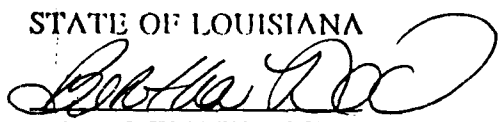


DANIEL J. ROSS, ET UX : 14TH JUDICIAL DISTRICT COURT
VS. NO. 90-4837 : PARISH OF CALCASIEU
CONOCO, INC., ET AL : STATE OF LOUISIANA
FILED: 5-21-93 : 
DEPUTY CLERK

5/21/93

PLAINTIFFS' SECOND SUPPLEMENTAL AND AMENDING PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now into Court through undersigned counsel comes, ELIZABETH ELAINE ROSS, DOUGLAS KURT ROSS AND ROBIN RENEE ROSS, hereinafter referred to as Plaintiff's beneficiaries, who wish to amend the Original Petition in the following respects:

By amending Paragraph "10" of Plaintiffs' petition to read as follows:

"10.

On information and belief, the following executive officers of Conoco, Inc., Conoco Chemicals and Continental Oil Company, and at and/or Continental Oil Company are, and at all times pertinent to this lawsuit were, domiciled in the States of Louisiana unless otherwise indicated:

- a. Paul Glover, Safety Superintendent, CONOCO, INC.
- b. Marvin Corwe, Safety Superintendent, CONOCO, INC.
- c. Ray Barber, Safety Superintendent, CONOCO, INC.
- d. Harry Martin, Safety Superintendent, CONOCO, INC.
- e. Bill Wilson, Safety Superintendent, CONOCO, INC.
- f. Luke Landry, Safety Inspector, CONOCO, INC.
- g. Ralph Carter, Safety Inspector, CONOCO, INC.
- h. Ed Romero, Safety Inspector, CONOCO, INC.
- i. John Lemire, Safety Inspector, CONOCO, INC.
- j. Bill Lewis, Safety Inspector, CONOCO, INC.
- k. Sydney Pitts, Safety Director, CONOCO, INC.
- l. Steve Ashby, Safety Director, CONOCO, INC.
- m. Jim Phoenix, Plant Manager, CONOCO, INC.

- n. Jack Jones, Plant Manager, CONOCO, INC.
- o. Maurice Clark, Plant Manager, CONOCO, INC.
- p. Jim Bateman, Plant Manager, CONOCO, INC.
- q. Robert Rutlilt, Plant Manager, CONOCO, INC.
- r. Bill Brown, Plant Manager, CONOCO, INC.
- s. Kenny Andre, Plant Manager, CONOCO, INC.
- t. George O'Brien, Plant Manager, CONOCO, INC.
- u. Walter Miller, Plant Manager, CONOCO, INC.
- v. Robert Lemkuhl, Plant Manager, CONOCO, INC, present domicile unknown.
- w. Leon Vernon, Plant Manager, CONOCO, INC.
- x. Bill Broddle, Senior Toxicologist, CONOCO, INC, former domicile in Oklahoma, believed to be domiciled in Texas.
- y. J. J. Chester, Medical Department, CONOCO, INC., present domicile unknown.
- z. Richard Conrad, Plant Manager, CONOCO, INC.
- aa. James DeBernardi, Plant Manager, CONOCO, INC.
- bb. Everett DeWhitt, Industrial Hygienist, CONOCO, INC., previous domicile in Oklahoma, believed to be domiciled in Delaware.
- cc. Dr. Jack Drumwright, Medical Department, CONOCO, INC.
- dd. Paul Fetzer, Chemist/"Industrial Hygienist", CONOCO, INC.
- ee. John Friend, Plant Manager, CONOCO, INC.
- ff. R. D. Gamblin, Vice President of Operations and plant manager, CONOCO, INC.
- gg. C. E. Gremillion, Safety Department, CONOCO, INC.
- hh. Tom Grumbles, Industrial Hygienist, CONOCO, INC., domiciled in Texas.
- ii. James Hall, Director of Industrial Hygiene, CONOCO, INC., domiciled in Texas
- jj. Michael Hayes, Safety Director, CONOCO, INC.
- kk. D. O. Popovac, Safety, CONOCO, INC.
- ll. Thomas Huffman, Plant Manager, CONOCO, INC.
- mm. Flynt Kennedy, Toxicologist, CONOCO, INC., previous domiciled in Oklahoma, present domicile in Pennsylvania.
- nn. Michell Malloly, Legal Department, CONOCO, INC., domiciled in Texas.

- oo. W. L. McClain, Legal Department, CONOCO, INC., domiciled in Texas.
- pp. George Shirley, Safety Director, CONOCO, INC.
- qq. Oren Steffy, M.D., Medical Department, CONOCO, INC., previous domiciled in Oklahoma, present domicile unknown.
- rr. Charles Whetstone, M.D., Medical Department, CONOCO, INC., present domicile unknown.
- ss. R. L. LeMbke, M.D., Medical Department, CONOCO, INC., previous domicile in Oklahoma, present domicile unknown.
- tt. Dave Kuhn, Environmental Manager, CONOCO, INC.
- uu. L. N. Vernon, CONOCO, INC., Saddle Brook, New Jersey.
- vv. Other executive officers with the same duties and negligence as alleged above, presently unknown but whose identities are subsequently discovered. Plaintiff will notify Defendants of their identities as they are determined."

II.

By amending paragraph "23" of Plaintiffs' Petition and the caption above it to read as follows:

"THEORIES OF RECOVERY BASED ON INTENTIONAL MISCONDUCT

23.

- A. Defendants, Conoco, Inc. (hereinafter sometimes referred to as "Conoco") and Vista Chemical Company, (hereinafter sometimes referred to as "Vista") including their executive officers (many of which remained with Vista after it purchased Conoco's V.C.M. plant in the early 1980's), have manufactured vinyl chloride at their Lake Charles facility and knowingly discharged it into the environment since approximately 1967. At all times relevant thereto, said defendants have been aware of the dangers inherent in the manufacture and use of vinyl chloride. Defendants possessed medical and scientific data, along with other knowledge, which clearly indicated that vinyl chloride and other related chemicals, including ethylene dichloride, was hazardous to the health and safety of its employees, including Daniel Ross, who were required to work with and around these chemicals.

B. Plaintiffs specifically allege that the Conoco Inc. and Vista Chemical, Inc. were aware of the following facts by at least the early 1970s:

1. That vinyl chloride is a multi-potential carcinogen; that is, a carcinogen which is capable of causing different types of cancer at different sites of the human body.
2. That the multi-potential carcinogenicity of vinyl chloride had been demonstrated in numerous animal toxicological studies and bioassays conducted under the auspices of European vinyl chloride manufacturers which these defendants promised to keep secret and did keep secret from our government, from Dan Ross, and others similarly situated and from the public at large.
3. That vinyl chloride had in fact already been found to be associated with cancer, including brain cancer, as well as other adverse health effects among workers employed in the vinyl industry, and even that vinyl chloride had caused brain cancer in Conoco's own employees at his Lake Charles facility, as early as 1972;
4. That the United States Governmental agencies regulating exposure of American workers (Dept. of Labor and O.S.H.A.) and the American public at large (E.P.A.; C.P.S.C., etc.) were completely unaware of the secret European studies demonstrating the association between exposure to vinyl chloride and the development of cancer.
5. That the information regarding the health effects of vinyl chloride which the defendants, individually and through their trade association, the Manufacturing Chemists Association, was furnishing on to our government on a more or less continuous basis was incomplete and deliberately misleading with regard to the state of their knowledge of the carcinogenic potential of vinyl chloride and that the government would be misled and lulled into inaction by their deliberate omission of any reference to the secret European animal studies.

6. That vinyl chloride was and had been reported in the toxicological and epidemiological literature to be a multi-potential carcinogen. These defendants were aware of such studies, reviewed such studies in detail and, indeed, had *secretly* (from its employees' perspective) conducted epidemiological studies of their own workers - including Mr. Ross himself. These studies demonstrated the statistically significant increased development of a wide variety of cancers in workers exposed to vinyl chloride in the vinyl industry for more than one year, including brain cancer;
7. That Mr. Ross and his co-workers had, without their knowledge, *themselves* been the subject of at least four major epidemiological studies of cancer in the vinyl industry which demonstrated significant associations between employment in the vinyl industry for as little as one year and the development of various forms of cancer, including brain cancer;
8. That Mr. Ross and the other employees of these defendants who were the subject of these secret industry-sponsored\conducted epidemiological studies were completely unaware, not only of the results of these studies, but even of the fact that they themselves had been used as "subjects" of such studies in the first place; Plaintiffs allege that virtually *none* of the unwitting subjects of these studies employed by Conoco or Vista, including Mr. Ross, was ever told the results of these studies. Indeed, on information and belief, at least as of the time Mr. Ross left Vista, *the very fact that such workers were even the subjects of such studies* has been scrupulously and fraudulently concealed from them!
9. That the information these defendants were providing to their employees, to the government and to the general public concerning the health risks associated with exposure to vinyl chloride was false, incomplete, intentionally and fraudulently misleading and cynically reassuring. In a concerted action to conceal to true facts from their employees, the

government and the general public, these defendants told their employees and the public, only enough about the link between vinyl chloride exposure and "cancer" to assuage any concerns which might arise from the mere use of the word in labels defendants were eventually forced by the government to place on some of their products (and then fraudulently removed from many of them). When Conoco's and Vista's employees were told anything, they generally told no more than that vinyl chloride had been reported to be associated an extremely rare form of liver cancer, angiosarcoma, due to the levels of exposure much higher than they were likely to encounter or have encountered and nothing more. Vista and Conoco know that this is untrue and incomplete and have known it since at least the early 1970's. Their employee and public educational efforts were in truth nothing more than deliberate misinformation campaigns conducted with the utterly fraudulent intent to defraud their employees, their customers, the government and the general public as the true nature and extent of the risk posed by the exposure to vinyl chloride.

10. That the information these defendants provided their employees and the general public with regard to extent and nature of their known (from the perspective of the defendants) exposure to the vinyl chloride and other carcinogenic chemicals was false, intentionally inaccurate, fraudulently misleading and cynically reassuring;
11. That the truth about the cancer risk of vinyl chloride and the truth about the nature and extent of their employees' (and the general public's) exposure to the vinyl chloride Defendants emitted into the air would be bad for their business in general and for their labor, governmental and public relations in particular;

- B. All of the foregoing knowledge was fraudulently withheld and concealed from Mr. Ross and his co-workers employed by Conoco and Vista, with the specific intent that they, the governmental and the public should be and

remain ignorant of the true facts regarding the carcinogenic chemicals those companies manufactured at Mr. Ross' worksite in Calcasieu Parish."

III.

By amending paragraph "24" of Plaintiffs' Petition and by adding the caption above it to read as follows:

"INTENTIONAL TORT OF FRAUDULENT MISREPRESENTATIONS CAUSING PHYSICAL HARM

24.

As the employer of Daniel Ross, Conoco and Vista had a duty to disclose and/or properly represent Daniel Ross's true medical condition, the true nature and extent of his exposures to vinyl chloride, the dangers associated with vinyl chloride and the true nature of the risks associated with working in a work place polluted with vinyl chloride and other carcinogenic chemicals."

IV.

By adding paragraphs "24a", "24b", "24c", and "24d", to Plaintiffs' Petition which read as follows:

"24a.

Yet, defendants intentionally did not disclose to Daniel Ross any or all of the foregoing information and/or fraudulently misrepresented any or all of the foregoing information to Mr. Ross.

24b.

Because of the fraudulent misrepresentations and/or non-disclosure, Daniel Ross justifiably went to work and relied on the misconception that he was not being harmed by exposure to the carcinogens his employers manufactured.

24c.

As a result of Daniel Ross's justifiable reliance upon defendants' non-disclosure and/or fraudulent misrepresentation, Daniel Ross contracted brain cancer and other medical conditions associated with his exposure to vinyl chloride.

24d.

The foregoing described deceit makes defendants liable to plaintiffs for all physical harm and economic loss caused to plaintiffs as a result of Daniel Ross's exposure to vinyl chloride."

By amending paragraphs "25", "25a", and "25b", of Plaintiff's Petition and by adding the caption above it to read as follows:

"INTENTIONAL TORT OF BATTERY

25.

As described in the foregoing paragraphs, Conoco and Vista deliberately failed to enlighten, educate, or share its knowledge with its employees, including Daniel Ross, regarding the dangerous propensities of vinyl chloride. Thus, Daniel Ross was unaware of the true nature and extent of his industrial exposure to vinyl chloride and the dangerous propensities of vinyl chloride; he was not aware of the ill-health effects which were the anticipated (from his employers' point of view) result of their employees routine work place exposure to vinyl chloride. (Indeed these had been demonstrated in secret epidemiological studies which *included Daniel Ross* at least by 1974). Therefore, although Daniel Ross went to work voluntarily, he was unaware of the potential danger of his exposure to vinyl chloride, the danger of which defendants were fully aware, apprised and updated on a near weekly basis. Conoco kept this secret from Daniel Ross. Thus, he did not voluntarily subject himself to the dangers and ill-health problems associated with his exposure to vinyl chloride.

25a.

Thus, these defendants intentionally exposed Daniel Ross to vinyl chloride without Daniel Ross's consent. Any consent to work by Daniel Ross was vitiated by defendants' concealment of scientific, medical, and other data, indicating the dangerous propensities of vinyl chloride and the true *nature* and *extent* of his occupational exposure to vinyl chloride. Such unconsented exposure to the multi-potential carcinogen vinyl chloride constituted an intentional infliction of harmful and/or offensive contact to the person of Daniel Ross' without his consent, thereby constituting the intentional tort of battery.

25b.

As a result of the aforementioned fraudulent battery, defendants are liable unto plaintiffs for all damages foreseen and unforeseen suffered by Daniel Ross and plaintiffs, including Daniel Ross's brain cancer and other damages pleaded herein, as a result of his exposure to vinyl chloride."

VI.

By amending Plaintiffs' Petition to delete paragraphs "25c-f."

VII.

By amending paragraph "26" of Plaintiff's Petition and by adding the caption above it to read as follows:

"OTHER INTENTIONAL ACTS

26.

In addition to fraudulent misrepresentations causing physical harm and battery, Conoco and Vista committed the following other intentional acts which caused Daniel Ross to suffer brain cancer and other ill-health effects associated with exposure to vinyl chloride and/or other carcinogens manufactured by his employers:

- A. Intentionally failing to provide necessary protection to Daniel Ross and others similarly situated;
- B. Intentionally failing to provide to plaintiffs and others similarly situated proper safety equipment and proper industrial hygiene and medical monitoring and controls;
- C. Intentionally failing to provide clean, respirable air and proper ventilation to Mr. Ross and others similarly situated;
- D. Intentionally failing to provide proper medical monitoring and medical information to Daniel Ross;
- E. Intentionally failing to adequately and accurately monitor the extent of their discharge of vinyl chloride into the work place;
- F. Intentionally failing to warn Daniel Ross and other workers of the dangers associated with vinyl chloride and to apprise them of the results of toxicological studies of animals and epidemiological studies of themselves and other workers similarly situated.;
- G. Intentionally inducing Daniel Ross and other workers to work in a work place polluted with vinyl chloride and other carcinogenic chemicals;
- H. Intentionally failing to keep vinyl chloride emissions into the work place at safe levels;

- I. Intentionally misleading Mr. Ross and other workers as to the nature, extent of the likely and potential effects of their occupational exposure to vinyl chloride;
- J. Intentionally leading Mr. Ross and other workers to believe that the results of their vinyl chloride monitoring program were reliable and actually reflected the extent of their exposure to vinyl chloride, all the while knowing the complete falsity of this representation and knowing, specifically, that the method of personal monitoring defendants employed consistently underestimated the vinyl chloride exposures their employees were actually sustaining and that the employees were actually coming into contact with vinyl chloride at levels which exceeded the Action Level and which exceeded the Permissible Exposure Limits set by O.S.H.A. and yet were being told by Conoco that their exposures did *not* exceed those levels; and
- K. Intentionally lying to and misleading as well as concealing relevant information from Mr. Ross, his Conoco and Vista co-workers, the government, the medical community and the community at large both as to the extent and nature of their vinyl chloride emissions and the extent and nature of the risk posed thereby."

VIII.

By amending paragraph "27" to Plaintiff's Petition to read as follows:

"27.

By committing the foregoing acts, throughout the course of Mr. Ross' employment and at least since the late 1960's or early 1970's, these defendants consciously desired to commit and did in fact commit repeated, harmful and unconsented battery upon the person of Daniel Ross and others. Moreover, as a result of these acts, defendants desired and knew that it was substantially certain that Daniel Ross and/or others similarly situated would be harmed as a result of these acts and deliberate omissions and would sustain injury and disease as a result."

IX.

By amending paragraph 28 of Plaintiffs' Petition and by adding the caption above to read as follows:

"INTENTIONAL TORT OF CONSPIRACY

28.

In addition to their individual acts, all defendants conspired with each other and with other members of the vinyl industry (primarily through their trade associations; including the Manufacturing Chemists Association and the Chemical Manufacturers Association), to commit the intentional or willful acts more specifically pleaded herein, thereby damaging Daniel

Ross and plaintiffs. Each defendant conspired to commit the following willful or intentional acts to Daniel Ross:

- A. Intentionally or willfully exposing Daniel Ross to vinyl chloride without Daniel Ross's consent, thereby intentionally inflicting unconsented harmful and/or offensive contact with Daniel Ross;
- B. Intentionally or willfully misrepresenting or failing to disclose Daniel Ross's true medical condition and/or the dangers associated with exposure to vinyl chloride;
- C. Intentionally or willfully inducing Daniel Ross and other workers to work in an environment that defendants knew was hazardous to their health;
- D. Intentionally or willfully failing to provide adequate protection to Daniel Ross to reduce or eliminate the dangerous effects of vinyl chloride;
- E. Intentionally or willfully failing to provide adequate warnings to Daniel Ross and other workers in the industry regarding the dangers and ill-health effects of exposure to vinyl chloride;
- F. Intentionally or willfully hiding, altering and destroying the medical and industrial hygiene monitoring records associated with Daniel Ross's and other workers' exposure to vinyl chloride;
- G. Intentionally or willfully failing to provide adequate medical monitoring in the vinyl chloride workplace;
- H. Intentionally or willfully failing to provide an accurate industry standard for monitoring safe levels of vinyl chloride exposure;
- I. Intentionally or willfully failing to test or investigate the dangerous propensities associated with exposure to vinyl chloride;
- J. Intentionally or willfully participating in an industry-wide standard to fail to test or investigate the potential adverse health effects posed by use of vinyl chloride in the workplace; including the deliberate and intentional misrepresentation, misclassification, alteration and suppression of epidemiological and toxicologic studies, data and other information concerning the carcinogenicity of vinyl chloride.
- K. Intentionally or willfully participating in an industry-wide conspiracy to conscientiously fail to warn Daniel Ross and other workers of the potential cancers and/or ill-health effects associated with exposure to vinyl chloride, including the deliberate misrepresentation, misclassification, alteration and suppression of epidemiological and toxicological studies, data and other information relating to the carcinogenicity of vinyl chloride;
- L. Intentionally or willfully participating in an industry-wide conspiracy to improperly influence, manipulate, alter and misclassify epidemiologic toxicologic data and scientific findings as reported by research concerning the health risks of vinyl chloride in the medical and trade literature;
- M. Intentionally or willfully participating in a concerted effort to misrepresent and underestimate the true extent and nature of vinyl chloride exposures which were reported to Daniel Ross and other workers; and

- N. Intentionally or willfully participating in a concerted effort to hide from Daniel Ross and other workers the fact that they themselves were members of a cohort in secret (from the perspective of the *subjects* of the study) industry sponsored epidemiological studies of cancer in the vinyl industry which had repeatedly demonstrated them to already have sustained significant excess mortality from various types of cancers and other diseases in persons employed in the vinyl industry for more than one year, including brain cancer.
- O. Intentionally concealing relevant information concerning the carcinogenic potential of vinyl chloride from the government and the public and lying to the government and the public about same in order to minimize the potential monetary loss they would incur if they had revealed the truth.
- P Each of the unlawful willful or intentional acts listed in this paragraph and subparagraphs constitutes an individual conspiracy to which each defendant gave assistance or encouragement, thereby causing Daniel Ross and other workers to be exposed to and damaged by vinyl chloride.
- Q As a result of the foregoing conspiracy, each defendant is liable in solido for the damage caused by each and every act listed in Paragraph 27 of this amending petition and prior petition."

X.

By amending paragraph "29" of Plaintiffs' Petition and by adding the caption above it to read as follows:

"CONCERT OF ACTION"

28.

The following tortious acts were committed on Daniel Ross by at least one defendant:

- A. Intentionally or willfully exposing Daniel Ross to vinyl chloride without Daniel Ross's consent, thereby intentionally inflicting unconsented harmful and/or offensive contact with Daniel Ross;
- B. Misrepresenting or failing to disclose Daniel Ross's true medical condition and/or the dangers associated with exposure to vinyl chloride;
- C. Inducing Daniel Ross and other workers to work in an environment that was hazardous to their health;
- D. Failing to provide adequate protection to Daniel Ross to reduce or eliminate the dangerous effects of vinyl chloride;
- E. Failing to provide adequate warnings to Daniel Ross and other workers in the industry regarding the dangers and ill-health effects of exposure to vinyl chloride;
- F. Hiding, altering and destroying the medical monitoring records associated with Daniel Ross's and other workers' exposure to vinyl chloride;
- G. Failing to provide adequate medical monitoring in the vinyl chloride work place;
- H. Failing to provide an accurate industry standard for monitoring safe levels of vinyl chloride exposure;

- I. Failing to test or investigate the dangerous propensities associated with exposure to vinyl chloride;
- J. Participating in an industry-wide concerted effort to fail to test or investigate the potential adverse health effects posed by use of vinyl chloride in the work place including the concerted effort to misrepresent, misclassify, alter and suppress epidemiological and toxicological studies, data and other information concerning the carcinogenicity of vinyl chloride;
- K. Participating in an industry-wide concerted effort to conscientiously fail to warn Daniel Ross and other workers of the potential cancers and/or ill-health effects associated with exposure to vinyl chloride including the misrepresentation, misclassification, alteration and suppression of epidemiological and toxicological studies, data and other information relating to the carcinogenicity of vinyl chloride;
- L. Participating in an industry-wide concerted effort to improperly influence, manipulate, alter and misclassify, epidemiologic toxicologic data and scientific findings as reported by research concerning the health risks of vinyl chloride in the medical and trade literature;
- M. Participating in a concerted effort to misrepresent and underestimate the true extent and nature of vinyl chloride exposures which were reported to Daniel Ross and other workers; and
- N. Participating in a concerted effort to prevent from Daniel Ross and other workers from learning that they themselves were members of a cohort in secret (from the perspective of the *subjects* of the study) industry sponsored epidemiological studies of cancer in the vinyl industry which had been repeatedly and consistently demonstrated to them to have already sustained statistically significant excess mortality from various types of cancer and other diseases in persons employed in the vinyl industry for more than one year, including brain cancer."
- O. Participating in a concerted effort to "keep the lid" on their employee's, the government's and the general public's knowledge concerning the carcinogenicity of vinyl chloride.

XI.

By adding paragraph "30" to Plaintiffs' Petition which reads as follows:

"30.

Each of the foregoing tortious acts, listed in paragraph 29, were performed by defendants:

- A. In concert with each other;
- B. Pursuant to a common design;
- C. Under the knowledge of each defendant that the other defendants' conduct constituted a breach of duty to which each defendant gave substantial assistance or encouragement; and/or
- D. With a substantial assistance of the other defendants to accomplish the tortious result of harming Daniel Ross, with a substantial assistance constituting a breach of duty by each defendant to Daniel Ross.

31.

As such, all defendants named herein are liable in solido for the actions and inactions of defendants."

XII.

By adding paragraphs "38a" to "38s" to read as follows:

**"CLAIM AGAINST VISTA AND CONOCO BASED UPON FRAUD,
CONSPIRACY AND SPOILIATION OF EVIDENCE**

38a.

At all times since the beginning of the intentional misconduct and conspiracy against Mr. Ross and other vinyl industry workers as to the nature and extent of their occupational exposure to vinyl chloride described in the preceding paragraphs, defendants have been acutely aware of the potential for lawsuits such as the present lawsuit being filed if the facts and results of their misconduct came to light.

38b.

Subsequent to the adoption of Federal Regulations in 1974 which required Conoco and Vista to retain documents reflecting their monitoring for vinyl chloride, those companies, sometimes under the guise of "document retention policies," knowingly, willfully and illegally destroyed monitoring records which documented the overexposure sustained by their employees but which contradicted the phony and inaccurate 3M dosimeter monitoring reports Vista and Conoco fraudulently and cynically provided to their employees, including Mr. Ross.

38c.

At some time subsequent to 1974, Conoco Chemicals (the Chemicals Division of Conoco, Inc., which employed Mr. Ross) initiated its own epidemiological study of its employees in order to document the nature and extent of their employees exposure to Vinyl chloride and other toxic and carcinogenic substances used in Mr. Ross' work place as well as the morbidity and mortality experience sustained by those employees as a result of those exposures.

38d.

At some time subsequent to 1980, Conoco and Vista knowingly and willfully destroyed and/or concealed from the plaintiffs the Conoco Chemical Epidemiological Study. Even to this day, both Vista and Conoco deny that this study ever existed in a continuing

conspiracy to hide it from the plaintiffs and other workers like Mr. Ross who were the unwitting subjects of this study.

38e.

At some time subsequent to 1967, Conoco and Vista knowingly and wilfully destroyed and/or disassembled documents reflecting its knowledge of the hazards posed by Vinyl Chloride, including specifically an "EDC epidemiological study" from the 1960s which had theretofore been maintained in a vault with restricted access. Even to this day, both Vista and Conoco deny that the documents or even the vault itself ever existed in a continuing conspiracy to hide such documents from plaintiffs and other workers like Mr. Ross.

38f.

At some time subsequent to 1970, Conoco and Vista knowingly and wilfully destroyed documents reflecting its knowledge of the hazards posed by Vinyl Chloride and the nature and extent of its participation in industry-wide (and industry sponsored) epidemiological studies of cancer in the Vinyl Industry and the knowledge it acquired thereby. At least three "updates" of these multi-million dollar studies were conducted throughout the 1970's and 1980's. Both Vista and Conoco have denied the existence of such documents in a continuing conspiracy to hide such documents from plaintiffs and other workers like Mr. Ross. Indeed, at least as of the time Mr. Ross last worked for Vista, Vista and Conoco succeeded in keeping not only the results but even *the very existence* of these studies secret from their own employees, the unwitting subjects of at least four separate studies demonstrating significant excesses of various forms of cancer, including brain cancer in vinyl chloride workers, including Mr. Ross.

38g.

Since at least approximately 1974 Conoco and Vista have altered and sanitized reports to Governmental agencies regulating the emission of vinyl chloride into the atmosphere and to the public and other records with the specific intent to minimize or even delete all references to cancer in such reports and records, including actual estimates of the carcinogenic risk to the public at large posed by their continuous emission of vinyl chloride into the atmosphere of Calcasieu Parish.

38h.

Since at least the early 1980's, Conoco and Vista deliberately and knowingly altered its computerized Industrial Hygiene monitoring records in order to make them appear to be complete and reliable, all the while knowing that they were neither.

38i.

Shortly after Mr. Ross' diagnosis of brain cancer, Vista, through its plant manager, Richard Conrad, initiated an "investigation" which included their unauthorized and patently illegal search and alteration of Mr. Ross' confidential medical file maintained by Conoco and Vista.

38j.

Plaintiffs' original petition in this case was filed on September 24, 1990.

38k.

Subsequent to September 24, 1990, subpoenas were issued for documents which reflected the defendants' knowledge of the hazards of vinyl chloride and other substances and the nature and extent of Mr. Ross' exposure to those substances.

38l.

Although fully aware of the outstanding subpoenas, the defendants illegally caused thousands of responsive documents to be taken out of the state and beyond this Court's Jurisdiction.

38m.

In the process of spiriting these documents out of state, these defendants intentionally and illegally destroyed the chain-of-custody of thousands of documents they knew were responsive to the plaintiffs' outstanding subpoenas and intentionally and illegally destroyed the context in which thousands of documents they knew were responsive to the plaintiffs' outstanding subpoenas had been maintained by Conoco and then, pursuant to an Asset Purchase Agreement, by Vista.

38n.

Plaintiffs believe and therefore allege that both Conoco and Vista have used the Asset Purchase Agreement referred to in the previous paragraph as the pretext for a fraudulent "shell game" in order to prevent the disclosure of documents subject to plaintiffs' lawful

subpoenas. However, it is Vista, with physical custody of the old "Conoco Chemicals" documents, who, on information and belief, has even to the present time, continued to the illegally withhold documents it should know are responsive to plaintiffs' subpoenas and discovery requests from plaintiff and has, on information and belief, removed or required Conoco to remove certain responsive documents from files before allowing Conoco to produce the remainder of such files.

38o.

Prior to producing them to plaintiffs, Vista deliberately altered thousands of documents and, on information and belief, destroyed or illegally withheld an unknown number of responsive documents.

38p.

Ever since Defendants' misconduct in mishandling, concealing and destroying the context and chain-of-custody of the documents subject to plaintiffs' subpoenas came to light, and while plaintiffs' Motion for Contempt against Vista and its Company Doctor and Industrial Hygienist was pending, at least Vista has continued their active concealment and fraud by "burying" responsive documents among hundreds of thousands or millions of documents they knew were not responsive and only then producing them to plaintiffs, often stripped of their context and without any apparent rhyme or reason.

38q.

Despite numerous subpoenas requiring Vista to produce indexes of documents potentially responsive to Plaintiff's discovery requests, Vista misinformed their own "outside" counsel about the existence of such an index. Only after plaintiffs counsel confronted Vista with clear circumstantial evidence that the index of Vista's Industrial Hygiene files did in fact exist in approximately April 1993 was the index finally produced. Plaintiffs counsel have been forced to wade through millions of pages of documents for over two years under the mistaken impression that the subpoenaed index had not been deliberately withheld by Vista.

However, the subpoenaed index *had* knowingly been withheld by Vista.

38r.

For the reasons set forth above, plaintiffs have been harmed and/or materially prejudiced by the spoliation of evidence committed by Conoco, Inc. and Vista, Chemical Inc.

and are entitled to damages as a result. Their pleadings and all defenses should be stricken and/or Plaintiffs should be entitled to a presumption that the spoliated documents would have been adverse to the Defendants' interest in this case,

38s.

In any event, for the reasons set forth above, the plaintiffs have *already* been hindered, delayed, forced to unnecessarily wade through thousands and perhaps millions of pages of unresponsive documents and otherwise substantially prejudiced by the defendants' spoliation of evidence and are entitled to damages as a result."

XIII.

By adding paragraphs "39a" through "39j" to Plaintiffs' Petition and the caption above to read as follows:

**"CLAIM AGAINST CONOCO AND VISTA BASED UPON FRAUD, CONSPIRACY
TO COMMIT BATTERY AND FRAUD**

39a.

Beginning at least as early as the mid 1970's Minnesota Mining and Manufacturing Co. (hereinafter "3M") and Conoco began a series of validation tests of the 3M 3500 and 3520 passive dosimeters.

39b.

The purpose of these tests included the evaluation of the ability of the 3M 3500 and 3520 passive dosimeters to accurately detect the level of vinyl chloride in the atmosphere.

39c.

Both 3M and Conoco, Inc. (and later, Vista) were well aware that the 3M 3500 and 3520 passive dosimeters were being used at Conoco's vinyl chloride production facilities in Calcasieu Parish (later purchased by Vista) in order to comply with numerous government regulations pertaining to vinyl chloride *and*, pursuant to those same regulations, to inform workers such as Daniel Ross as to the nature and extent of their occupational exposure to vinyl chloride.

39d.

Both 3M and Conoco explicitly agreed to keep the results of these tests secret. On information and belief, this same fraudulent "confidentiality agreement" was extended to

include Vista Chemical following its purchase of Conoco's Vinyl Chloride production facilities in the early 1980's.

39e.

The results of these secret tests demonstrated that the 3M passive dosimeters consistently underestimated the true levels of vinyl chloride exposure in the atmosphere and all conspirators knew that the *actual* levels of vinyl chloride in the atmosphere were significantly much higher than an analysis of the dosimeters would reveal or a report to an employee based upon an analysis of such a dosimeter would reveal.

39f.

The results of these secret tests also demonstrated similar problems with any other sampling methods which relied on charcoal as the media for the adsorption of vinyl chloride and subsequent analysis. Conoco was already aware of this and had been at least since 1974. The conspirators knew that charcoal was extremely "lossy" for vinyl chloride and that the use of charcoal would consistently underestimate the actual levels of vinyl chloride encountered by the monitored employee. Despite this knowledge, in the following years, these conspirators repeatedly expressly and implicitly represented that the use of charcoal as an adsorbent media had been validated by O.S.H.A. and/or N.I.O.S.H., and/or Industry, all the while knowing that the method had not been validated by any of them. From this point on, Defendants "validated" their use of 3M dosimeters by comparing them with the inaccurate results achieved using "traditional" (for *other* organic compounds) charcoal tube based sampling methods they knew without question were grossly inaccurate and in fact consistently underestimated actual employee to *vinyl chloride*.

39g.

Conoco, Inc., Vista Chemical Company and 3M were all well aware that the results of monitoring conducted employing 3M's passive dosimeters were used by many employers in the vinyl industry, and specifically by Conoco and Vista, for such crucial matters as determining the extent of employee exposures to vinyl chloride, determining the employers' compliance with governmental regulations, determining which employees were subject to special medical and industrial hygiene monitoring and reporting requirements imposed by law, determining when employees would be informed of their overexposure to vinyl chloride, what

such employees would be told about their exposures and many other important legal requirements which Defendants knew would be triggered by employee monitoring results reflecting vinyl chloride exposures above "Action Levels" and "Permissible Exposure Limits" set by the O.S.H.A.

39h.

Conoco, Vista and 3M were all well aware that the results of monitoring conducted using 3M's passive dosimeters were used by many employers in the vinyl industry, and specifically by Conoco Inc., as the basis for vinyl chloride exposure information conveyed to workers in the vinyl industry such as Daniel Ross and that, because of defendants' fraudulent secrecy agreements, such workers would have absolutely no idea that the results of the monitoring conducted with 3M's passive dosimeters did *in fact* consistently underestimate their true exposures to vinyl chloride. Numerous follow up studies conducted by Conoco and Vista invariably and unequivocally demonstrated the inaccuracy of 3M dosimetry in particular and of charcoal-based monitoring for vinyl chloride in general. Despite this, Vista and Conoco have continued to fraudulently provide their employees with the phony 3M monitoring reports and have deliberately failed to inform them of essential facts of which they have been aware for almost 20 years: Not only that vinyl chloride exposures several times higher than the "Permissible Exposure Limit" set by O.S.H.A. would *appear* (based on the phony 3M dosimetry analyses) to be below the permissible exposure limit, but also that such overexposures would often *appear* to reflect exposures even below O.S.H.A.'s "Action Level" which is used to initiate governmentally required medical monitoring, industrial hygiene monitoring, and other legal requirements designed to protect workers such as Daniel Ross from vinyl chloride. As a result, practically all of the thousands of "personal monitoring reports" Vista and Conoco have cynically provided their employees over the last almost 20 years were known by them to be misleading, falsely reassuring and consistently lower than the vinyl chloride exposures actually encountered by the "monitored" worker.

39i.

Subsequent to its purchase of Conoco Inc.'s vinyl chloride production facility in Calcasieu Parish, Vista Chemical Company, with full knowledge of the foregoing, intentionally continued and still continues to perpetrate the fraud initiated by its employees (former Conoco

employees) and 3M upon the government and upon innocent workers such as Mr. Ross who have no reason to know that the industrial hygiene monitoring reports they receive from their employer are inaccurate and consistently underestimate the true degree of their exposure to vinyl chloride.

39j.

As a result of the foregoing fraudulent conspiracy, Daniel Ross was deliberately misinformed as to the true degree of his industrial exposure to vinyl chloride. He was exposed over the Action and Permissible Exposures Limits and was not provided proper medical and industrial hygiene information as described above and was battered and damaged as described above.

XIV.

By adding Paragraph "36a" and "36b" to Plaintiffs' petition to read as follows:

"36a.

Based on the acts of outrageous misconduct committed by Conoco and Vista as alleged herein, plaintiffs are entitled to Punitive damages under the laws of the States of their domicile, Delaware, and under the laws of the states where the managerial acts of intentional misconduct, conspiracy and concerted action described above were planned, coordinated and implemented; primarily in the States of Texas (Houston) and Oklahoma (Ponca City), Delaware (Wilmington) and the District of Columbia (MCA/CMA conspiracies).

XV.

All allegations and prayers of the original petition are reiterated.

XVI.

By amending the prayer to read as follows:

"WHEREFORE, Premises Considered, Plaintiffs pray that the Defendants, and each of them, be cited to appear and answer herein as the law directs, and that upon final hearing hereof, ELIZABETH ELAINE ROSS, DOUGLAS KURT ROSS and ROBIN RENEE ROSS recover of and from the Defendants, and each of them, individually, jointly and in solido, for each their damages as alleged in an amount which the evidence may show proper at time of trial, together with costs, and legal interest from the date of judicial demand until paid, and for such other and further relief, special and general, as law and equity may permit.

The beneficiaries of DANIEL J. ROSS further pray for Exemplary Damages against the Defendants, individually, jointly, and in solido in an amount which the evidence may show proper at time of trial.

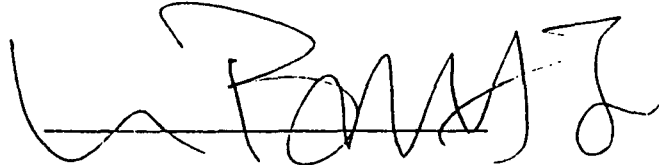
The beneficiaries of DANIEL J. ROSS further pray for Punitive Damages against the Defendants, individually, jointly, and in solido in an amount which the evidence may show proper at time of trial.

Plaintiff's beneficiaries further pray that this cause be tried before a jury.

The beneficiaries of DANIEL J. ROSS also pray that they be permitted to file their Second Supplemental and Amending Petition."

Respectfully submitted,

BAGGETT, McCALL & BURGESS

A handwritten signature in black ink, appearing to read 'W. B. Baggett', written over a horizontal line.

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