

SUPERIOR COURT OF N.J.

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Clerk

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.

EDWIN E. ACOSTA, et al,
(whose names appear in Exhibit
1 annexed hereto,)

Plaintiffs,

vs.

ALLIED CHEMICAL CORP.; ASHLAND
CHEMICAL CO., A DIVISION OF
ASHLAND OIL, INC.; C.I.B.A.
GEIGY CORP., (DYESTUFFS &
CHEMICALS DIVISION); DOW CORNING,
CORP.; E.I. DUPONT de NEMOURS &
CO.; ESSEX CORPORATION; FISHER
SCIENTIFIC CO., INC.; HOOKER
CHEMICALS & PLASTICS CORP.;
KURTS AND WOLFE CHEMICAL COMPANY;
L.J. & M. LA PLACE CO.; LONDON
CHEMICAL CO.; MONSANTO COMPANY;
THE JOHN D. MORE CORP.; NAUSSAU
RECYCLE CORP.; WILLIAM F. NYE,
INC.; OAKITA CORP.; PARKER CO.
(DIVISION OF OXY METAL INDUSTRIAL
CORP.); POLYMER CORP.; P.P.G.
INDUSTRIES INC.; SEIDLER CHEMICAL
& SUPPLY CO.; SHELL OIL COMPANY;
SUBURBAN CHEMICAL CO.; TENNECO
CO. (A DIVISION OF TENNECO OIL
CO.); TEXTILE CHEMICAL CO.;
UNION CARBIDE CORPORATION,
CHEMICALS & PLASTICS DIVISION;
A.B.C. CORP. and DEF CORP.
(Fictitious names being other
corporations or legal entities
whose true identities are unknown
which either manufactured,
packaged, distributed and/or
supplied any toxic substances
or chemicals to the Western
Electric Plant, Kearny, New Jersey,
during the period complained of.

Defendants.

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CIVIL ACTION

COMPLAINT

Plaintiffs, each of whom is listed in Exhibit 1 annexed hereto, complaining of the corporate Defendants say:

FIRST COUNT

1. Plaintiffs were employed at a plant of the WESTERN ELECTRIC COMPANY in New Jersey, and were there compelled from time to time to inhale and breathe fumes, vapors, particles, dust and other substances in the atmosphere and were otherwise exposed to these substances in the performance of their duties as employees of the WESTERN ELECTRIC COMPANY.

2. Each of the named plaintiffs was so employed and so exposed to toxic substances during the time period set forth in Exhibit 1 which is made a part hereof.

3. That as a result of being exposed to the inhalation and ingestion of toxic chemicals and other substances, each of the plaintiffs herein endured pain and suffering, sustained temporary and permanent injuries, emotional distress and have been and will be compelled to expend large sums of money for medical care and therapeutic attention and for these reasons have and will sustain the loss of gainful employment and earning power.

4. That the Defendants above named, at times material to the Complaint herein, manufactured, supplied and delivered or arranged for the delivery to WESTERN ELECTRIC COMPANY, for use in its Kearny, New Jersey Plant

various toxic chemicals and other toxic substances to be used by the WESTERN ELECTRIC COMPANY in production and manufacturing procedures in said plants.

5. That at all times herein material the duties of plaintiffs at the above mentioned plants of the WESTERN ELECTRIC COMPANY were such as to require them to be present in various locations wherein the above mentioned varnishes, lacquers, resins, paints, solvents, chlorides, acids, and other chemicals, substances and products manufactured, sold or supplied by the Defendants to Plaintiffs' employer, were used in such a manner as to emit noxious, poisonous, caustic, and harmful fumes and vapors, all of which caused, separately or together, the severe, disabling and devastating injuries complained of herein.

6. The Defendants in question knew, or should have known, that an ultimate user of their product would potentially be exposing themselves to a danger of physical injury unless certain precautions were taken and they therefore had a duty to exercise reasonable care to give adequate warning to the foreseeable ultimate users concerning the potential dangers of the product and the proper method of utilizing the same, including but not limited to clothing, respirators, and ventilation, to render the use of the product safe.

7. In spite of this duty, the Defendants negligently, carelessly, and in breach of their duty of care, failed and omitted to supply specific or adequate warnings and/or instructions to either the WESTERN ELECTRIC COMPANY Personnel

involved in the supervision of the use of these products and/or to the Plaintiffs' themselves in order to render the use of the products safe.

8. As a direct and proximate result of the Defendants' negligence aforesaid, the Plaintiffs were caused to contract, suffer and become diseased in their pulmonary and respiratory systems, to develop various forms of cancer, to develop dermatological conditions, to develop liver, gallbladder and kidney diseases, to develop adverse genetic conditions including defects in chromosomal structure order, composition and/or count, to develop malfunctioning of the endocrine system and to develop disorders of the central and/or peripheral nervous system, to develop various allergic reactions, to suffer metal poisoning, to develop bone marrow disorders and to develop serological disorders. Those Plaintiffs who may have had pre-existing conditions suffered an aggravation and/or exacerbation of this condition.

SECOND COUNT

9. Plaintiffs repeat and reiterate each and every allegation set forth in the paragraphs of this Complaint designated 1 through 11, with the same force and effect as though fully set forth at length herein.

10. That each of the products supplied to WESTERN ELECTRIC COMPANY by the Defendants was delivered to the WESTERN ELECTRIC COMPANY in the condition in which it was originally produced for use by the WESTERN ELECTRIC COMPANY and without modification or alteration.

11. The chemical products and/or substances manufactured by the Defendants were defective in that they had a dangerous propensity and were potentially harmful to an ultimate foreseeable user at the time they were placed into the stream of commerce by the Defendants and they failed to contain adequate warning labels which would advise the ultimate user (and/or the supervisors or representatives of the ultimate user's employer responsible for directing the products' use) in unambiguous and unequivocal specific terms of the nature and degree of the dangers to be anticipated from the use of the product, and they also failed to provide adequate warnings or instructions including but not limited to instructions regarding proper clothing, and the use of respirators, and/or proper ventilation which would be reasonably necessary to render the use of the product safe. Further, the warnings were not packaged, published or affixed so as to be reasonably calculated to reach and/or influence the ultimate user or their supervisors aforesaid. Because of the Defendants' failure to warn of the dangers of which they are deemed as a matter of law to have had actual knowledge, they are liable to the Plaintiffs under the theory of strict liability and tort.

THIRD COUNT

12. Plaintiffs repeat and reallege all the allegations of the First and Second Counts of this Complaint and incorporate them herein as if fully set forth at length.

13. That at the time of each sale from the Defendants' to WESTERN ELECTRIC COMPANY under the uniform commercial codes,

each Defendant impliedly warranted that the said products were of good and merchantable quality and that they were fit for the use and purpose for which they were intended.

14. That the said warranties of merchantability and fitness for use were for the benefit of WESTERN ELECTRIC COMPANY and its employees.

15. That the purpose intended by the parties to the purchase and sale was its use at the WESTERN ELECTRIC COMPANY Plants in New Jersey, in connection with the production of labeling for containers.

16. That the implied warranties as aforesaid were breached in that the merchandise could not be safely used at said plant for said purpose without exposing employees to diseases and conditions specified in paragraph 8 page 4.

That the Plaintiffs were damaged by reason of the breach of said implied warranties.

FOURTH COUNT

17. Plaintiff repeats and realleges all the allegations of the First, Second and Third Counts of this Complaint and incorporates them herein as if fully set forth at length.

18. On information and belief and in order to protect the Plaintiffs' rights pending completion of discovery, Plaintiffs allege that ABC Corp. and DEF Corp. were either the manufacturers, packagers, distributors and/or suppliers of either the toxic substances complained of or additional presently known toxic substances to which Plaintiffs were exposed during the course of their employment

which substances were negligently, defectively and in breach of implied warranties, furnished to the Plaintiffs causing them injury.

WHEREFORE, Plaintiffs demand judgment against the Defendants jointly and severally on each of the several counts of this Complaint for compensatory damages together with interest and costs of suit and for such other relief as the Court may deem proper.

GUARINI & GUARINI
Attorneys for Plaintiffs

BY: /s/ Maurice H. Connelly
MAURICE H. CONNELLY

DATED: December 4, 1981

JURY DEMAND

Plaintiffs demand trial by jury as to all issues in this case.

GUARINI & GUARINI
Attorneys for Plaintiffs

BY: /s/ Maurice H. Connelly
MAURICE H. CONNELLY

DATED: December 4, 1981