, is the widow and Administratrix of the Estate of John H. Warren, deceased, and is an individual residing in Springfield, Hampden County, Commonwealth of Massachusetts.

2. Defendant, The Dow Chemical Company, is a corporation which is incorporated in the State of Delaware and has its principal place of business in the State of Michigan. Defendant, The Dow Chemical Company, regularly does and solicits business in Massachusetts and

EXHIBIT

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derives substantial revenue from the sale and use of its products in Massachusetts.

3. Defendant, B.F. Goodrich Company, is a corporation which is incorporated in the State of New York and has its principal place of business in the State of Ohio. Defendant, B.F. Goodrich Company, regularly does and solicits business in Massachusetts and derives substantial revenue from the sale and use of its products in Massachusetts.

4. Defendant, Whittaker Development Co., is the successor corporation of Great American Chemical Corporation, a corporation which was incorporated in the State of Delaware and had its principal place of business in the State of California. Defendant, Whittaker Development Co., is incorporated in Delaware and has its principal place of business in California, regularly does and solicits business in Massachusetts and derives substantial revenue from the sale and use of its products in Massachusetts.

5. Defendant, Union Carbide Corp., is a corporation which is incorporated in the State of New York and has its principal place of business in the State of Connecticut. Defendant, Union Carbide Corp., regularly does and solicits business in Massachusetts and derives substantial revenue from the sale and use of its products in Massachusetts.

6. Defendant, American Cyanamid Corporation, is a corporation which is incorporated in the State of Maine and has its principal place of business in the State of New Jersey. Defendant, American

Cyanamid Corporation, regularly does and solicits business in Massachusetts and derives substantial revenue from the sale and use of its products in Massachusetts.

7. Defendant, Continental Oil Company ("CONOCO"), is a corporation which is incorporated in the State of Delaware and has its principal place of business in the State of Delaware. CONOCO regularly does and solicits business in Massachusetts and derives substantial revenue from the sale and use of its products in Massachusetts.

JURISDICTION

8. This Court has jurisdiction of this action pursuant to 28 USC § 1332 since this civil action is between citizens of different States and the matter in controversy exceeds the sum or value of Fifty Thousand Dollars (\$50,000.) exclusive of interest and costs.

COUNT I

(Wrongful Death - Negligence - M.G.L. c. 229, § 2)

9. The plaintiff's decedent, John H. Warren, (hereinafter referred to as "Mr. Warren") was employed as a production worker by the Monsanto Company in Springfield, Massachusetts, from 1947 to 1987. During that time, the Monsanto Company engaged in the production and manufacture of various plastics and other materials including polyvinyl chloride and related products (hereinafter collectively referred to as "PVC").

10. As part of Mr. Warren's employment at the Monsanto Company, he was regularly exposed to, forced to come into contact with, and breathed and ingested fumes and vapors emanating from vinyl chloride and related compounds used by Monsanto in the manufacture of PVC.

11. Upon information and belief, at all times material hereto, defendant, The Dow Chemical Company, sold or otherwise supplied said vinyl chloride and related compounds to Monsanto, either directly or through third parties, for the manufacture of PVC and other related applications.

12. Upon information and belief, at all times material hereto, defendant, B.F. Goodrich Company, sold or otherwise supplied said vinyl chloride and related compounds to Monsanto, either directly or through third parties, for the manufacture of PVC and other related applications.

13. Upon information and belief, at all times material hereto, defendant, Union Carbide Corp., sold or otherwise supplied said vinyl chloride and related compounds to Monsanto, either directly or through third parties, for the manufacture of PVC and other related applications.

14. Upon information and belief, at all times material hereto, Great American Chemical Corp., predecessor corporation to defendant, Whittaker Development Co., sold or otherwise supplied said vinyl chloride and related compounds to Monsanto, either directly or through third parties, for the manufacture of PVC and other related applications.

15. Upon information and belief, at all times material hereto, defendant, American Cyanamid Corporation, sold or otherwise supplied said vinyl chloride and related compounds to Monsanto, either directly or through third parties, for the manufacture of PVC and other related applications.

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16. Upon information and belief, at all times material hereto, the defendant, CONOCO, sold or otherwise supplied said vinyl chloride and related compounds to Monsanto, either directly or through third parties, for the manufacture of PVC and other related applications.

17. At all times material hereto, each of the defendants knew or should have known that the vinyl chloride products which they manufactured and/or supplied to Monsanto were inherently and unreasonably dangerous and defective when ingested, breathed or absorbed.

18. At all times material hereto, all of the defendants either 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 of said vinyl chloride products and materials, would be exposed to and would inhale, absorb and ingest fumes and vapors emanating from said products and materials on a regular basis.

19. At all times material hereto, all of the defendants owed a duty of due and reasonable care to Mr. Warren and other similarly situated persons in the processing, designing, testing, manufacturing, distributing, selling, supplying and/or marketing of their vinyl chloride products.

20. Each of the defendants breached its duty of due and reasonable care by the following conduct: (a) by negligently processing, testing, designing, manufacturing, distributing, marketing, supplying and selling vinyl chloride products; (b) by negligently failing to provide proper, adequate and correct warnings and instructions

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for proper and safe use concerning the dangers posed to the persons using, handling or exposed to their vinyl chloride products; (c) by negligently failing to properly test and investigate the dangers posed to chemical workers such as Mr. Warren by their vinyl chloride products; (d) by negligently failing to reduce, minimize, eliminate or eradicate the health hazards posed by their vinyl chloride products.

21. As a direct and proximate result of the defendants' aforesaid negligence, Mr. Warren suffered injuries, suffered loss of earnings, suffered serious illness and ultimately died as a result of angiosarcoma of the liver on January 29, 1988.

22. As a direct and proximate result of defendants' aforesaid negligence, Mr. Warren's next-of-kin including his widow, Alic L. Warren, and his two surviving sons, Daniel W. Warren and John D. Warren, have 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 damages as provided in M.G.L. c. 229, § 2.

COUNT II

(Wrongful Death Negligence - Conscious Pain
and Suffering, M.G.L. c. 229, § 6)

23. The plaintiff repeats and realleges the allegations contained in paragraphs 1 through 22, and by reference incorporates them herein.

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24. As a further direct and proximate result of the defendants' aforesaid negligence, Mr. Warren sustained conscious, physical and emotional pain and suffering until the time of his death on January 29, 1988.

25. The plaintiff is entitled to recover damages for Mr. Warren's conscious, physical and emotional pain and suffering pursuant to M.G.L. c. 229, § 6.

COUNT III

(Wrongful Death - Breach of Warranty - M.G.L. c. 229, § 2)

26. The plaintiff repeats and realleges the allegations contained in paragraphs 1 through 25, and by reference incorporates them herein.

27. The defendants expressly and impliedly warranted to users of their vinyl chloride products, including Mr. Warren, that said products were safe, merchantable and fit for their intended uses, including the manufacture of PVC and related materials.

28. The defendants breached their express and implied warranties in that the vinyl chloride products supplied by the defendants were unsafe, not of merchantable quality, were unfit for their intended uses and were defective and unreasonably dangerous.

29. As a direct and proximate result of defendants' breach of warranties, Mr. Warren suffered injury, suffered loss of earnings, suffered serious illness and ultimately died as a result of angiosarcoma of the liver on January 29, 1988.

30. As a further direct and proximate result of defendants' aforesaid breach of warranties, Mr. Warren's next-of-kin including

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his widow, Alic L. Warren, and his two surviving sons, Daniel W. Warren and John D. Warren, have 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 damages as provided in M.G.L. c. 229, § 2.

COUNT IV

(Wrongful Death - Breach of Warranty,
Conscious Pain and Suffering, M.G.L. c. 229, § 6)

31. The plaintiff repeats and realleges the allegations contained in paragraphs 1 through 30, and by reference incorporates them herein.

32. As a further direct and proximate result of defendants' breach of warranties, Mr. Warren was caused to suffer conscious, physical and emotional pain and suffering up to the time of his death on January 29, 1988.

33. The plaintiff is entitled to recover damages for Mr. Warren's conscious, physical and emotional pain and suffering pursuant to M.G.L. c. 229, § 6.

COUNT V

(Wrongful Death - Malicious, Willful,
Wanton and Reckless Conduct - M.G.L. c. 229, § 2)

34. The plaintiff repeats and realleges the allegations contained in paragraphs 1 through 33, and by reference incorporates them herein.

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35. The defendants, by their aforesaid conduct acted maliciously, willfully, wantonly and recklessly.

36. As a direct and proximate result of the defendants' malicious, willful, wanton and reckless conduct, Mr. Warren suffered injury, suffered loss of earnings, suffered serious illness and ultimately died as a result of angiosarcoma of the liver on January 29, 1988.

37. As a further direct and proximate result of defendants' malicious, willful, wanton and reckless conduct, Mr. Warren's next-of-kin including his widow, Alice L. Warren, and his two surviving sons, Daniel W. Warren and John D. Warren, have 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 damages as provided in M.G.L. c. 229, § 2.

COUNT VI

(Wrongful Death - Malicious, Willful,
Wanton and Reckless Conduct - M.G.L. c. 229, § 6)

38. The plaintiff repeats and realleges the allegations contained in paragraphs 1 through 37, and by reference incorporates them herein.

39. As a further direct and proximate result of defendants malicious, wanton, willful and reckless conduct, Mr. Warren sustained conscious, emotional and physical pain and suffering until the time of his death on January 29, 1988.

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40. The plaintiff is entitled to recover compensatory and punitive damages for Mr. Warren's conscious, physical and emotional pain and suffering pursuant to M.G.L. c. 229, § 6.

COUNT VII

41. The plaintiff repeats and realleges the allegations contained in paragraphs 1 through 40 and by reference incorporates them herein.

42. The defendant, Dow Chemical Company, its agents, servants or employees negligently and/or willfully and knowingly committed the following unfair and deceptive acts and practices in violation of M.G.L. c. 93A, § 2.

- a. Dow Chemical Company 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.
- b. Dow Chemical Company knew or should have known that the plaintiff's decedent, John Warren, and other similarly situated chemical workers during the usual course of their employment and through the ordinary and 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 Chemical Company was negligent in processing, testing, designing, manufacturing, distributing, marketing, supplying and selling the said vinyl chloride products and vinyl chloride monomer.

- c. Dow Chemical Company 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 the plaintiff's decedent, John Warren.
- d. Dow Chemical Company was negligent in failing to properly test and investigate the dangers posed to chemical workers such as the plaintiff's decedent by its vinyl chloride products and vinyl chloride monomer.
- e. Dow Chemical Company was negligent in failing to reduce, minimize, eliminate or erradicate the health hazards posed by its vinyl chloride products and vinyl chloride monomer.
- f. Dow Chemical Company breached express and implied warranties of merchantability and fitness for a particular purpose in that the vinyl chloride products and vinyl chloride monomer it supplied were not of merchantable quality, were unfit for their intended uses and were defective and unreasonably dangerous by way of toxicity.

43. On or about January 9, 1991, the defendant, Dow Chemical Company, was served a demand for relief pursuant to M.G.L. c. 93A, § 9, a copy of which is attached hereto and marked Exhibit 1.

COUNT VIII

44. The plaintiff repeats and realleges the allegations contained in paragraphs 1 through 43 and by reference incorporates them herein.

45. The defendant, Union Carbide Chemicals and Plastics Company, Inc., its agents, servants or employees negligently and/or willfully and knowingly committed the following unfair and deceptive acts and practices in violation of M.G.L. c. 93A, § 2.

- a. Union Carbide Chemicals and Plastics Company, Inc. 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.
- b. Union Carbide Chemicals and Plastics Company, Inc. knew or should have known that the plaintiff's decedent, John Warren, and other similarly situated chemical workers during the usual course of their employment and through the ordinary and 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. Union Carbide Chemicals and Plastics Company, Inc. was negligent in processing, testing, designing, manufacturing, distributing, marketing, supplying and selling the said vinyl chloride products and vinyl chloride monomer.

- c. Union Carbide Chemicals and Plastics Company, Inc. 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 the plaintiff's decedent, John Warren.
- d. Union Carbide Chemicals and Plastics Company, Inc. was negligent in failing to properly test and investigate the dangers posed to chemical workers such as the plaintiff's decedent by its vinyl chloride products and vinyl chloride monomer.
- e. Union Carbide Chemicals and Plastics Company, Inc. was negligent in failing to reduce, minimize, eliminate or erradicate the health hazards posed by its vinyl chloride products and vinyl chloride monomer.
- f. Union Carbide Chemicals and Plastics Company, Inc. br ached express and implied warranties of merchantibility and fitness for a particular purpose in that the vinyl chloride products and vinyl chloride monomer it supplied were not of merchantible quality, were unfit for their intended uses and were defective and unreasonably dangerous by way of toxicity.

46. On or about January 9, 1991, the defendant, Union Carbide Chemicals and Plastics Company, Inc., was served a demand for relief

pursuant to M.G.L. c. 93A, § 9, a copy of which is attached hereto and marked Exhibit 2.

COUNT IX

47. The plaintiff repeats and realleges the allegations contained in paragraphs 1 through 46 and by reference incorporates them herein.

48. The defendant, B.F. Goodrich Company, its agents, servants or employees negligently and/or willfully and knowingly committed the following unfair and deceptive acts and practices in violation of M.G.L. c. 93A, § 2.

- a. B.F. Goodrich Company 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,
- b. B.F. Goodrich Company knew or should have known that the plaintiff's decedent, John Warren, and other similarly situated chemical workers during the usual course of their employment and through the ordinary and 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. B.F. Goodrich Company was negligent in processing, testing, designing, manufacturing, distributing, marketing, supplying and selling the said vinyl chloride products and vinyl chloride monomer.

- c. B.F. Goodrich Company 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 the plaintiff's decedent, John Warren.
- d. B.F. Goodrich Company was negligent in failing to properly test and investigate the dangers posed to chemical workers such as the plaintiff's decedent by its vinyl chloride products and vinyl chloride monomer.
- e. B.F. Goodrich Company was negligent in failing to reduce, minimize, eliminate or erradicate the health hazards posed by its vinyl chloride products and vinyl chloride monomer.
- f. B.F. Goodrich Company breached express and implied warranties of merchantability and fitness for a particular purpose in that the vinyl chloride products and vinyl chloride monomer it supplied were not of merchantable quality, were unfit for their intended uses and were defective and unreasonably dangerous by way of toxicity.

49. On or about January 9, 1991, the defendant, B.F. Goodrich Company, was served a demand for relief pursuant to M.G.L. c. 93A, § 9, a copy of which is attached hereto and marked Exhibit 3.

COUNT X

50. The plaintiff repeats and realleges the allegations contained in paragraphs 1 through 46 and by reference incorporates them herein.

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51. The defendant, CONOCO, Inc., its agents, servants or employees negligently and/or willfully and knowingly committed the following unfair and deceptive acts and practices in violation of M.G.L. c. 93A, § 2.

- a. CONOCO, Inc. 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.
- b. CONOCO, Inc. knew or should have known that the plaintiff's decedent, John Warren, and other similarly situated chemical workers during the usual course of their employment and through the ordinary and 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. CONOCO, Inc. was negligent in processing, testing, designing, manufacturing, distributing, marketing, supplying and selling the said vinyl chloride products and vinyl chloride monomer.
- c. CONOCO, Inc. 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 the plaintiff's decedent, John Warren.

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- d. CONOCO, Inc. was negligent in failing to properly test and investigate the dangers posed to chemical workers such as the plaintiff's decedent by its vinyl chloride products and vinyl chloride monomer.
- e. CONOCO, Inc. was negligent in failing to reduce, minimize, eliminate or erradicate the health hazards posed by its vinyl chloride products and vinyl chloride monomer.
- f. CONOCO, Inc. breached express and implied warranties of merchantibility and fitness for a particular purpose in that the vinyl chloride products and vinyl chloride monomer it supplied were not of merchantible quality, were unfit for their intended uses and were defective and unreasonably dangerous by way of toxicicity.

52. On or about January 9, 1991, the defendant, CONOCO, Inc., was served a demand for relief pursuant to M.G.L. c. 93A, § 9, a copy of which is attached hereto and marked Exhibit 4.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff, Alice L. Warren, Administratrix of the Estate of John H. Warren, demands judgment against all of the defendants, jointly and severally, which shall include the following items of relief:

- A. Damages in the full and just amount of Five Million Dollars (\$5,000,000.) representing the fair monetary value of the decedent, John H. Warren, to those persons entitled to receive such damages as provided in M.G.L. c. 229, § 1, to wit, his next-of-kin, Alice L. Warren, Daniel W. Warren and John D. Warren;

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- B. Reasonable funeral and burial expenses of the decedent in the amount of Twenty Five Thousand Dollars (\$25,000.);
- C. Punitive damages pursuant to M.G.L. c. 229, § 2, in the full and just amount of Fifty Million Dollars (\$50,000,000.);
- D. Damages for the conscious, physical and emotional pain and suffering of the decedent, John H. Warren, as provided in M.G.L. c. 229, § 6, in the full and just amount of Five Million Dollars (\$5,000,000.);
- E. Triple the amount of damages sustained pursuant to M.G.L. c. 93, § 2 including attorney's fees and costs; and
- F. Costs, interest, reasonable attorneys' fees and whatever other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

The plaintiff hereby demands a trial by jury on all issues so triable.

THE PLAINTIFF
ALICE L. WARREN, Administratrix of
the Estate of John H. Warren

By _____
James H. Tourtelotte, Esq., and

By _____
Keith A. Minoff, Esq., both of
Robinson Donovan Madden
& Barry, P.C.
1500 Main Street - Suite 1400
Springfield, Massachusetts 01115
(413) 732-2301
JHT BBO NO. 500800
KAM BBO NO. 551536

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CERTIFICATE OF SERVICE

I, Keith A. Minoff, Esq., hereby certify that on this day of March, 1991, I served a copy of the above upon the parties in the action by mailing, postage prepaid, to counsel, Sharon Berger, Esq., of One International Place, Boston, MA 02110 and Joseph E. Rendini, Esq., of 250 Summer Street, Boston, MA 02110.

Subscribed under the penalties of perjury.

Keith A. Minoff

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