

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

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NICOLINA SIRECI, as Executrix of :
the Estate of JOSEPH E. SIRECI, :
Deceased, :

Plaintiff, :

-against- :

CHEMCO, INC., ROMAN HASS, INC. :
MONSANTO, INC., UNION CARBIDE :
INC., and AMERICAN CYANAMID, Inc., :

Defendants. :

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7/16/84
(Rec'd 2/F)

PLAINTIFF'S VERIFIED
BILL OF PARTICULARS

Index No. 13411/83

Q 1. With respect to the allegations contained in paragraph "tenth" of the complaint state the date when the alleged lung cancer was first discovered by plaintiff's decedent.

A 1. During hospitalization at Flushing Hospital and Medical Center from April 2, 1981 to April 23, 1981 a diagnosis was made of Squamous Cell Carcinoma, undifferentiated, site undetermined with generalized bone metastases. Thalaccemia Minor.

Q 2. Also with respect to the allegations contained in paragraph "tenth" state the date the plaintiff's decedent first sought medical attention for the alleged lung cancer and the name and address of each physician from whom such medical attention was sought.

A 2. March 13, 1981 however not diagnosed at time.

Alexander Farca, M.D.
4500 Parsons Boulevard
Flushing, New York

Flushing Hospital & Medical Center
Parsons Boulevard and 45th Avenue
Flushing, New York 11355

Admitted 4/2/81, Discharged 4/23/81 with outpatient
treatments thereafter readmitted 5/6/81, Discharged 5/31/81.

Joseph Resigno, M.D.
46-27 Parsons Boulevard
Flushing, New York

Began treatment for condition approximately one to two
months prior to hospitalization on April 2, 1981.

Robert D. Karlan, M.D.
42-60 Main Street
Flushing, New York 11355

Consultations dated March 25, 1981.

Q 3. Also with respect to the allegations contained
in paragraph "tenth" of the complaint state what other forms of
cancer are being alleged.

A 3. Same as paragraph one above as far as
ascertained to date.

Q 4. Also with respect to the allegations contained
in paragraph "tenth" of the complaint state the dates when the
other forms of cancer being alleged were first discovered by
the plaintiff's decedent.

A 4. Same as paragraph one and three above.

Q 5. Also with respect to the allegations contained
in paragraph "tenth" of the complaint state the dates when the

plaintiff's decedent first sought medical attention for the other forms of cancer being alleged and the name and address of each physician from whom such medical attention was sought.

A 5. Same as paragraph one, two, three and four above.

Q 6. Also with respect to the allegations contained in paragraph "tenth" of the complaint state whether a death certificate exists identifying the plaintiff's decedent's cause of death.

A 6. Yes, a death certificate does exist and a copy is attached hereto.

Q 7. With respect to the allegations contained in paragraph "twelfth" of the complaint state the date the plaintiff's decedent was first employed by KALEX of W. R. GRACE & CO., INC. (hereinafter "KALEX") the date the plaintiff's decedent was last employed by KALEX and the job titles and duties of the plaintiff's decedent while employed by KALEX identified by date.

A 7. Plaintiffs decedent was employed by Elm Coated Fabrics, a Division of W. R. Grace & Co., Inc., formerly owned by Emanuel Mittman. This business was believed to be sold to Hatco and later to W. R. Grace & Co., Inc., of which Kalex Chemical Products, Inc., is a division.

Plaintiff last worked in and about March 13, 1981 at Kalex Chemical Products, Inc., as a foreman. The exact dates of employment will be submitted upon ascertainment.

UCC 087774

Q 8. Also with respect to the allegations contained in paragraph "twelfth" of the complaint state the dates and length of time the plaintiff's decedent was confined to bed, the hospital and to his house due to the alleged injuries suffered which form the basis of this complaint.

- A 8. (a) Bed - From March 13, 1981
intermittently to March 31, 1981;
- (b) House - March 13, 1981 to May 31, 1981
except hospital;
- (c) Hospital - April 2, 1981 to April 23, 1981
May 6, 1981 to May 31, 1981.

Q 9. Also with respect to the allegations contained in paragraph "twelfth" of the complaint state the length of time the plaintiff's decedent was incapacitated from employment due to the alleged injuries suffered which form the basis of this complaint.

- A 9. From March 8, 1981 to death on May 31, 1981.

Q 10. With respect to the allegations contained in paragraphs "twelfth", "seventeenth" and "eighteenth" of the complaint state the name and address of every physician, who treated or examined the plaintiff's decedent at any time while said decedent was employed by KALEX other than those physician's set forth by plaintiff in response to items 2 and 5 of this demand; and with respect to each such physician state:

- (a) The date(s) of each treatment or examination;
- (b) The reason for each treatment or examination;

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- (c) The nature of each treatment or consultation; and
- (d) Where each treatment or examination was rendered.

A 10. Plaintiff's decedent had family doctor

Joseph Resigno, M.D.
46-27 Parsons Boulevard
Flushing, New York

Upon information and belief a copy of his record is attached hereto. Other names, if any, will be supplied upon ascertainment.

Q 11. Also with respect to the allegations contained in paragraphs "twelfth", "seventeenth" and "eighteenth" of the complaint state the name and address of each hospital or clinic in which plaintiff's decedent was ever treated or hospitalized at any time while said decedent was employed by KALEX, and with respect to each such treatment or hospitalization, state:

- (a) The date(s) of each such treatment or hospitalization;
- (b) The reason plaintiff's decedent was treated or hospitalized; and
- (c) The name and address of each physician who treated or attended plaintiff's decedent during each treatment or hospitalization.

11. (a) Flushing Hospital & Medical Center
Parsons Boulevard and 45th Avenue
Flushing, New York 11355

Inpatient from 4/2/81 to 4/23/81. Also as an outpatient on 4/27, 4/28, 4/29, 4/30, and 5/1, 5/4, 5/5/81.
Inpatient from 5/6/81 to 5/31/81.

(b) Due to the negligence, carelessness, imprudence and culpable conduct of the defendants for breach of warranties and willful and wanton acts.

(c) Alexander Farca, M.D.
4500 Parsons Boulevard
Flushing, New York

Flushing Hospital & Medical Center
Parsons Boulevard and 45th Avenue
Flushing, New York 11355

Admitted 4/2/81, Discharged 4/23/81 with outpatient treatments thereafter. Readmitted 5/6/81 to 5/31/81.

Joseph Resigno, M.D.
46-27 Parsons Boulevard
Flushing, New York

Robert D. Karlan, M.D.
42-60 Main Street
Flushing, New York 11355

Consultations dated March 25, 1981

See paragraph 17 for injuries and related treatment.

Q 12. With respect to the allegations contained in paragraph "fifteenth" of the complaint identify any documents indicating the sale of polyvinyl chloride resins to KALEX by defendant Union Carbide Corporation, the dates of such sales and the date of deliveries.

A 12. Plaintiff's decedent had no documents in his possession, but plaintiff verify believes that such documents relating to sales and deliveries are in the possession of the defendants, their agents, servants or employees, including but not limited to their respective wholesalers and retailers and in the possession of Kalex Chemical Products, Inc.

Q 13. Also with respect to the allegations contained in paragraph "fifteenth" of the complaint state whether the plaintiff is alleging contracts between KALEX and defendant Union Carbide Corporation and if so the dates of such contracts.

A 13. Plaintiff's decedent had no contracts nor does plaintiff in her possession but verily believes that such contract whether expressed or implied do exist, and are in the possession or knowledge of the defendants, their agents, servants or employees, including but not limited to their respective wholesalers and retailers and in the possession and knowledge of Kalex Chemical Products, Inc.

Q 14. With respect to the allegations contained in paragraph "sixteenth" of the complaint state what knowledge defendant Union Carbide Corporation had that polyvinyl chloride resins allegedly supplied and manufactured by defendant Union Carbide Corporation to KALEX were carcinogens, dangerous and lethal substances, exposure to which over a period of time may cause cancer.

A 14. The defendant, Union Carbide Corporation, knew or should have become aware of the carcinogenous qualities of polyvinyl chloride prior to its introduction into the stream of commerce and should thereafter have kept abreast of the scientific literature by noted research and scientific journals of which the following are a few:

Cancer Research, P. Viola 3, 516 71
Mutation Res. 31, 163, 1975, Ducatman
Lancet 1 459 1975, Fuses
Lancet 2 410 1975, Purchase.

Q 15. With respect to the allegations contained in paragraph "seventeenth" of the complaint state the dates, manner and length of time that plaintiff's decedent was allegedly exposed to polyvinyl chloride resins.

A 15. From approximately 1951 up to and through March 13, 1981 when the injury was first discovered.

Q 16. With respect to the allegation contained in paragraph "nineteenth" of the complaint state the specific acts or omissions constituting the claimed negligence of defendant Union Carbide Corporation.

A 16. Plaintiff will claim that the manufacturing and supplying defendants are jointly and severally liable for their concerted action in that the defendants, wrongfully tested and marketed polyvinyl chloride; that the defendants acted in concert to produce and market an ineffective and dangerous product, polyvinyl chloride without giving adequate warnings to prevent the carcinogenous agents from invading the person of the decedent; the defendants failed to comply with industry wide standards adhered to by manufacturers and suppliers of polyvinyl chloride; the defendants knew or should have known of the dangerous propensities and cancer producing qualities of the polyvinyl chloride and did intend to commit tortious acts in failing to adequately warn the use and hazards of polyvinyl chloride; that the defendants failed to develop and/or to educate users of polyvinyl chloride as to the hazards thereof and to warn of the proper and safe conditions and work

environment necessary for the safe use of this highly dangerous and deliterious product; that the defendants knew or should have known that the polyvinyl chloride which they manufactured or supplied were carcinogenous, dangerous and lethal substances, exposure to which over a period of time would or may cause cancer; that the defendants were negligent, imprudent and guilty of culpable conduct in the manufacture, sale and disbursal of this dangerous and death causing chemical product known as polyvinyl chloride; that the defendants failed to keep abreast of the social, scientific and industrywide developments as to the hazards of their product, its use and productivity; that the defendants represented to the industry that the use of polyvinyl chloride was safe and the plaintiff's decedent and others in reliance thereon did use and were exposed to said product in reliance upon said representations; that the defendants breached their warranties, express and implied including the warranty of merchantability of the polyvinyl chloride; the defendants represented that the polyvinyl chloride was fit for use in the manufacture of plastics and that it was adequately tested and that these representations were false in that the tests were inadequate or inaccurate and in fact the polyvinyl chloride was unsafe for use; that the defendants were negligent, imprudent and guilty of culpable conduct in that they knew or should have known of the carcinogenic properties of the polyvinyl chloride at the time it was marketed and to be used; that the defendants failed to

warn the public and users of polyvinyl chloride of its dangerous properties when they knew or should have known of such dangers and they failed in that duty to warn which was a continuing one; that the defendants fraudulently represented that the polyvinyl chloride was safe for use as marketed and the plaintiff's decedent in reliance thereon was caused to be injured and consequently died of said injuries.

Q 17. With respect to the allegations contained in paragraphs "twenty-first", "thirtieth" and "thirty-ninth" of the complaint state what damages were allegedly suffered by the plaintiff which form the basis of the plaintiff's claim for Five Million (\$5,000,000) dollars.

17. Metastatic squamous cell lung cancer.

Pain and aches of the body, feet, knuckles and cancer sores in the mouth;

Difficulty in swallowing, breathing and speech;

Pain in the neck,

Pain in right side of chest and low back;

Inability to walk due to weakness;

Treatments with radiotherapy and supportive therapy;

Pathological fractures in the wall of the 8th and 9th ribs on the right side and 3rd, 4th and 5th ribs in the anterior axillary line on the side;

Bronchogenic carcinoma right lower lobe with metastases to hilar lymph nodes, liver, spleen, kidneys, adrenals and bone marrow;

Pulmonary edema;

Pulmonary emphysema;

Patchy Bronchopneumonia;
Death;
Swelling of tongue;
Difficulty in eating;
Marked muscular pain in neck and thorax;
Paresis of the right hypoglossal nerve;
Dysphonia;
Numbness of left side of chin and right side of head;
Pain in low back and weakness of leg;
Possibility of the third cervical vertebrae collapsing;
Placed in Stryker collar;
Squamous cell carcinoma with generalized bony metastases;
Thalassemia minor;
Regurgitation through nose;
Hoarseness;
Anemia
Bronchogenic carcinoma with generalized metastases
Progressive bone pain and the development of dysphasia (inability to speak);
Spinal cord compression;
Low grade fever;
Multiple cranial nerve involvement;
Lesions of the C-3 appearing to be moth eaten with irregular areas of decreased density.

Q 18. With respect to the allegations contained in paragraphs "twenty-second" "twenty-sixth", "thirty-first", "thirty-four", "fortieth" and "forty-third" of the complaint state each and every malicious and wilful act of which the plaintiff claims to have been committed by defendant Union Carbide Corporation which constitutes the basis of the claims for punitive damages.

A 18. That the defendant Union Carbide Corporation in addition to the acts complained on in Paragraph 16 did with utter disregard to the safety of users and persons working with polyvinyl chloride resins failed to warn of its hazardous and deleterious nature.

Q 19. With respect to the allegations contained in paragraphs "twenty-fifth", "thirty-third" and "forty-second" of the complaint state the total amounts claimed as special damages for physicians' services, medical supplies, hospital expenses and nurses services.

A 19. Joseph Resigno, M.D. - will be submitted;

Alexander Farca, M.D. - \$1,300.00;

Robert D. Karlan, M.D. - will be submitted.

Nurses' services - None claimed except as contained in hospital bill and services rendered by wife;

Unascertained to date but some pharmacy bills approximate \$61.70. Additional bills if any will be supplied upon ascertainment.

Flushing Hospital & Medical Center
Parsons Boulevard & 45th Avenue
Flushing, New York 11355

\$8,356.00 from 4/2/81 to 4/23/81

Outpatient care, \$765.00

\$9,138.80 from 5/6/81 to 5/31/81

Q 20. Also with respect to the allegations contained in paragraphs "twenty-fifth", "thirty-third" and "forty-second" of the complaint state the amount of earnings the plaintiff's decedent was alleged to have lost as a result of the alleged injuries suffered which form the basis of this complaint.

A 20. From March 1981 to death at approximately \$500.00 per week.

Q 21. Also with respect to the allegations contained in paragraphs "twenty-fifth", "thirty-third" and "forty-second" of the complaint state the plaintiff's decedent's annual salary and/or other compensation received from KALEX for the five years prior to the alleged injuries suffered which form the basis of this complaint.

A 21. 1977 - \$19,796.00;
1978 - \$16,240.83;
1979 - \$19,848.84;
1980 - \$24,368.55;
1981 - \$ 6,790.34

Q 22. Also with respect to the allegations contained in paragraphs "twenty-fifth", "thirty-third" and "forty-second" of the complaint state the plaintiff's decedent's date of birth and the plaintiff's decedent's date of death.

A 22. Decedent was born September 25, 1924;

Decedent died May 31, 1981.

Q 23. With respect to the allegations contained in paragraph "twenty-ninth" of the complaint state the basis upon which the defendant Union Carbide Corporation owed the plaintiff's decedent a duty to warn.

A 23 Union Carbide Corporation should have warned plaintiff's decedent and all other workmen or users of polyvinyl chloride of its carcinogenous qualities and its deleterious effect upon the human person and in particular metastatic lung disease.

Q 24. With respect to the allegations contained in paragraph "thirty-sixth" of the complaint state whether the alleged representations made by defendant Union Carbide Corporation were written or oral.

- (a) If the claimed representations were made in writing, identify the documents in which defendant Union Carbide allegedly made such representations and the dates thereof.
- (b) If the claimed representations were made orally, state separately with respect to each and every claimed oral representation:
 - 1. The date and place of each such oral representation;
 - 2. The name, address and position of each such person present who made the representation on behalf of the defendant Union Carbide Corporation;

A 24 and 25. Plaintiff verily believes that representations were made but has no present knowledge as to the exact representations whether written, oral or implied or expressed by law. However, upon ascertainment after discovery, this information will be supplied.

Q 26. With respect to the allegations contained in paragraph "thirty-eight" of the complaint, state the basis for the allegation that defendant Union Carbide Corporation knew the alleged representations to be false.

A 26. Union Carbide Corporation knew or should have known that the representations were false had proper testing and examination of the deleterious and harmful qualities of polyvinyl chloride been properly and adequately tested.

Dated: New York, New York

Yours, etc.

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