

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALICE L. WARREN,
ADMINISTRATRIX OF THE
ESTATE OF JOHN H. WARREN,
DECEASED,

Plaintiff,

v.

THE DOW CHEMICAL COMPANY
THE B.F. GOODRICH COMPANY,
CONOCO, INC. and
CONTINENTAL OIL COMPANY,

Defendants.

CIVIL ACTION NO. 89-30201-F

BBO #064415

RESPONSES OF DEFENDANT
CONOCO, INC. TO PLAINTIFF'S
REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant Conoco, Inc. (hereafter "Conoco") pursuant to Rule 34 of the Federal Rules of Civil Procedure, hereby responds to plaintiff's request for production of documents and makes the following objections to each and every document request as if fully set forth at length in the specific responses thereto.

GENERAL OBJECTIONS

1. Conoco objects to providing the information sought in document request Nos. 1-7, 9-11 and 14-25, on the basis that plaintiff has not made even a minimal showing that Conoco sold or supplied VCM to Monsanto Chemical Company. Without such a showing, plaintiff cannot use the discovery process to fish

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through Conoco's voluminous records for evidence on which to base her complaint.

After a reasonable investigation and diligent inquiry, which included interviews of current and former Conoco employees, as well as an extensive search of Conoco's records, there is nothing to suggest that Conoco sold or otherwise supplied VCM to Monsanto Chemical Company during the time period referred to in plaintiff's documents or at any time. The information sought in document Nos. 1-7, 9-11, and 14-25 calls for product testing, safety recommendations, knowledge of hazards or dangers associated with the product, warnings, prior litigation, prior complaints, names and addresses of individuals from Conoco who participated in OSHA hearings, Manufacturing Chemists Association and Society of The Plastics Industry meetings, and government records. Without a factual basis for showing that sales to Monsanto took place, the documents sought are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Unless and until plaintiff produces evidence that demonstrates it was more probable than not that Conoco sold VCM to Monsanto, it would be extremely unfair and prejudicial to permit plaintiff free access to Conoco's files to conduct a highly improper expedition into areas which are wholly irrelevant. Conoco will seek a Protective Order concurrently

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herewith for a stay of discovery until plaintiff produces the requisite sales information.

2. Conoco objects to plaintiff's designation of "the product" as "vinyl chloride monomer" ("VCM") and "polyvinyl chloride" ("PVC") on the basis that plaintiff's complaint makes no allegation that Conoco manufactured and/or supplied PVC which caused or contributed to the decedent's illness and subsequent death. Moreover, VCM and PVC are separate and distinct products; they are not interchangeable. Accordingly, plaintiff's definition of "the product" is overly broad and Conoco objects to providing any information regarding PVC. Accordingly, for the foregoing reasons, Conoco objects to each and every document request which seeks information about "the product" and will respond as to VCM only.

3. Conoco objects to the "Definitions" section of plaintiff's document request because it imposes upon Conoco the duty to provide information which is not required by the Federal Rules of Civil Procedure. Additionally, with regard to documents that have been "destroyed," plaintiff's demand that defendant "identify the date of destruction, the person responsible for ordering destruction, and the purpose for destruction" obviates the obligation imposed upon plaintiff under Rule 34(b) to set forth the items to be inspected and provide a description of each item and category with reasonable particularity. Plaintiff has

inappropriately shifted the burden to defendant to provide responses which are simply not required by Rule 34 and which inappropriately appear to call for information more in the form of interrogatory responses. Defendant will respond only in the manner required by Rule 34.

Moreover, Conoco objects to plaintiff's definitions to the extent that they alter the common sense and usual meaning of the words or phrases stated therein. Further, Conoco objects to plaintiff's definition of "defendant" because it is extremely broad and inappropriately includes numerous individuals who clearly cannot be construed in any manner as "the defendant." Accordingly, Conoco will respond only on its own behalf.

4. Conoco objects to plaintiff's requests to the extent that they seek information which is protected by the attorney-client privilege, attorney work product (the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation) or other trial preparation materials protected from discovery under the Federal Rules of Civil Procedure. Conoco also objects to plaintiff's requests to the extent that they require defendant to state each privilege or limitation claimed, provide a written statement as to the existence of the information, document or communication and include a summary of all facts and circumstances upon which such claim is based. Such

a requirement is beyond the scope of the Federal Rules of Civil Procedure.

5. Conoco objects to plaintiff's requests to the extent that they seek information already known to plaintiff, or available to plaintiff from sources other than Conoco on the grounds that such requests are overly broad and unduly burdensome. Specifically, and without limiting the foregoing, Conoco objects to plaintiff's requests to the extent that such requests call for information contained in:

(a) Publicly available scientific or medical journals, books, treatises, textbooks and other compilations;

(b) Publicly available records or files maintained by governmental offices or agencies; and

(c) Documents or records within the plaintiff's possession or control.

6. Conoco objects to plaintiff's document requests insofar as they seek documents from 1947 to the present (or to the late 1970s) which is outside the time period during which the decedent was allegedly exposed to the product (1948-1974). Such a request is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Moreover,

Conoco objects to the overall burdensome nature of plaintiff's requests. Because of the passage of time, it would be extremely burdensome and costly for defendant to identify and compile information which spans over a time period of 40 years. Further, to the extent plaintiff can make a preliminary showing that Conoco sold or otherwise furnished VCM to Monsanto Chemical Company during a given time period, Conoco reserves the right to object to producing information outside the time period that plaintiff alleges Conoco sold or otherwise furnished VCM to Monsanto.

RESPONSES

Subject to and without waiving the foregoing objections, Conoco responds to plaintiff's request for production of documents as follows:

1. All documents of every kind, nature and description, including but not limited to, office records of any claims, injuries, illnesses of which the defendant has received notice concerning the product from 1948 to date.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of Conoco's General Objections. Conoco further objects to this request on the grounds that it is

designed to harass answering defendant and is overly broad, unduly burdensome, not relevant and not reasonably calculated to lead to the discovery of admissible evidence. The request constitutes an enormous fishing expedition into every claim, injury or illness of which Conoco has received notice concerning the product (construed by Conoco to mean VCM) from 1948 to the present. The request is not limited to the type of alleged illness or injury that occurred in this case (angiosarcoma of the liver resulting from VCM exposure), nor is it limited to any reasonable time period and, at the very least, the request seeks documents for time periods beyond the decedent's alleged exposure period (1948-1974); which information is also irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. See also Conoco's General Objection No. 6. Conoco further objects to this request to the extent that such documents are protected from discovery by the attorney client privilege and/or the work product immunity.

2. All documents of every kind, nature and description, including but not limited to, reports of testing, examination or chemical analysis of the product in the possession, custody or control of the defendant.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General

Objections. Conoco further objects to this request on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited by any reasonable time period and, at the very least, it seeks documents for time periods beyond the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6. Moreover, the request does not specify the particular areas of testing, examination or chemical analysis to which the request is reasonably related and, as such, is vague, ambiguous, overly broad, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

3. All documents of every kind, nature and description, including but not limited to, notes, memoranda and office records, identifying any and all persons who conducted testing, examination or chemical analysis of the product from 1947 to 1979.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this request to the extent that it is designed to harass answering defendant and is overly broad, unduly burdensome and not reasonably calculated to lead to

the discovery of admissible evidence. The identity of all persons as described above would be an extremely burdensome and costly task, not reasonably calculated to, nor likely to lead to the discovery of admissible evidence. Moreover, the request is not limited by any reasonable time period and, at the very least, it seeks documents beyond the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6. Further, as more fully stated and objected to in response to plaintiff's request No. 2, this request fails to specify the areas of "testing, examination or chemical analysis" and is therefore objectionable.

4. All instructions, rules, regulations, documents, correspondence, brochures, manuals or other material which describes any warnings provided to any purchasers or users of the product from 1947 to 1979.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this request to the extent that it is designed to harass answering defendant and is overly broad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited by any reasonable time period and, at the

very least, it seeks information concerning time periods subsequent to the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6.

5. All instructions, rules, regulations, documents, correspondence, manuals, brochures or other material which describe any safety procedures to be observed in using the product from 1947 to 1979.

Response

Objection. See Conoco's response to plaintiff's Request No.

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6. All documents of any kind, nature and description referring to or containing oral or written communications between the defendant and the Occupational Safety and Health Administration, National Institute for Occupational Safety and Health or any other agency, division, department, bureau or commission of federal, state, local or municipal government, including but not limited to, all product safety data sheets and reports of alleged dangers or safety hazards and representations about the product, prepared for or at the request, or in the possession, custody or control of the defendant.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this request to the extent that it is designed to harass answering defendant and is overly

broad, unduly burdensome, vague, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The request seeks all documents referring to any communication to the agencies listed therein. It is not limited by any reasonable time period and, at the very least, it is not limited to the alleged exposure period in this case (1948-1974). See also Conoco's General Objection No. 6. Further, the request is not reasonably related to communications with the agencies named concerning the dangers or safety hazards of VCM alleged in this case, and it is therefore overly broad. To require Conoco to produce all of the documents requested concerning the product would be an enormous fishing expedition which would be extremely costly and purely designed to harass answering defendant.

7. All marketing, advertising, promotional, catalog, sales or other written or pictorial material concerning the product.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this request to the extent that it is designed to harass answering defendant and is overly broad, unduly burdensome and not reasonably calculated to lead to

the discovery of admissible evidence. Moreover, the request is not limited to any reasonable time period and, at the very least, it is not limited to the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6.

8. Copies of all written statements, signed or unsigned, of all experts whom the defendant or defendant's attorney intends to be present at the trial for the purpose of testifying concerning the plaintiff's claim, or for the purpose of supporting the defendant's defense without the intention of testifying.

Response

Conoco objects to this request to the extent that it requests expert discovery which is beyond the scope of Rule 26(b)(4) of the Federal Rules of Civil Procedure. Plaintiff is not entitled to expert discovery related to an expert who has been retained or specially employed by Conoco in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. Moreover, plaintiff's request for all statements from experts whom Conoco intends to present at trial is beyond the scope of expert discovery pursuant to Fed. R. Civ. P. 26(b)(4)(A)(i). Further, the request seeks trial preparation materials which are protected from discovery pursuant to Rule 26(b)(3). Subject to and without waiving said objections, Conoco responds that it has not determined which, if any, experts it intends to call at trial.

000787

9. The coverage selection and/or declaration pages of all insurance policies which may provide coverage for claims brought against the defendant in this action or whose proceeds would be available to satisfy any judgment in this matter.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1.

10. All documents of every kind, nature and description which depict or explain the design, assembly, composition or chemical makeup of the product.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this request to the extent that it requires the production of documents which are not reasonably calculated to lead to the discovery of admissible evidence. This request, which is not limited to any reasonable time period (see Conoco's General Objection No. 6), calls for an enormous fishing expedition and would be unduly burdensome and costly to Conoco. Moreover, the "design," "assembly," "composition" and "chemical makeup" of VCM are not in issue in this case.

11. All documents of every kind, nature and description, including but not limited to, trade standards, procedures or practices relating to the use, storage, transportation and sale of the product.

Response

Objection. See Conoco's response to plaintiff's Request Nos. 4 and 20.

12. All documents of every kind, nature and description related to the sale, delivery or furnishing of the product to Monsanto Chemical Company, including but not limited to, invoices, product safety data sheets, bills of sale, order forms, warning notices, warranties, receipts, delivery orders and bills of lading from 1947 to 1979.

Response

Conoco objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this request to the extent that it seeks information beyond the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6. Subject to and without waiving said objections, and limiting this response to documents relating to the "sale, delivery or furnishing" of VCM to Monsanto Chemical Company in Springfield, MA, Conoco responds that it has no such documents in its possession, custody or control. See Conoco's response to plaintiff's interrogatory Nos. 3 and 14.

13. All documents of every kind, nature and description relating to shipment of the product to Monsanto Chemical Company issued by the Interstate Commerce Commission, Department of Transportation, Bureau of Explosives and Association of American Railroads from 1947 to 1974.

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Response

Conoco objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this request because it is overly broad and unduly burdensome given the lengthy period of time covered by the request, including that it exceeds the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6. Additionally, it would be less burdensome and less costly for plaintiff to obtain the information from the agencies involved. Plaintiff can obtain such information with equal facility as Conoco. Subject to and without waiving said objection, Conoco responds that it has no such documents in its possession, custody or control.

14. All documents of every kind, nature and description which refer to or reflect any oral or written communications between the defendant, the Manufacturing Chemists Association and any of its member companies, including but not limited to, Dow Chemical Company, the B.F. Goodrich Company, Union Carbide Company and Monsanto Chemical Company, from 1947 to 1979 regarding the product.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. This request is further objected to as being overly

broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The request seeks all written communications about VCM, regardless of their subject matter, and it is therefore not limited to the issues in this case. Further, the request seeks documents for time periods beyond the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6. To require Conoco to produce all documents between it and the entities listed in the request would be an enormous and costly task and is purely designed to harass Conoco and constitutes a fishing expedition by plaintiff. See also, Conoco's objection to plaintiff's request No. 6.

15. All documents of every kind, nature and description which refer to or reflect any oral or written communications between the defendant, the Society of the Plastics Industry, Inc. and any of its member companies, including but not limited to, Dow Chemical Company, the B.F. Goodrich Company, Union Carbide Company and Monsanto Chemical Company, from 1947 to 1979 regarding the product.

Response

Objection. See Conoco's response to plaintiff's Request No. 14.

16. All documents of every kind, nature and description relating to meetings of the Manufacturing Chemists Association from 1947 to 1979 at which the product was discussed.

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Response

Objection. See Conoco's and response to plaintiff's Request
No. 14.

17. All documents of every kind, nature and description relating to meetings of the Society of the Plastics Industry, Inc. from 1947 to 1979 at which the product was discussed.

Response

Objection. See Conoco's response to plaintiff's Request
No. 14.

18. All documents of every kind, nature and description relating to the OSHA Carcinogen Advisory Committee which refer to the product.

Response

Objection. See Conoco's response to plaintiff's Request
No. 13.

19. All documents of every kind, nature and description which reflect or refer to any investigations, tests and studies regarding the health effects of exposure to the product which are in the possession, custody or control of the defendant.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this request on the

grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited by any reasonable time period and, at the very least, it is not limited to the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6.

Further, the request is not limited to "investigations, tests and studies" regarding the health effects of exposure to VCM which are substantially similar to the health effects alleged in this case. See also Conoco's objection to plaintiff's request No. 2.

20. All records, reports, statements, or data compilations prepared by any federal, state or local government entity as the result of investigations related to the use of the product which are in the possession, custody or control of the defendant.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of Conoco's General Objections. Conoco further objects to this request on the grounds that it is overly broad, unduly burdensome, vague, unlimited in time, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. See Conoco's response to plaintiff's request No. 6. See also Conoco's General Objection No. 6.

21. All documents identified in your answer to Interrogatory 4(e).

Response

Objection. See Conoco's response to plaintiff's request

No. 2.

22. All documents relating to safety equipment or special tools recommended by the defendant to be used when using or exposed to the product from 1947 to 1979.

Response

Conoco objects to providing the information requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No.

1. Conoco further objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 2 of defendant's General Objections. Conoco further objects to this request on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The request it is not limited to any reasonable time period and, at the very least, it seeks information concerning time periods subsequent to the alleged exposure period in this case (1948-1974). See also Conoco's General Objection No. 6.

23. All documents relating to notification given by the defendant to Monsanto Chemical Company from 1947 to 1979 regarding danger and/or hazards in the use of or exposure to the product.

Response

Conoco objects to providing the information requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No.

1. Conoco further objects to plaintiff's use of the term "the product" for the reasons set forth in paragraph 2 of Conoco's General Objections. Conoco further objects to this request on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited to any reasonable time period and, at the very least, it is not limited to the alleged exposure period in this case (1948-1974). See also Conoco's General Objection No. 6.

24. All documents relating to danger or warning instructions as to the use of the product which were furnished by the defendant to Monsanto Chemical Company between the years 1947 to 1979.

Response

Objection. See Conoco's response to plaintiff's document request No. 23.

25. All documents relating to complaints or other notices of injury or illness similar to that alleged by the plaintiff received by the defendant.

Response

Conoco objects to providing the documents requested without a preliminary showing by plaintiff that Conoco sold VCM to Monsanto Chemical Company. See Conoco's General Objection No. 1. Conoco further objects to this request to the extent that it is designed to harass answering defendant and is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited to any reasonable time period and, at the very least, it seeks information subsequent to the alleged exposure period in this case (1948-1974). See also Conoco's General Objection No. 6. Further, Conoco objects to the phrases "complaints or other notices of injury" and "similar" in this context as vague and ambiguous in that they are not defined. See also Conoco's response to plaintiff's document request No. 1.

26. All documents relating to communication between the defendant and all persons, businesses and entities hired by the defendant to transport the products during the years 1947 to 1979.

Response

Conoco objects to plaintiff's use of the term "the product" for the reasons set forth in paragraph 2 of Conoco's General Objections. Conoco further objects to this request to the extent that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. It is not limited to the decedent's alleged exposure period (1948-1974). See also Conoco's General Objection No. 6. Conoco

further objects to this request to the extent that it seeks information relating to other products manufactured by Conoco, or the transport of the product to locations other than Monsanto Chemical Company. Indeed, such information is clearly irrelevant to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, and limiting this response to communications regarding the transport of VCM to Monsanto Chemical Company, Conoco responds that it has no such documents in its possession, custody or control.

CONOCO, INC.

By its attorney,



Sharon R. Burger
NUTTER, McCLENNEN & FISH
One International Place
Boston, Massachusetts 02110-2699
(617) 439-2000

CERTIFICATE OF SERVICE

I, Sharon R. Burger, hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record by mail on this date.



Sharon R. Burger

Dated: February 8, 1991

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