

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

Plaintiff,

v.

THE DOW CHEMICAL COMPANY
THE B.F. GOODRICH COMPANY,
UNION CARBIDE COMPANY and
CONTINENTAL OIL COMPANY,

Defendants.

CIVIL ACTION NO. 89-30201-F

BBO #064415

RESPONSES OF DEFENDANT
THE DOW CHEMICAL COMPANY TO
PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant The Dow Chemical Company ("Dow") pursuant to Rule 34 of the Federal Rules of Civil Procedure, hereby responds to plaintiff's request for production of documents and makes the following objections to each and every document request as if fully set forth at length in the specific responses thereto.

GENERAL OBJECTIONS

1. Dow objects to plaintiff's designation of "the product" as "vinyl chloride monomer" ("VCM") and "polyvinyl chloride" ("PVC") on the basis that plaintiff's complaint makes no allegation that Dow manufactured and/or supplied "PVC" which caused or contributed to the decedent's illness and subsequent

death. Moreover, PVC and VCM are separate and distinct products; they are not interchangeable. Accordingly, plaintiff's definition of "the product" is overly broad and Dow objects to providing any information regarding PVC. Accordingly, for the foregoing reasons, Dow objects to each and every document request which seeks information about "the product" and will respond as to VCM only.

2. Dow objects to the "Definitions" section of plaintiff's document request because it imposes upon Dow the duty to provide information which is not required by the Federal Rules of Civil Procedure. Additionally, with regard to documents that have been "destroyed," plaintiff's demand that defendant "identify the date of destruction, the person responsible for ordering destruction, and the purpose for destruction" obviates the obligation imposed upon plaintiff under Rule 34(b) to set forth the items to be inspected and provide a description of each item and category with reasonable particularity. Plaintiff has inappropriately shifted the burden to defendant to provide responses which are simply not required by Rule 34 and which inappropriately appear to call for information more in the form of interrogatory responses. Defendant will respond only in the manner required by Rule 34.

Moreover, Dow objects to plaintiff's definitions to the extent that they alter the common sense and usual meaning of the words or phrases stated therein. Further, Dow objects to

plaintiff's definition of "defendant" because it is extremely broad and inappropriately includes numerous individuals who clearly cannot be construed in any manner as the defendant. Defendant Dow will respond only on its own behalf.

3. Dow objects to plaintiff's requests to the extent that they seek disclosure of confidential, proprietary or commercially sensitive trade secret information.

4. Dow objects to plaintiff's requests to the extent that they seek information which is protected by the attorney-client privilege, attorney work product (the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation) or other trial preparation materials protected from discovery under the Federal Rules of Civil Procedure. Dow also objects to plaintiff's requests to the extent that they require defendant to state each privilege or limitation claimed, provide a written statement as to the existence of the information, document or communication and include a summary of all facts and circumstances upon which such claim is based. Such a requirement is beyond the scope of the Federal Rules of Civil Procedure and is therefore objected to.

5. Dow objects to plaintiff's requests to the extent that they seek information already known to plaintiff, or available to plaintiff from sources other than Dow on the grounds that such

requests are overly broad and unduly burdensome. Specifically, and without limiting the foregoing, Dow objects to plaintiff's requests to the extent that such requests call for information contained in:

(a) Publicly available scientific or medical journals, books, treatises, textbooks and other compilations;

(b) Publicly available records or files maintained by governmental offices or agencies; and

(c) Documents or records within the plaintiff's possession or control.

6. Dow objects to plaintiff's document requests insofar as they seek documents from 1947 to the present (or to the late 1970s) which is outside the time period during which the decedent was allegedly exposed to the product (1948-1974) and outside the time period during which Dow supplied VCM to Monsanto Chemical Company (1969-1972) (see Dow's response to plaintiff's interrogatory No. 3). Such requests are overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, Dow objects to the overall burdensome nature of plaintiff's requests. Because of the passage of time, it would be extremely burdensome and costly for defendant to identify and compile information which spans over a time period of 40 years.

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RESPONSES

Subject to and without waiving the foregoing objections, Dow responds to plaintiff's request for production of documents as follows:

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:

Dow objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, irrelevant to the issues in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. The request constitutes an enormous fishing expedition into every claim, injury or illness of which Dow has received notice concerning the product (construed by Dow to mean VCM) from 1948 to the present. The request is not limited to the type of alleged illness that occurred in this case (angiosarcoma of the liver), nor is it limited to any reasonable time period and, at the very least, the request seeks documents for time periods beyond the decedent's alleged exposure period (1948-1974), and beyond the time Dow supplied VCM to Monsanto Chemical Company (1969-1972), which information is also

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irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Dow further objects to this request to the extent that such documents are protected from discovery by the attorney-client privilege and/or the work product immunity. Moreover, due to the passage of time, some or all of the requested documents are no longer available.

Subject to and without waiving these objections, and limiting this response solely to documents which constitute notices of instances of alleged angiosarcoma of the liver resulting from VCM exposure, which notices were received by Dow within the decedent's alleged exposure period (1948-1974), Dow has no such documents in its possession, custody or control.

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:

Dow objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited by any reasonable time period and, at the very least, it seeks documents for time periods beyond the

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decendent's alleged exposure period (1948-1974) and beyond the time Dow supplied VCM to Monsanto Chemical Company (1969-1972). Dow further objects to this request as seeking disclosure of proprietary and commercially sensitive trade secret information. Moreover, the request does not specify the particular areas of "testing, examination or chemical analysis" to which the request is reasonably related and, as such, is vague, ambiguous, overly broad, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving said objections, and limiting this response to published studies within the exposure time limitations stated above (1948-1974), please refer to Exhibit "A" which contains published studies and references to European toxicity studies pertaining to VCM toxicity. See also Dow's response to plaintiff's interrogatory No. 4.

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:

Dow objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request to the extent that it is designed to harass answering defendant and is overly broad, unduly burdensome, irrelevant to the issues in this lawsuit and not reasonably calculated to lead to the discovery of

admissible evidence. The request is not limited by any reasonable time period and, at the very least, it seeks documents beyond the decedent's alleged exposure period (1948-1974) and beyond the time when Dow supplied VCM to Monsanto Chemical Company (1969-1972). Moreover, the identity and the names of all of the individuals as described above would be an extremely burdensome and costly task, not reasonably calculated to, nor likely to lead to the discovery of admissible evidence. Further, as more fully stated and objected to in response to Request No. 2, this request fails to specify the areas of "testing, examination or chemical analysis" and is therefore objectionable.

Subject to and without waiving said objections, and limiting this response as stated in Dow's response to plaintiff's document request No. 2, due to the passage of time and unavailability of records, it is impossible to identify all persons involved although principal authors of the studies are included in Exhibit "A".

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:

Dow objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request to the extent

that it seeks documents concerning warnings beyond the decedent's alleged exposure period (1948-1974) and beyond the time period when Dow supplied VCM to Monsanto Chemical Company (1969-1972). Dow further objects to this request on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, irrelevant to the issues in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Further, due to the passage of time and unavailability of records, it is impossible to produce "all documents" that were in existence during the relevant time period.

Subject to and without waiving said objections, and limiting this response to information regarding VCM made available to Dow's customers up until the time period when VCM supplied by Dow to Monsanto Chemical Company ended (1972), attached as Exhibit "B" are Material Safety Data Sheets, product brochures and labels for the time period during which Monsanto purchased VCM from Dow. See also Dow's response to plaintiff's interrogatory Nos. 5, 6, and 7.

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:

Objection. Please refer to Dow's response to Request No. 4.

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:

Dow objects to Plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request to the extent that it is designed to harass answering defendant and is overly broad, unduly burdensome, unlimited in time, vague and ambiguous as written, irrelevant to the issues in this lawsuit, and not reasonably calculated to lead to the discovery of admissible evidence. The request seeks all documents referring to any communication to the agencies listed therein. It is not limited by any reasonable time period and, at the very least, it is not limited to the alleged exposure period in this case (1948-1974) or the time when Dow supplied VCM to Monsanto Chemical Company (1969-1972). Further, the request is not reasonably related to communications with the agencies named concerning the dangers or safety hazards alleged in this case, and it is therefore overly broad. To require Dow to produce all of the documents requested concerning the product (construed by Dow to be VCM) would be an enormous fishing expedition which would be extremely costly and purely designed to harass answering defendant.

Subject to and without waiving said objections, and limiting this response to written communications about angiosarcoma of the liver during the decedent's alleged exposure period (1948-1974), Dow responds that it has no such documents in its possession, custody or control.

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

RESPONSE:

Dow objects to Plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request to the extent that it is designed to harass answering defendant and is overly broad, unduly burdensome, unlimited in time, vague and ambiguous as written, irrelevant to the issues in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, the request is not limited to any reasonable time period and, at the very least, it is not limited to the decedent's alleged exposure period (1948-1974) or to the time period Dow supplied VCM to Monsanto Chemical Company (1969-1972). Dow further objects to the extent that the request could be construed to require production of documents not created by Dow. Subject to and without waiving said objections, please refer to Exhibit "B".

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 purposes of testifying concerning the plaintiff's claim, or for the purpose of supporting the defendant's defense without the intention of testifying.

RESPONSE:

Dow objects to this request to the extent that it requests expert discovery which is beyond the scope of Rule 26(b)(4) of the Federal Rules of Civil Procedure. Plaintiff is not entitled to expert discovery related to an expert who has been retained or specially employed by Dow in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. Moreover, plaintiff's request for all statements from experts whom Dow intends to present at trial is beyond the scope of expert discovery pursuant to Fed. R. Civ. P. 26(b)(4)(A)(i). Further, the request seeks trial preparation materials which are protected from discovery pursuant to Rule 26(b)(3). Subject to and without waiving said objection, Dow answers that it has not determined which, if any, experts it intends to call at trial. Please refer to Dow's response to Interrogatory No. 11.

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:

Dow objects to providing copies of insurance policies on the grounds that such a request is overly broad and unduly

burdensome. Subject to and without waiving said objection, a list of those policies in effect during the relevant time period (1969-1972) is attached as Exhibit "E".

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

RESPONSE:

Dow objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request to the extent that it is overly broad and unduly burdensome, vague and ambiguous, irrelevant to the issues in this lawsuit and requires the production of voluminous documents which are not reasonably calculated to lead to the discovery of admissible evidence. The "design," "assembly," "composition" and "chemical makeup" of VCM are not in issue in this case. This request, which is not limited to any reasonable time period, calls for an enormous fishing expedition and would be unduly burdensome and costly to Dow. Dow further objects to this request to the extent that it seeks proprietary and commercially sensitive trade secret information.

Subject to and without waiving said objections, please refer to the Material Safety Data Sheets attached as part of Exhibit "B".

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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:

Dow objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request on the grounds that it is overly broad, unduly burdensome, unlimited in time, vague and ambiguous, irrelevant to the issues in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Dow further objects to the extent that this request seeks proprietary and commercially sensitive trade/secret information.

Subject to and without waiving said objections, please refer to Exhibits "B" and "D" attached hereto.

12. All documents of every kind, nature and description related to the sale, delivery or furnishing of the product to Monsanto Chemical, 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:

Dow objects to Plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request on the grounds

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that it seeks information beyond the decedent's alleged exposure period (1948-1974) and beyond the time period Dow supplied VCM to Monsanto Chemical Company (1969-1972), and it is therefore overly broad and unduly burdensome. Subject to and without waiving said objections, Dow responds that due to the passage of time, no such documents exist for the time period Dow supplied VCM to Monsanto so far as Dow can presently determine other than those documents attached as Exhibit "B.". Please also refer to Dow's response to Interrogatory No. 3.

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:

Dow objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request because it is overly broad and unduly burdensome given the lengthy period of time covered by the request, including that it exceeds the time when Dow supplied VCM to Monsanto Chemical Company (1969-1972). Additionally, it would be less burdensome and less costly for plaintiff to obtain the information from the agencies involved. Plaintiff can obtain such information with equal facility as Dow. Due to the passage of time and unavailability of records, it is impossible to produce "all documents" that were in existence during the relevant time period. Furthermore, to the

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best of Dow's present knowledge, Dow did not ship VCM to Monsanto (see Dow's response to plaintiff's Interrogatory No. 3). Subject to and without waiving these objections, Dow responds that to the best of Dow's knowledge and belief, Dow has no such documents in its possession, custody or control.

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, Union Carbide Company, B. F. Goodrich Company, Continental Oil Company and Monsanto Chemical Company, from 1947 to 1979 regarding the product.

RESPONSE:

Dow objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. This request is further objected to as being overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The request seeks all oral or written communications about VCM, regardless of their subject matter, and it is therefore not limited to the issues in this case nor is it limited to the decedent's alleged exposure period (1947-1974) or the time period Dow supplied VCM to Monsanto Chemical Company (1969-1972). To require Dow to produce all documents between it and the entities listed in the request would be an enormous and costly task and is purely designed to harass Dow and constitute a fishing expedition by plaintiff. See also Dow's objection to plaintiff's Request No. 6. Further, due to the passage of time and unavailability of records, it is

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impossible to produce "all documents" that may have been in existence during the relevant time period.

Subject to and without waiving said objections, and limiting this response to written communications concerning VCM toxicity during the decedent's alleged exposure period (1948-1974), Dow responds as follows: please refer to the Manufacturing Chemists Association Vinyl Chloride Chronology attached as Exhibit "C," and the documents attached as Exhibit "F".

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 Plastics Industry, Inc. and any of its member companies, including but not limited to, Union Carbide Company, the B.F. Goodrich Company, Continental Oil Company and Monsanto Chemical Company, from 1947 to 1979 regarding the product.

RESPONSE:

Objection. See Dow's response to plaintiff's request No. 14. Subject to and without waiving said objections, and limiting this response to communications concerning VCM toxicity during the decedent's alleged exposure period (1948-1974), Dow has no such documents in its possession, custody or control, as documents for the relevant time period no longer exist. Please refer to Dow's response to plaintiff's interrogatory No. 18.

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.

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RESPONSE:

Objection. See Dow's response to plaintiff's request No. 14.

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:

Objection. See Dow's response to plaintiff's request Nos. 14 and 15, and Dow's response to plaintiff's interrogatory No. 18.

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

RESPONSE:

Objection. See Dow's response to plaintiff's request No. 14.

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:

Dow objects to Plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, unlimited in time, irrelevant to

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the issues in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited by any reasonable time period and, at the very least, it is not limited to the decedent's alleged exposure period (1948-1974) or to the period Dow supplied VCM to Monsanto Chemical Company (1969-1972). Further, the request is not limited to "investigations, tests or studies regarding the health effects of exposure" to VCM which are substantially similar to the health effects alleged in this case. Dow further objects on the basis that this request seeks disclosure of proprietary and commercially sensitive trade secret information. See also Dow's response to plaintiff's request No. 2.

Subject to and without waiving said objections, and limiting this response to investigations, tests or studies of the health effects of exposure to VCM published during the decedent's alleged exposure period (1948-1974), Dow responds by referring plaintiff to Exhibit "A".

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:

Dow objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of Dow's General Objection. Dow further objects to this request on the grounds that it is overly

broad, unduly burdensome, vague, unlimited in time, irrelevant to the issues in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Further, the information requested is equally available to plaintiff. See also Dow's response to plaintiff's request No. 6. Subject to and without waiving said objections, and limiting this response to documents generated within the decedent's alleged exposure period (1948-1974), please refer to the documents attached as Exhibit "D".

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

RESPONSE:

Objection. See Dow's response to plaintiff's Request No. 2.

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

RESPONSE:

Dow objects to plaintiff's use of the term "product" for the reasons set forth in paragraph 1 of defendant's General Objections. Dow further objects to this request on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited to any reasonable time period and, at the very least, it is not limited to the alleged exposure period in this case

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(1948-1974) and seeks information outside the period when Dow supplied VCM to Monsanto Chemical Company (1969-1972).

Subject to and without waiving said objections, and limiting this response to information regarding VCM made available to Dow's customers up until the time period when VCM supplied by Dow to Monsanto Chemical Company ended (1972), see the documents attached as Exhibit "B".

23. All documents relating to notification given by the defendant to Monsanto Chemical Company from 1947 to 1979 regarding danger and/or hazards in use of or exposure to the product.

RESPONSE:

Dow objects to plaintiff's use of the term "the product" for the reasons set forth in paragraph 1 of Dow's General Objections. Dow further objects to this request on the grounds that it is designed to harass answering defendant and is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited to any reasonable time period and, at the very least, it is not limited to the alleged exposure period in this case (1948-1974) and it is beyond the period when Dow supplied VCM to Monsanto Chemical Company (1969-1972). Further, due to the passage of time, it is impossible to produce "all documents" for the relevant time period. Also, due to the passage of time, Dow has no records of what was provided to sophisticated companies

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such as Monsanto, especially since Monsanto had manufactured and used VCM for numerous years prior to purchasing any VCM from Dow.

Subject to and without waiving these objections, and limiting this response to information regarding VCM which might have been given to Monsanto Chemical Company between 1969 and 1972, see the documents applicable to said time period attached as Exhibit "B". Please also refer to Dow's response to interrogatory Nos. 5 and 7.

24. All documents relating to danger or warning instructions as to the use of the product which were furnished to the defendant Monsanto Chemical Company between the years 1947 and 1979.

RESPONSE:

Dow objects to plaintiff's use of the term "the product" for the reasons set forth in paragraph 1 of Dow's General Objections. Dow further objects to this request on the grounds that it is designed to harass answering defendant and is vague, ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited to any reasonable time period and, at the very least, it is not limited to the alleged exposure period in this case (1948-1974), and seeks information outside the time period Dow supplied VCM to Monsanto Chemical Company (1969-1972).

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Subject to and without waiving said objections, and limiting this response to instructions regarding VCM which might have been given to Monsanto Chemical Company between 1969 and 1972, please refer to Dow's response to plaintiff's request No. 23.

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

Dow objects to this request to the extent that it is designed to harass answering defendant and is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Dow further objects to this request to the extent that it is not limited to any reasonable time period and, at the very least, it is not limited to the alleged exposure period in this case (1948-1972) and seeks information outside the time period Dow supplied VCM to Monsanto Chemical Company (1969-1972). Dow objects to the phrases "complaints," or "other notices of injury," and "similar" in this context as vague and ambiguous in that they are not defined. Moreover, Dow objects to this request as seeking documents protected by the attorney-client privilege and work product immunity, respectively.

Subject to and without waiving said objections, and limiting this response solely to notices of instances of alleged

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angiosarcoma of the liver related to VCM exposure, received by Dow during the decedent's exposure period (1948-1974). Dow has no such documents in its possession, custody or control. See Dow's request No. 1.

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 and 1979.

RESPONSE:

Dow objects to plaintiff's use of the term "the product" for the reasons set forth in paragraph 1 of Dow's General Objections. Dow further objects to this request to the extent that it is overly broad, unduly burdensome, irrelevant to the issues in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence because, among other reasons, Dow did not transport VCM to Monsanto. Further, it is not limited to any reasonable time period and, at the very least, it is not limited to the alleged exposure period in this case (1948-1974) and seeks information outside the time period Dow supplied VCM to Monsanto Chemical Company (1969-1972). Dow further objects to this request to the extent that it seeks information relating to any product other than VCM manufactured by Dow (noting the request refers to "the products" rather than "the product"), or to the transport of VCM to locations other than Monsanto Chemical Company in Springfield, Massachusetts. Such documents are irrelevant to the issues in this case and are

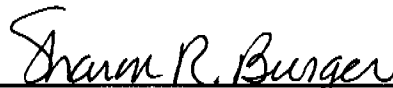
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not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving said objections, and limiting this response to communications regarding the "transport" of VCM to Monsanto Chemical Company for the relevant time period (1969-1972). Dow responds that to the best of Dow's present knowledge and due to the passage of time, documents of this nature are no longer available. Dow also refers plaintiff to Dow's response to Interrogatory No. 3.

THE DOW CHEMICAL COMPANY

By its attorney,



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Boston, Massachusetts 02110-2699
(617) 439-2000

CERTIFICATE OF SERVICE

I, Sharon R. Burger, hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record by mail on this date.



Sharon R. Burger

Dated: February 13, 1991

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