

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

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

C.A. No. 89-30201-F

v.)

THE DOW CHEMICAL COMPANY,)
THE B.F. GOODRICH COMPANY,)
UNION CARBIDE COMPANY, AND)
CONTINENTAL OIL COMPANY,)
Defendants.)

RESPONSE OF DEFENDANT THE B.F. GOODRICH
COMPANY, INC. TO PLAINTIFF'S REQUEST
FOR PRODUCTION OF DOCUMENTS

GENERAL OBJECTIONS: Defendant The B.F. Goodrich Company ("Goodrich") objects to plaintiff's "Definitions" section in so far as it seeks to impose upon Goodrich any obligations over and above those which are imposed upon it pursuant to the provisions of Fed.R.Civ.P. Rule 34. More specifically, the aforementioned rule does not empower the party serving a request for production of documents to arbitrarily define words or phrases, to impose obligations to respond upon persons other than Goodrich, to impose upon Goodrich any obligation to produce documents not in its possession, custody or control, or to provide any written statement describing any claim of privilege.

Goodrich further objects to plaintiff's "Definitions" section in so far as it defines "product" as meaning both vinyl chloride monomer ("VCM") and polyvinyl chloride ("PVC"). Plaintiff does not allege that exposure to PVC caused her alleged

injuries: information regarding PVC is therefore irrelevant and not reasonably calculated to lead to the discovery of information admissible in evidence. Goodrich's responses herein refer only to VCM.

With respect to all plaintiff's other "definitions", Goodrich responds herein according to the commonly accepted meanings of terms used in the requests. When "documents" are requested, the responses herein embrace all documents, whether recorded manually, magnetically or electronically and whether memorializing facts or data in a written or pictorial fashion.

Also, Goodrich objects to each and every request made by plaintiff in so far as it may be interpreted to embrace documents protected by the attorney-client privilege or the work-product doctrine or which were generated in anticipation of litigation.

Finally, Goodrich objects to each and every request seeking information outside of the relevant period, i.e., 1947 (when plaintiff was first employed by Monsanto) to 1974 (when Monsanto ceased VCM operations). Goodrich will respond to requests for the time period 1948-1974 only.

REQUEST NO. 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 NO. 1

OBJECTION: Request No. 1 is a "blanket" request which fails to sufficiently identify the documents it seeks and is therefore vague; it is not limited in to injuries similar to those suffered by plaintiff's decedent claim and is therefore overbroad; it is also overbroad because it seeks "all documents of every kind" without any limitation at all; because of its overbreadth and vagueness, it would be unreasonably burdensome for Goodrich to formulate a response.

REQUEST NO. 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 NO. 2

OBJECTION: Request No. 2 is overbroad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence in that it is not limited to VCM sold by Goodrich to plaintiff's employer, Monsanto Chemical Company. Further, in seeking "all documents of every kind" without any limitation, the request is so overbroad that Goodrich cannot reasonably be expected to formulate a response.

REQUEST NO. 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 NO. 3

OBJECTION: Request No. 3 is overbroad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence in that it is not limited to VCM sold by Goodrich to plaintiff's employer, Monsanto Chemical Company and also in so far as it seeks information pertaining to VCM sold after plaintiff's employer stopped utilizing VCM at the place of plaintiff's employment in 1974. Without waiving this objection, Goodrich states that it has been unable to locate any responsive documents and is continuing to search for same. Goodrich reserves its right to supplement this response.

REQUEST NO. 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 NO. 4

OBJECTION: Request No. 4 is overbroad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence in so far as it seeks information pertaining to VCM sold after plaintiff's employer stopped utilizing VCM at the place of plaintiff's employment in 1974. Without waiving this objection, Goodrich will produce all documents responsive to Request No. 4

for the time period 1947-1974 which are in its possession, custody or control.

REQUEST NO. 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 NO. 5

OBJECTION: Request No. 5 is overbroad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence in so far as it seeks information pertaining to VCM sold after plaintiff's employer stopped utilizing VCM at the place of plaintiff's employment in 1974. Without waiving this objection, Goodrich will produce all documents responsive to Request No. 5 for the time period 1947-1974 which are in its possession, custody or control: see Response No. 4, above.

REQUEST NO. 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 NO. 6

OBJECTION: Request No. 6 is overbroad and not reasonably calculated to lead to the discovery of admissible evidence in that it seeks documents pertaining to dangers unassociated with angiosarcoma, the condition from which plaintiff's decedent allegedly suffered, and is not limited to the relevant time period, i.e., 1947-1974. Without waiving this objection, Goodrich will produce all documents within its possession, custody or control pertaining to angiosarcoma risks and generated or known to Goodrich within the period 1947-1974. Goodrich reserves the right to supplement this response.

REQUEST NO. 7

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

RESPONSE NO. 7

OBJECTION: Request No. 7 is overbroad in that it is not limited to the relevant time period, i.e., 1947-1974. Without waiving this objection, Goodrich states that it has been unable to locate any responsive documents but is willing to produce such documents from the time period 1947-1974. Goodrich is continuing to search for same and reserves the right to supplement this response.

REQUEST NO. 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 NO.8

OBJECTION: Plaintiff seeks discovery of the opinion of experts beyond the scope of that allowed by Fed.R.Civ.P., Rule 26(b)(4)(A).

REQUEST NO. 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 NO. 9

Goodrich will provide a copy of the relevant portions of its Kemper Insurance policy and other potentially pertinent policies.

REQUEST NO. 10

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

RESPONSE NO. 10

OBJECTION: Request No. 10 is vague in that it fails to describe the documents sought with any particularity and overbroad in that

it reaches a vast number of documents, such as chemical textbooks, whose production is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, Goodrich will produce a textbook description of vinyl chloride.

REQUEST NO. 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 NO. 11

OBJECTION: Request No. 11 is overbroad in that it is not limited to the relevant time period, i.e., 1947-1974. Without waiving this objection, Goodrich will produce all responsive documents in its possession, custody or control applicable to the time period 1947-1974: see Response No. 4. Goodrich reserves the right to supplement this response.

REQUEST NO. 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 NO. 12

OBJECTION: Request No. 12 is overbroad in that it is not limited to the time period during which plaintiff's employer, Monsanto Chemical Company, used VCM, i.e., 1947-1974. Furthermore, Goodrich objects that the request reaches documents containing trade secrets, confidential information, and information irrelevant to plaintiff's claims and beyond the permissible scope of discovery. Without waiving this objection, Goodrich states that it is willing to produce redacted documents showing information pertaining solely to Monsanto for the time period 1947-1974, should plaintiffs so agree.

REQUEST NO. 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.

RESPONSE NO. 13

Goodrich states it has no responsive documents.

REQUEST NO. 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, Union Carbide Company, Continental Oil Company and Monsanto Chemical Company, from 1947 to 1979 regarding the product.

RESPONSE NO. 14

OBJECTION: Request No. 14 is overbroad in that it is not limited to the time period during which plaintiff's employer, Monsanto Chemical Company, used VCM, i.e., 1947-1974. Without waiving this objection, Goodrich will produce all responsive documents in its possession, custody or control applicable to the time period 1947-1974. Goodrich reserves the right to supplement this response.

REQUEST NO. 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, Union Carbide Company, Continental Oil Company and Monsanto Chemical Company, from 1947 to 1979 regarding the product.

RESPONSE NO. 15

OBJECTION: Request No. 15 is overbroad in that it is not limited to the time period during which plaintiff's employer, Monsanto Chemical Company, used VCM, i.e., 1947-1974. Without waiving this objection, Goodrich will produce all responsive documents in its possession, custody or control applicable to the time period

1947-1974. Goodrich reserves the right to supplement this response.

REQUEST NO. 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.

RESPONSE NO. 16

OBJECTION: Request No. 16 is overbroad in that it is not limited to the time period during which plaintiff's employer, Monsanto Chemical Company, used VCM, i.e., 1947-1974. Without waiving this objection, Goodrich will produce all responsive documents in its possession, custody or control applicable to the time period 1947-1974. See Response No. 14. Goodrich reserves the right to supplement this response.

REQUEST NO. 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 NO. 17

OBJECTION: Request No. 17 is overbroad in that it is not limited to the time period during which plaintiff's employer, Monsanto Chemical Company, used VCM, i.e., 1947-1974. Without waiving this objection, Goodrich states that it has been unable to locate any responsive documents. Goodrich will continue its search and reserves its right to supplement this response. Should Goodrich

locate any responsive documents, it will produce such as are applicable to the time period 1947-1974.

REQUEST NO. 18

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

RESPONSE NO. 18

OBJECTION: Request No. 18 is overbroad in that it is not limited to the time period during which plaintiff's employer, Monsanto Chemical Company, used VCM, i.e., 1947-1974. Without waiving this objection, Goodrich states that it has been unable to locate any responsive documents. Goodrich will continue to search and reserves its right to supplement this response. Should Goodrich locate any responsive documents, it will produce such as are applicable to the time period 1947-1974.

REQUEST NO. 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 NO. 19

OBJECTION: Request No. 19 is vague, overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. It seeks undefined documents pertaining to any health effects of VCM and is in no way limited to the

condition (i.e., angiosarcoma of the liver) allegedly suffered by plaintiff's decedent. It is not limited to the relevant time period, i.e., 1947-1974. To conduct the wide-ranging search for which the instant request calls for documents containing irrelevant information is to impose an unreasonable burden upon Goodrich. Without waiving this objection, Goodrich will produce responsive documents relating to angiosarcoma from the time period 1947-1974. Goodrich reserves the right to supplement this response.

REQUEST NO. 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 NO. 20

OBJECTION: Request No. 20 is overbroad in that it is not limited to the time period during which plaintiff's employer, Monsanto Chemical Company, used VCM, i.e., 1947-1974. Without waiving this objection, Goodrich will produce all responsive documents in its possession, custody or control applicable to the time period 1947-1974.

REQUEST NO. 21

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

RESPONSE NO. 21

OBJECTION: Read in conjunction with plaintiff's Interrogatory 4(e), Request No. 21, Request No. 21 seeks the same documents as does Request No. 19 and is therefore redundant and unduly burdensome. It is also objectionable for the reasons set forth in the objections to Request No. 19, which is incorporated herein in its entirety. As Goodrich has not yet formulated its answers to Interrogatory No. 4(e), Goodrich reserves its right to make further objections and to supplement this response.

REQUEST NO. 22

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

RESPONSE NO. 22

OBJECTION: Request No. 22 is not limited to the time period of plaintiff's decedent's possible exposure, i.e., 1947-1974, and so is overbroad. Furthermore, it is not reasonably calculated to lead to the discovery of admissible evidence: the equipment and tools are not in any way limited to those whose function or purpose may have had an effect on plaintiff's decedent's alleged condition and the documents sought are described in terms so vague and overbroad that they embrace any conceivable document referring to or picturing any tool or piece of equipment. Furthermore, the request's use of the term "recommend" is vague and Goodrich cannot tell whether it refers to recommended equipment within Goodrich or to communications with third-

parties. Without waiving this objection, Goodrich will produce all documents regarding safety tools or equipment to be used in conjunction with VCM by Goodrich employees during the time period 1947-1974 and which are in its possession, custody or control. Goodrich reserves the right to supplement this response.

REQUEST NO. 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 NO. 23

OBJECTION: Request No. 23 is overbroad in that it is not limited to the time period during which plaintiff's employer, Monsanto Chemical Company, used VCM, i.e., 1947-1974. Without waiving this objection, Goodrich states that it has not been able to identify any documents specifically directed to Monsanto, but that it will produce all responsive documents directed in general to its VCM customers during the time period 1947-1974. See Response No. 4. Goodrich reserves the right to supplement this response.

REQUEST NO. 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 NO. 24

OBJECTION: Request No. 24 is overbroad in that it is not limited to the time period during which plaintiff's employer, Monsanto Chemical Company, used VCM, i.e., 1947-1974. Request No. 24 is also overly burdensome in that it is virtually the same as Request No. 23. See the response and objections to Request No. 23, which are incorporated in their entirety by reference herein. Goodrich reserves the right to supplement this response.

REQUEST NO. 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 NO. 25

OBJECTION: Request No. 25 is vague, overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff does not define the term "similar" and would force Goodrich, in formulating a response, to guess what conditions, illnesses or injuries are "similar" to angiosarcoma of the liver. Furthermore, plaintiff seeks documents which pertain to physical illnesses suffered by others removed in time and place from plaintiff's decedent and under circumstances dissimilar from those encountered by plaintiff's decedent. Such documents are not appropriate subjects of discovery in that they cannot of themselves either make it more or less likely that plaintiff will be able to prove her claims and they will not lead to the discovery of documents or other

information that will make such proof more or less likely. Such documents are irrelevant and beyond the scope of discovery. Further, Goodrich objects that any such documents in its possession, custody or control are protected by the attorney-client privilege and the work-product doctrine and/or were prepared in anticipation of litigation.

REQUEST NO. 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 NO. 26

OBJECTION: Request No. 26 is overbroad in that it is not limited to the time period during which plaintiff's employer, Monsanto Chemical Company, used VCM, i.e., 1947-1974. Without waiving this objection, Goodrich states that it has in its possession, custody or control no responsive documents.

Date: 3/22/91


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