

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA DEPARTMENT OF GENERAL
SERVICES, PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION, PENNSYLVANIA PUBLIC
UTILITY COMMISSION, PENNSYLVANIA
EMERGENCY MANAGEMENT AGENCY, AND
PENNSYLVANIA DEPARTMENT OF STATE,

Plaintiffs

v.

UNITED STATES MINERAL PRODUCTS
COMPANY, CERTAINTIED CORPORATION,
COURTAULDS AEROSPACE, INC.,
CHEMREX, INC., PHILIPS ELECTRONICS
NORTH AMERICA CORPORATION, ADVANCE
TRANSFORMER COMPANY, and
MONSANTO COMPANY,

Defendants

NO. 284 M.D. 1990

AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. This is an action for compensatory damages and other relief stemming from the asbestos, polychlorinated biphenyl (PCB), and dioxin contamination of the Transportation and Safety Building located in the Capitol Complex in Harrisburg, Pennsylvania.

2. Plaintiffs' damages include, but are not limited to, costs for air, bulk, and wipe sampling and analysis; monitoring costs; the cost of operations and maintenance work attributable to asbestos, PCBs, and dioxins; the cost to clean equipment and furnishings contaminated by asbestos, PCBs, and dioxins; the cost to replace equipment, furnishings and

records that were contaminated by asbestos, PCBs, and dioxins; the cost of removing asbestos, PCBs, and dioxins from the building; the costs to relocate building occupants, equipment, and furnishings due to the asbestos, PCB, and dioxin hazards in the building; and the costs of replacing the building.

3. Plaintiffs further seek punitive damages from defendants U.S. Mineral and ChemRex in an amount which is just and fair under the circumstances. The demand for punitive damages is based on the wanton and willful actions of these defendants in causing plaintiffs' employees, tenants, and customers to be exposed to hazardous and toxic substances.

JURISDICTION

4. This Court has jurisdiction pursuant to 42 Pa.C.S. §761(a)(2) over this action brought by agencies of the Commonwealth government.

PARTIES

5. Plaintiff Department of General Services (DGS) is an administrative department of the executive branch of the government of the Commonwealth of Pennsylvania. As the successor to the General State Authority, DGS is charged with the duty, inter alia, of constructing, maintaining, and repairing Commonwealth buildings. See 71 P.S. §631.1.

6. Plaintiff Department of Transportation (PennDOT) is an administrative department of the executive branch of the government of the Commonwealth of Pennsylvania. Until the end of 1996, its headquarters were located in the Transportation and Safety Building.

7. Plaintiff Pennsylvania Public Utility Commission (PUC) is an independent administrative commission of the Commonwealth of Pennsylvania. Two of its bureaus maintained office space in the Transportation and Safety Building prior to June 16, 1994.

8. Plaintiff Pennsylvania Emergency Management Agency (PEMA) is an administrative agency of the executive branch of the government of the Commonwealth of Pennsylvania. Its principal office was located within the Transportation and Safety Building through the end of 1996.

9. Plaintiff Department of State (State) is an administrative department of the executive branch of the government of the Commonwealth of Pennsylvania. The Department's Bureau of Professional and Occupational Affairs occupied the sixth floor of the Transportation and Safety Building prior to June 16, 1994.

10. Defendant United States Mineral Products Company (U.S. Mineral) is incorporated under the laws of the State of New Jersey and conducts business in Pennsylvania. U.S. Mineral has its principal place of business at Furnace Street, Stanhope, New Jersey 07874.

11. Defendant CertainTeed Corporation is incorporated under the laws of Delaware and conducts business in Pennsylvania. CertainTeed has its principal place of business at 750 East Swedesford Road, Valley Forge, Pennsylvania 19482.

12. Defendant Courtaulds Aerospace, Inc. is incorporated under the laws of California and has conducted business in Pennsylvania. Courtaulds Aerospace has its principal place of business at 5454 San Fernando Road, Glendale, California 91203.

13. Defendant ChemRex, Inc. is incorporated under the laws of Delaware and conducts business in Pennsylvania. ChemRex has its principal place of business at 889 Valley Park Drive, Shakopee, Minnesota 55379.

14. Defendant Philips Electronics North America Corporation is incorporated under the laws of Delaware and conducts business in Pennsylvania. Philips Electronics has its principal place of business at 100 East 42nd Street, New York, New York 10017.

15. Defendant Advance Transformer Company is incorporated under the laws of Delaware and conducts business in Pennsylvania. Advance Transformer has its principal place of business at O'Hare International Center, 10275 West Higgins Road, Chicago, Illinois 60018.

16. Defendant Monsanto Company is incorporated under the laws of Delaware and conducts business in Pennsylvania. Monsanto has its principal place of business at 800 North Lindbergh Boulevard, St. Louis, Missouri 63141.

FACTUAL ALLEGATIONS

17. The Transportation and Safety Building is located at Commonwealth and Forster Streets in Harrisburg, Pennsylvania. It was built between 1965 and 1967.

18. Until 1996, several thousand Commonwealth employees had their offices in the building and hundreds of members of the general public conducted business in the building daily.

19. DGS, on behalf of the Commonwealth, holds legal title to the Transportation and Safety Building.

20. PennDOT was the principal tenant in the Transportation and Safety Building, occupying offices on most of the floors. PEMA's offices were on the basement floor. Prior to June 16, 1994, other Commonwealth agencies occupying space in the building included State, on the sixth floor; DGS, on the tenth floor; and the PUC, on the fourth floor.

21. DGS was responsible for general building maintenance, but PennDOT paid for many building maintenance projects out of its own budget. PennDOT was also billed by DGS on a quarterly basis for its prorated share of the costs of operating the building.

22. U.S. Mineral manufactured, marketed, and sold spray applied fireproofing which contains asbestos and PCBs. This fireproofing, including but not necessarily limited to CAFCO Blaze-Shield Type D, was installed in the Transportation and Safety Building during its construction and is found throughout the building.

23. The U.S. Mineral fireproofing used in the construction of the Transportation and Safety Building deteriorated after installation. It did not adhere permanently to the surfaces to which it was applied, and debris from its deterioration was found throughout the building.

24. As a result of the existence and condition of the U.S. Mineral fireproofing, which was known to contain asbestos, plaintiffs took measures to protect building occupants and visitors from exposure to the fireproofing. These measures, which were costly, caused great inconvenience to plaintiffs, restricted management options, and could never guarantee that significant exposure events would not occur.

25. CertainTeed, through its predecessor or division Gustin Bacon Manufacturing Company, manufactured, marketed, and sold G-B fiberglass duct which

contains PCBs. This duct material was installed in the Transportation and Safety Building during its construction and is found throughout the building.

26. The CertainTeed duct material installed in the Transportation and Safety Building has released PCBs into the building, causing contamination of building surfaces, equipment, furniture, and records.

27. Courtaulds Aerospace, through its predecessor Products Research and Chemical Company or its predecessor Products Research Corp., manufactured, marketed, and sold caulk which contains PCBs. This product was used in the construction of the Transportation and Safety Building to seal the joints between the precast concrete panels on the exterior of the building.

28. ChemRex, through its Sonneborn Building Products Division, manufactured, marketed, and sold caulk which contains PCBs. This product was used during the construction of and/or during renovations to the Transportation and Safety Building in the 1980's to seal the joints between the precast concrete panels on the exterior of the building.

29. Philips Electronics, through its subsidiary Advance Transformer Company, manufactured, marketed, and sold fluorescent light ballasts which contain PCBs. These ballasts were incorporated into light fixtures which were installed in the Transportation and Safety Building.

30. The light ballasts manufactured by Advance Transformer have released PCBs into the Transportation and Safety Building, causing contamination of building surfaces, equipment, furniture, and records.

31. The caulk products manufactured by Courtaulds Aerospace and ChemRex have contaminated the precast concrete panels on the building.

32. Monsanto manufactured, marketed, and sold PCBs which were used in construction materials, hydraulic fluids, dedusting oils, and other products.

33. PCBs manufactured by Monsanto have contaminated building surfaces, equipment, furniture, and records in the Transportation and Safety Building.

34. On June 16, 1994, a five alarm fire occurred in the Transportation and Safety Building. Immediately following the fire, the entire Transportation and Safety Building was closed while safety tests were conducted. Portions of the building were reoccupied in stages beginning June 20, 1994.

35. As a result of the testing program which followed the fire, plaintiffs discovered that U.S. Mineral's fireproofing contained PCBs. Some samples, upon analysis, had levels in excess of 50 parts per million. In addition, it was discovered that fireproofing debris was located in many more areas than previously had been known. These discoveries prompted plaintiffs to impose additional restrictions on what activities could take place in the building in order to safeguard the health of building users and caused significant disruption to the plaintiffs' normal activities.

36. Subsequent testing in the building showed high levels of PCBs in the ductwork, light ballasts, and caulking, including levels in excess of 1,000 parts per million. In addition, dioxins were detected in areas directly impacted by the fire. Plaintiffs believe that the dioxins resulted from pyrolysis of the defendants' PCBs.

37. In order to decontaminate the building for purposes of continued occupancy, it would have been necessary to remove U.S. Mineral's fireproofing and CertainTeed's duct material, clean contaminated surfaces within the building, and install replacement materials which did not contain asbestos or PCBs. This process would have taken more than a year and would not have been cost-effective.

38. In January of 1996, DCS decided to replace the Transportation and Safety Building with a new structure. This decision was prompted by the high levels of asbestos and PCBs known to be in the building.

39. By the end of 1996, the building was vacant and all state agencies had been relocated to substitute office space. Due to asbestos, PCB, and dioxin contamination, floors four through seven had never been reopened for use.

ASBESTOS ALLEGATIONS

40. Asbestos is a known human carcinogen. Inhalation of asbestos fibers can lead to mesothelioma, lung cancer, and other serious and irreversible health impairments. Health problems associated with asbestos often lead to death.

41. The latency period for disease resulting from exposure to asbestos ranges from 5 to more than 30 years. While exposure to asbestos fibers will not always result in mesothelioma, lung cancer, or other health impairments, even low level or episodic exposure can lead to serious health problems or fatalities.

42. Asbestos fibers are virtually indestructible. When asbestos containing materials or asbestos dust is disturbed, asbestos fibers become airborne. The fibers can remain

airborne for a long period due to their size and shape, thus facilitating their inhalation by humans.

43. There is no known safe threshold of exposure to asbestos fibers.

44. The costs to remove and dispose of asbestos containing materials from buildings is much higher than comparable costs for materials which do not contain asbestos. The sole reason for this cost differential is the hazardous nature of asbestos.

45. Regulations promulgated by the Environmental Protection Agency require removal of defendant's asbestos containing materials from the Transportation and Safety Building before undertaking major renovations to the building or demolishing it. The regulations were promulgated to protect the public health and safety by minimizing human exposure to asbestos fibers.

PCB ALLEGATIONS

46. In 1976 Congress found that the extreme health hazards posed by PCBs required a ban on their manufacture, processing, or distribution. See 15 U.S.C. §2605(e).

47. According to the Agency for Toxic Substances and Disease Registry, a branch of the federal Public Health Service, PCBs have been found to cause harmful effects to the skin and may irritate the nose and lungs. Animal studies indicate that PCBs can cause liver, kidney, skin, stomach, thyroid gland and other damage. They are known carcinogens in animals and are suspected carcinogens and teratogens in humans. Contact exposure to PCBs has caused death in laboratory animals. Their toxic effects are exacerbated by the fact

that PCBs are extraordinarily persistent in the environment and are resistant to biological degradation. Moreover, PCBs tend to accumulate in tissues.

48. The existence of PCBs in a building at the levels found in the Transportation and Safety Building causes difficult and costly management problems in terms of routine maintenance and repair activities as well as in terms of planning for and undertaking renovations, whether small or large. Further, constant vigilance is required to prevent employees and the public from exposure to the PCBs. No measure of precaution is sufficient to guarantee that harmful PCB exposure will not occur to persons in the building.

49. The costs to remove and dispose of PCB containing materials from buildings is much higher than comparable costs for materials which do not contain PCBs. The sole reason for this cost differential is the hazardous nature of PCBs.

DIOXIN ALLEGATIONS

50. According to the Federal Agency for Toxic Substances and Disease Registry, dioxins are among the most toxic anthropogenic chemicals in the environment.

51. Dioxin has been linked to a variety of reproductive and neurological problems as well as to cancers of the lung, liver, and stomach. The EPA classifies dioxin as a "probable" human carcinogen at low levels of exposure and has reported that it may trigger problems such as endometriosis in women and decreased sperm counts in men.

52. The existence of dioxin in a building at the levels found in the Transportation and Safety Building causes difficult and costly management problems in terms of routine maintenance and repair activities as well as in terms of planning for and undertaking

renovations, whether small or large. Further, constant vigilance is required to prevent employees and the public from exposure to the dioxins. No measure of precaution is sufficient to guarantee that harmful dioxin exposure will not occur to persons in the building.

53. The costs to remove and dispose of PCB containing materials from buildings is much higher than comparable costs for materials which do not contain PCBs. The sole reason for this cost differential is the hazardous nature of PCBs.

COUNT I - STRICT LIABILITY OF U.S. MINERAL

54. Paragraphs 1 through 53 are incorporated herein by reference.

55. U.S. Mineral is in the business of selling and did sell the fireproofing in the Transportation and Safety Building.

56. U.S. Mineral's fireproofing was installed in the Transportation and Safety Building without substantial change in the condition in which it left the control of U.S. Mineral.

57. U.S. Mineral's fireproofing in the Transportation and Safety Building is defective and unreasonably dangerous to plaintiffs, their employees, tenants, and other persons using the building because it contains asbestos and/or PCBs. Functionally equal fireproofing not containing asbestos or PCBs could have been manufactured by U.S. Mineral.

58. U.S. Mineral's sale of defective asbestos and/or PCB containing fireproofing is a proximate cause of plaintiffs' injuries.

59. U.S. Mineral provided no warning to plaintiffs that its fireproofing contained asbestos or PCBs or that its fireproofing could be hazardous to human health.

60. U.S. Mineral's failure to warn was a proximate cause of plaintiffs' injuries.

WHEREFORE, plaintiffs pray that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficiently punish it and discourage repetition of its outrageous, reckless, willful, and wanton conduct;

C. plaintiffs recover their costs and disbursements of this suit; and

D. the Court grant such other and further relief as it deems just and proper.

COUNT II - NEGLIGENCE OF U.S. MINERAL

61. Paragraphs 1 through 60 are incorporated herein by reference.

62. At all times material, U.S. Mineral knew, or with the exercise of reasonable care should have known, that its fireproofing would be used in facilities such as the Transportation and Safety Building.

63. At all times material, U.S. Mineral knew, or with the exercise of reasonable care should have known, that its fireproofing was inherently dangerous, defective, and hazardous and could cause harm to persons working in or visiting facilities such as the Transportation and Safety Building and would contaminate and thereby cause harm to the buildings themselves.

64. U.S. Mineral owed a duty to plaintiffs, and breached that duty, when it failed to adequately test the safety of its fireproofing products. As a result, U.S. Mineral supplied defective products which have contaminated the Transportation and Safety Building with hazardous substances.

65. U.S. Mineral owed a duty to plaintiffs, and breached that duty, when it failed to recommend the removal of its fireproofing from the market and to undertake the responsibility of locating, removing, and replacing the fireproofing in the Transportation and Safety Building, although it knew or should have known that the presence of carcinogenic asbestos and/or PCBs in this product posed a health hazard in the building.

66. In breaching its duties as set forth above, U.S. Mineral acted recklessly, willfully, wantonly, and outrageously.

67. U.S. Mineral's actions and its failure to act when it had a duty to do so were proximate causes of plaintiffs' injuries.

WHEREFORE, plaintiffs pray that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficiently punish it and discourage repetition of its outrageous, reckless, willful, and wanton conduct;

C. plaintiffs recover their costs and disbursements of this suit; and

D. the Court grant such other and further relief as it deems just and proper.

COUNT III - BREACH OF EXPRESS WARRANTY OF U.S. MINERAL

68. Paragraphs 1 through 67 are incorporated herein by reference.

69. U.S. Mineral expressly warranted that CAFCO Blaze Shield Type D would not "dust or flake."

70. DGS relied upon this express representation when it purchased CAFCO Blaze Shield Type D for use in the Transportation and Safety Building.

71. U.S. Mineral breached its express warranty by the sale to DGS of a product which "dusts."

72. U.S. Mineral's breach of its express warranty has harmed DGS.

73. DGS has given U.S. Mineral timely and adequate notice of the breach of its express warranty.

WHEREFORE, DGS prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. DGS recover its costs and disbursements of this suit; and

C. the Court grant such other and further relief as it deems just and proper.

COUNT IV - BREACH OF IMPLIED WARRANTIES OF U.S. MINERAL

74. Paragraphs 1 through 73 are incorporated herein by reference.

75. U.S. Mineral impliedly warranted that its fireproofing sold to DGS was of good and merchantable quality.

76. U.S. Mineral had not disclaimed its implied warranties before DGS purchased its products.

77. U.S. Mineral breached its implied warranties by the sale to DGS of carcinogenic and otherwise hazardous products.

78. U.S. Mineral's breach of its implied warranties has harmed DGS.

79. DGS has given U.S. Mineral timely and adequate notice of the breach of its implied warranties.

WHEREFORE, DGS prays that:

- A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;
- B. DGS recover its costs and disbursements of this suit; and
- C. the Court grant such other and further relief as it deems just and proper.

COUNT V - FRAUDULENT MISREPRESENTATION OF U.S. MINERAL

80. Paragraphs 1 through 79 are incorporated herein by reference.

81. Through advertisements, U.S. Mineral misrepresented its fireproofing by failing to state that PCBs were contained therein and by stating that CAFCO Blaze Shield Type D would not dust.

82. U.S. Mineral's misrepresentations were made knowingly, deceptively, and in bad faith in order to induce purchasers such as DGS to utilize its products in building projects.

83. DGS relied upon U.S. Mineral's misrepresentations when it purchased products which it believed to be safe and dust free.

84. DGS was damaged by U.S. Mineral's material misrepresentations because it was induced to purchase defendant's unsafe, carcinogenic products which have deteriorated and contaminated the Transportation and Safety Building with PCBs.

WHEREFORE, DGS prays that:

A. judgment be entered against U.S. Mineral for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against U.S. Mineral for punitive damages in an amount which is fair and just under the circumstances and which will sufficiently punish it and discourage repetition of its outrageous, reckless, willful and wanton conduct;

C. DGS recover its costs and disbursements of this suit; and

D. the Court grant such other and further relief as it deems just and proper.

COUNT VI - STRICT LIABILITY OF CERTAINTEED

85. Paragraphs 1 through 84 are incorporated herein by reference.

86. CertainTeed, through its predecessor Gustin Bacon, was in the business of selling and did sell the duct material installed in the Transportation and Safety Building.

87. CertainTeed's duct material was installed in the Transportation and Safety Building as intended and without substantial change in the condition in which it left the control of CertainTeed

88. CertainTeed's duct material in the Transportation and Safety Building is defective and unreasonably dangerous to plaintiffs, their employees, tenants, and other persons using the building because it contains PCBs. Functionally equal duct material not containing PCBs could have been manufactured by CertainTeed.

89. CertainTeed's sale of defective PCB containing duct material is a proximate cause of plaintiffs' injuries.

90. CertainTeed provided no warning to plaintiffs that its duct material contained PCBs or that its duct material could be hazardous to human health.

91. CertainTeed's failure to warn was a proximate cause of plaintiffs' injuries.

WHEREFORE, plaintiffs pray that:

A. judgment be entered against CertainTeed for compensatory damages in an amount in excess of \$10,000;

- B. plaintiffs recover their costs and disbursements of this suit; and
- C. the Court grant such other and further relief as it deems just and proper.

COUNT VII - BREACH OF IMPLIED WARRANTIES - CERTAINTEED

- 92. Paragraphs 1 through 91 are incorporated herein by reference.
- 93. CertainTeed impliedly warranted that its duct material sold to DGS was of good and merchantable quality.
- 94. CertainTeed had not disclaimed its implied warranties before DGS purchased its product.
- 95. CertainTeed breached its implied warranties by the sale to DGS of carcinogenic and otherwise hazardous products.
- 96. CertainTeed's breach of its implied warranties has harmed DGS.
- 97. DGS has given CertainTeed timely and adequate notice of the breach of its implied warranties.

WHEREFORE, DGS prays that:

- A. judgment be entered against CertainTeed for compensatory damages in an amount in excess of \$10,000;
- B. DGS recover its costs and disbursements of this suit; and
- C. the Court grant such other and further relief as it deems just and proper.

COUNT VIII - STRICT LIABILITY OF COURTAULDS AEROSPACE

98. Paragraphs 1 through 97 are incorporated herein by reference.

99. Courtaulds Aerospace, through its predecessor Products Research, was in the business of selling and did sell caulk used in the Transportation and Safety Building.

100. Courtaulds Aerospace's caulk was installed in the Transportation and Safety Building without substantial change in the condition in which it left the control of Courtaulds Aerospace.

101. Courtaulds Aerospace's caulk in the Transportation and Safety Building is defective and unreasonably dangerous because it contains high levels of PCBs. Functionally equal caulk not containing high levels of PCBs could have been manufactured by Courtaulds Aerospace.

102. Courtaulds Aerospace's sale of defective PCB containing caulk is a proximate cause of plaintiffs' injuries.

103. Courtaulds Aerospace provided no warning to plaintiffs that its caulk contained high levels of PCBs or that its caulk could be hazardous to human health.

104. Courtaulds Aerospace's failure to warn was a proximate cause of plaintiffs' injuries.

WHEREFORE, plaintiffs pray that:

A. judgment be entered against Courtaulds Aerospace for compensatory damages in an amount in excess of \$10,000;

B. plaintiffs recover their costs and disbursements of this suit; and

C. the Court grant such other and further relief as it deems just and proper.

COUNT IX - BREACH OF IMPLIED WARRANTIES - COURTAULDS AEROSPACE

105. Paragraphs 1 through 104 are incorporated herein by reference.

106. Courtaulds Aerospace impliedly warranted that its caulk sold to DGS was of good and merchantable quality.

107. Courtaulds Aerospace had not disclaimed its implied warranties before DGS purchased its products.

108. Courtaulds Aerospace breached its implied warranties by the sale to DGS of carcinogenic and otherwise hazardous products.

109. Courtaulds Aerospace's breach of its implied warranties has harmed DGS.

110. DGS has given Courtaulds Aerospace timely and adequate notice of the breach of its implied warranties.

WHEREFORE, DGS prays that:

A. judgment be entered against Courtaulds Aerospace for compensatory damages in an amount in excess of \$10,000;

B. DGS recover its costs and disbursements of this suit; and

C. the Court grant such other and further relief as it deems just and proper.

COUNT X - STRICT LIABILITY OF CHEMREX

111. Paragraphs 1 through 110 are incorporated herein by reference.

112. ChemRex is in the business of selling and did sell caulk used in the Transportation and Safety Building.

113. ChemRex's caulk was installed in the Transportation and Safety Building without substantial change in the condition in which it left the control of ChemRex.

114. ChemRex's caulk in the Transportation and Safety Building is defective and unreasonably dangerous because it contains high levels of PCBs. Functionally equal caulk not containing high levels of PCBs could have been manufactured by ChemRex.

115. Some of ChemRex's caulk was manufactured and installed in the Transportation and Safety Building in the 1980's. This was after the use of PCBs in all but a few products, not including caulk, was prohibited by the EPA.

116. ChemRex's sale of defective PCB containing caulk is a proximate cause of plaintiffs' injuries.

117. ChemRex provided no warning to plaintiffs that its caulk contained high levels of PCBs or that its caulk could be hazardous to human health.

118. ChemRex's failure to warn was a proximate cause of plaintiffs' injuries.

WHEREFORE, plaintiffs pray that:

A. judgment be entered against ChemRex for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against ChemRex for punitive damages in an amount which is fair and just under the circumstances and which will

sufficiently punish it and discourage repetition of its outrageous, reckless, willful and wanton conduct;

- C. plaintiffs recover their costs and disbursements of this suit; and
- D. the Court grant such other and further relief as it deems just and proper.

COUNT XI - NEGLIGENCE OF CHEMREX

119. Paragraphs 1 through 118 are incorporated herein by reference.

120. At all times material, ChemRex knew, or with the exercise of reasonable care should have known, that its caulk manufactured or sold after 1980 would be used in facilities such as the Transportation and Safety Building.

121. At all times material, ChemRex knew, or with the exercise of reasonable care should have known, that its caulk manufactured or sold after 1980 would contaminate and thereby cause harm to the Transportation and Safety Building.

122. ChemRex owed a duty to plaintiffs, and breached that duty, when it failed to adequately test the safety of its caulk. As a result, ChemRex supplied defective products which have contaminated the Transportation and Safety Building with a hazardous substance.

123. ChemRex owed a duty to plaintiffs, and breached that duty, when it failed to recommend the removal of its caulk from the market and to undertake the responsibility of locating, removing, and replacing the caulk in the Transportation and Safety

Building, although it knew or should have known that the presence of PCBs in its product would contaminate the building.

124. In breaching its duties as set forth above, ChemRex acted wilfully, wantonly, and outrageously.

125. ChemRex's actions and its failure to act when it had a duty to do so were proximate causes of plaintiffs' injuries.

WHEREFORE, plaintiffs pray that:

A. judgment be entered against ChemRex for compensatory damages in an amount in excess of \$10,000;

B. judgment be entered against ChemRex for punitive damages in an amount which is fair and just under the circumstances and which will sufficiently punish it and discourage repetition of its outrageous, reckless, willful and wanton conduct;

C. plaintiffs recover their costs and disbursements of this suit; and

D. the Court grant such other and further relief as it deems just and proper.

COUNT XII - BREACH OF IMPLIED WARRANTIES - CHEMREX

126. Paragraphs 1 through 125 are incorporated herein by reference.

127. ChemRex impliedly warranted that its caulk sold to DGS was of good and merchantable quality.

128. ChemRex had not disclaimed its implied warranties before DGS purchased its products.

129. ChemRex breached its implied warranties by the sale to DGS of carcinogenic and otherwise hazardous products.

130. ChemRex's breach of its implied warranties has harmed DGS.

131. DGS has given ChemRex timely and adequate notice of the breach of its implied warranties.

WHEREFORE, DGS prays that:

- A. judgment be entered against ChemRex for compensatory damages in an amount in excess of \$10,000;
- B. DGS recover its costs and disbursements of this suit; and
- C. the Court grant such other and further relief as it deems just and proper.

COUNT XIII - STRICT LIABILITY OF PHILIPS ELECTRONICS NORTH AMERICA CORP. AND/OR ADVANCE TRANSFORMER COMPANY

132. Paragraphs 1 through 131 are incorporated herein by reference.

133. Philips Electronics North America Corporation, through its subsidiary Advance Transformer Company, was in the business of selling and did sell ballasts used in the Transportation and Safety Building.

134. Advance Transformer Company's ballasts were installed in the Transportation and Safety Building without substantial change in the condition in which they left the control of Advance Transformer Company.

135. Advance Transformer Company's ballasts in the Transportation and Safety Building are defective and unreasonably dangerous because they contain high levels of PCBs. Functionally equal ballasts not containing high levels of PCBs could have been manufactured by Advance Transformer Company.

136. Advance Transformer Company's sale of defective PCB containing ballasts is a proximate cause of plaintiffs' injuries.

137. Neither Philips Electronics North America Corporation nor Advance Transformer Company provided warning to plaintiffs that their ballasts contained high levels of PCBs or that their ballasts could be hazardous to human health.

138. The failure to warn of Philips Electronics North America Corporation or Advance Transformer Company was a proximate cause of plaintiffs' injuries.

WHEREFORE, plaintiffs pray that:

- A. judgment be entered against Philips Electronics North America Corporation and/or Advance Transformer Company for compensatory damages in an amount in excess of \$10,000;
- B. plaintiffs recover their costs and disbursements of this suit; and
- C. the Court grant such other and further relief as it deems just and proper.

**COUNT XIV - BREACH OF IMPLIED WARRANTIES - PHILIPS ELECTRONICS
NORTH AMERICA CORP. AND/OR ADVANCE TRANSFORMER COMPANY**

139. Paragraphs 1 through 138 are incorporated herein by reference.

140. Advance Transformer Company impliedly warranted that its ballasts sold to DGS were of good and merchantable quality.

141. Advance Transformer Company had not disclaimed its implied warranties before DGS purchased its products.

142. Advance Transformer Company breached its implied warranties by the sale to DGS of carcinogenic and otherwise hazardous products.

143. Advance Transformer Company's breach of its implied warranties has harmed DGS.

144. DGS has given Philips Electronics North America Corporation and Advance Transformer Company timely and adequate notice of the breach of its implied warranties.

WHEREFORE, DGS prays that:

A. judgment be entered against Philips Electronics North America Corporation and/or Advance Transformer Company for compensatory damages in an amount in excess of \$10,000;

B. DGS recover its costs and disbursements of this suit; and

C. the Court grant such other and further relief as it deems just and proper.

COUNT XV - STRICT LIABILITY OF MONSANTO

145. Paragraphs 1 through 144 are incorporated herein by reference.

146. Monsanto was in the business of selling and did sell the PCBs which were incorporated into the duct, caulk, light ballasts, and fireproofing in the Transportation and Safety Building.

147. Monsanto's PCBs were installed in the Transportation and Safety Building without substantial change in their condition.

148. Monsanto's PCBs as used in the duct, caulk, light ballasts, and fireproofing of the Transportation and Safety Building are defective and unreasonably dangerous to plaintiffs, their employees, tenants, and other persons using the building.

149. Monsanto's sale of PCBs for use in duct, caulk, light ballasts, and fireproofing in the Transportation and Safety Building is a proximate cause of plaintiffs' injuries.

WHEREFORE, plaintiffs pray that:

- A. judgment be entered against Monsanto for compensatory damages in an amount in excess of \$10,000;
- B. plaintiffs recover their costs and disbursements of this suit; and
- C. the Court grant such other and further relief as it deems just and proper.

COUNT XVI - BREACH OF IMPLIED WARRANTIES - MONSANTO

150. Paragraphs 1 through 149 are incorporated herein by reference.

151. Monsanto impliedly warranted that its PCBs incorporated into duct, caulk, light ballasts, and fireproofing sold to DGS were of good and merchantable quality.

152. Monsanto had not disclaimed its implied warranties before DGS purchased the products which contained Monsanto's PCBs.

153. Monsanto breached its implied warranties by the sale of carcinogenic or otherwise hazardous PCBs to be used in products purchased by DGS.

154. Monsanto's breach of its implied warranties has harmed DGS.

155. DGS has given Monsanto timely and adequate notice of the breach of its implied warranties.

WHEREFORE, DGS prays that:

A. judgment be entered against Monsanto for compensatory damages in an amount in excess of \$10,000;

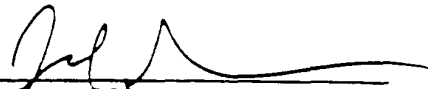
B. DGS recover its costs and disbursements of this suit; and

C. the Court grant such other and further relief as it deems just and proper.

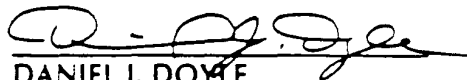
Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY:


JOEL M. RESSLER
Senior Deputy Attorney General
I.D. No. 28625

BY:


DANIEL J. DOYLE
Senior Deputy Attorney General
I.D. No. 54855

JOHN G. KNORR, III
Chief Deputy Attorney General
Chief, Litigation Section

Office of Attorney General
Litigation Section
15th Fl., Strawberry Square
Harrisburg, PA 17120
(717) 783-1471

DATES: February 7, 1997

VERIFICATION

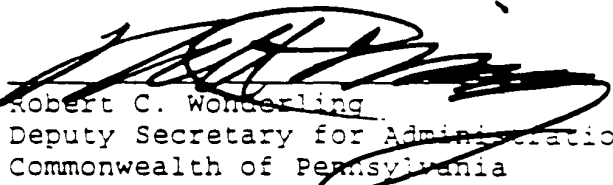
I, Merle H. Ryan, verify that I am Deputy Secretary for Public Works of the Department of General Services, that I am authorized to make this verification on its behalf and that the facts set forth in the foregoing Amended Complaint are true upon my personal knowledge, information, and belief. I understand that my statements are made subject to 18 Pa. C.S. Section 4904 providing for criminal penalties for unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Merle H. Ryan", is written over a solid horizontal line.

Merle H. Ryan
Deputy Secretary for Public Works
Department of General Services

VERIFICATION

I, Robert C. Wonderling, Deputy Secretary for Administration, Commonwealth of Pennsylvania, Department of Transportation, do hereby state that I read the foregoing Amended Complaint and that the facts set forth therein are true and correct, to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.


Robert C. Wonderling
Deputy Secretary for Administration
Commonwealth of Pennsylvania
Department of Transportation

Dated: 2-2-97

VERIFICATION

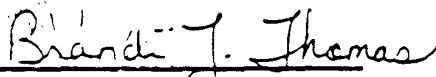
COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF DAUPHIN :

I, G. J. GILLERT, Executive Assistant to the Executive Director of the Pennsylvania Public Utility Commission, being first duly sworn, hereby state that I have read the foregoing amendment complaint and believe it to be true and correct to the best of my knowledge, information, and belief.



G. J. GILLERT

Sworn to and subscribed
before me this 7th day
of February, 1997.


NOTARY PUBLIC

Notarial Seal
Brandi L. Thomas, Notary Public
Swatara Twp., Dauphin County
My Commission Expires Sept. 22, 1997
Member, Pennsylvania Association of Notaries

VERIFICATION

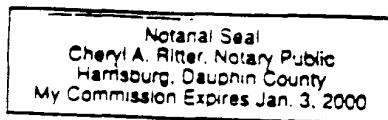
COMMONWEALTH OF PENNSYLVANIA :
 :
 : SS
COUNTY OF DAUPHIN :

I, **Mark L. Goodwin**, Chief Counsel of the Pennsylvania Emergency Management Agency, being first duly sworn, hereby state that I have read the foregoing Amended Complaint and believe it to be true and correct to the best of my knowledge, information, and belief.

Mark L. Goodwin
MARK L. GOODWIN

Sworn to and subscribed
before me this 7th day
of February, 1997.

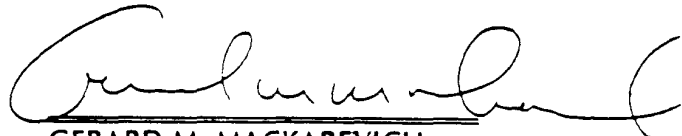
Charles A. Ritt
NOTARY PUBLIC



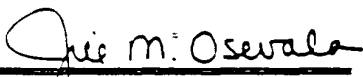
VERIFICATION

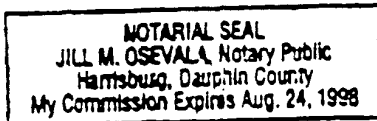
COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF DAUPHIN :

I, Gerard M. Mackarevich, Deputy Chief Counsel for the Department of State,
being first duly sworn, hereby state that I have read the foregoing Amended Complaint and
believe it to be true and correct to the best of my knowledge, information, and belief.


GERARD M. MACKAREVICH

Sworn to and subscribed
before me this 7th day
of February, 1997.


NOTARY PUBLIC



CERTIFICATE OF SERVICE

I, **DANIEL J. DOYLE**, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on February 7, 1997, I caused to be served a copy of the foregoing document entitled **AMENDED COMPLAINT**, by serving same as follows:

VIA FIRST CLASS MAIL:

**William J. O'Brien, Esquire
James J. Rohn, Esquire
John A. Guernsey, Esquire
CONRAD O'BRIEN GELLMAN
& ROHN, P.C.
1515 Market Street, 16th Floor
Philadelphia, PA 19102**

**Lynn Esposito Marshall, Esquire
Senior Counsel
NORTH AMERICAN PHILLIPS CORP.
P.O. Box 6800
Somerset, NJ 08873
(Counsel for Philips Electronics North
America Corporation and Advance
Transformer Company)**

**Miles A. Jellinek, Esquire
COZEN & O'CONNOR
The Atrium
1900 Market Street
Philadelphia, PA 19103**

**Sandra O. Scherer, Esquire
General Counsel
CHEMREX, INC.
3033 South 128th Street
New Berlin, WI 53151-4071
(Counsel for ChemRex, Inc.)**

**Frederick B. Tedford, Esquire
James M. Roux, Esquire
DANAHER, TEDFORD, LAGNESE
& NEAL, P.C.
Capitol Place
21 Oak Street
Hartford, CT 06101**

VIA PROCESS SERVER:

Gian-Paolo Caccini
Chairman of the Board
CERTAINTED CORPORATION
Box/Drawer 860
750 E. Swedesford Road
Valley Forge, PA 19482

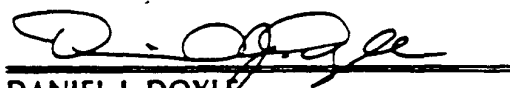
Mr. Reinhard Rutz, President
CHEMREX, INC.
889 Valley Park Drive
Shakopee, MN 55379

Mr. Ted Clark
Chief Executive Officer
COURTAULDS AEROSPACE, INC.
Box/Drawer 1800
5454 San Fernando Rd.
Glendale, CA 91203

Mr. Jack Briody, President
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Mr. Robert B. Shapiro
Chairman of the Board and
Chief Executive Officer
MONSANTO COMPANY
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Mr. Stephen C. Tumminello
Chief Executive Officer
PHILIPS ELECTRONICS NORTH
AMERICA CORPORATION
100 East 42nd Street
New York City, NY 10017



DANIEL J. DOYLE
Senior Deputy Attorney General
I.D. No. 54855