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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NICOLINA SIRECI, as Executrix of the
Estate of JOSEPH E. SIRECI, deceased,

Plaintiff

-against-

CHEMCO, INC., ROMAN HAAS, INC., MONSANTO
INC., UNION CARBIDE, INC., AMERICAN
CYANMID, INC., AMERICAN CYANAMID
MONSANTO, INC.,

Defendants

ROHM & HAAS COMPANY s/h/a ROMAN
HASS, INC.,

Defendant and Third
Party Plaintiff

-against-

ELM COATED FABRICS, INC., A Division of
KALEX CHEMICAL, INC.,

Index #13411/83

Third Party Defendant

MONSANTO COMPANY, INC.,

Third Party Plaintiff

-against-

ELM COATED FABRICS, INC., ELM COATED
FABRICS, INC. d/b/a ELM COATED FABRICS
DIV. OF KALEX CHEMICAL PRODUCTS, INC.,
ELM COATED FABRICS DIV. OF KALEX CHEMICAL
PRODUCTS, INC., AND KALEX CHEMICAL
PRODUCTS, INC.

Third Party
Defendants

AFFIRMATION IN
SUPPORT OF THE
DEFENDANT UNION
CARBIDE AND
MONSANTO'S
MOTION FOR
SUMMARY JUDGMENT

ALEXANDER V. SANSONE, being duly sworn, deposes and
says:

That I am an attorney admitted to the practice of
law in the State of New York and associated with the firm of
HOGAN, JONES & PARISI, P.C., attorneys for the third party

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defendants, ELM COATED FABRICS, INC., ELM COATED FABRICS DIV. OF KALEX CHEMICAL PRODUCTS, INC., and KALEX CHEMICAL PRODUCTS INC. (KALEX, defendants) herein, and am fully familiar with the pleadings filed in this action.

I make this Affirmation in Support of the Motion by defendant, Union Carbide, for summary judgment and the cross motion for the same relief by the defendant, Monsanto. These motions request that the Court dismiss the plaintiff's complaint upon the grounds that the causes of action contained therein are time barred by the applicable statute of limitations.

This wrongful death action arises out of a claim by the plaintiff that her deceased husband, Joseph Sireci, developed cancer as a result of his exposure to polyvinyl chloride (PVC's) during the course of his employment at the Kalex Chemical plant. Plaintiff is accordingly seeking damages for said wrongful death.

The deceased plaintiff, Joseph Sireci, worked at the Kalex plant located at 5727 49th Street in Maspeth, New York from April 18, 1978 until his death in May of 1981. Previously, upon information and belief, he had been employed by the Elm Coated Fabrics Div. of W.R. Grace at the same location. Kalex purchased the plant from W.R. Grace in 1978. At the plant, polyvinyl chloride resins were used to produce various vinyl products. These resins were delivered to a silo on the premises. From the silo, the raw materials were pumped in vats, mixed and then rooled into flat vinyl sheets.

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The sheets thereafter were used in the manufacturing process. The raw material (PVC's or polyvinyl chloride monomer) were generally consumed within a week of delivery.

In continuing its manufacturing at the plant, Kalex purchased polyvinyl chloride from a number of manufacturers in the industry. As can be seen from the affidavit of Stanley Mandel, (a signed copy of which is annexed hereto and marked Exhibit "A") Director of Material Management at Kalex, no purchases of polyvinyl chloride resins were made from Union Carbide since at least 1977. In addition, a review of his records reveals that neither Kalex nor Grace ever purchased polyvinyl chloride resins from Monsanto, American Cyanamid or Rohm & Haas.

According to the complaint filed on behalf of Nicolina Sireci, Joseph Sireci died on May 31, 1981. Since plaintiff seeks to recover damages for personal injuries based upon negligence and strict products liability, her cause of action is governed by the three year statute of limitations set forth in CPLR Section 214. It is well settled that where personal injury results from exposure to a toxic substance, the three year limitations period begins to run at the time of exposure to the product. Therefore, plaintiff's causes of action would be timely only if the deceased were exposed to products manufactured by the defendants within three years of the filing of

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the summons and complaint (May 31, 1983). Accordingly, the action must be dismissed if Mr. Sireci was not exposed to products manufactured by the defendants after May 31, 1980.

As can be seen from the Affidavit submitted by Stanley Mandel, Kalex made no such purchases of PVC's or polyvinyl chloride resins from Union Carbide, Monsanto, American Cyanamid, or Rohm & Haas. Therefore, the plaintiff's cause of action is barred by the statute of limitations.

Further, Nicolina Sireci, as the representative of the Estate of Joseph Sireci, could only commence an action on behalf of her husband if that claim was not barred by the statute of limitations when filed on May 31, 1983. Pursuant to the facts set forth above, any cause of action on behalf of Joseph Sireci had already expired at the time of the filing of the summons. Accordingly, the defendants motion for summary judgment should be granted.

WHEREFORE, the third party defendant, KALEX, would respectfully request that the Court grant the instant motions by defendants Union Carbide and Monsanto for summary judgment dismissing the plaintiff's complaint upon the grounds that the cause of action alleged therein are time barred as a matter of law, and that the Court grant such other and further relief as it deems just, proper and equitable.

Dated: New York, N.Y.
July 22, 1985


ALEXANDER V. SANSONE

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