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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**BONNIE T. HAYDEN and
JULIUS A. HAYDEN**

: CIVIL ACTION

NO. 86-5232

vs.

**APPLETON PAPERS INC.
and
ARNOLD CORPORATION**

PLAINTIFFS' PRE-TRIAL MEMORANDUM

I. NATURE OF ACTION AND BASIS OF JURISDICTION

In September, 1984, Bonnie Hayden was exposed to significant levels of formaldehyde which were emitted from carbonless copy paper forms. Defendant Appleton Papers Inc. (Appleton Papers) originally manufactured the carbonless copy paper. Defendant Arnold Corporation [Arnold) printed, treated, collated and marketed the forms.

As the result of this significant exposure to formaldehyde, Mrs. Hayden developed an allergic sensitization to formaldehyde. Presently, even minimal exposures to formaldehyde will cause an allecgic reaction. Mrs. Hayden is precluded from all employment and isolated from social and personal activities. Plaintiffs have filed a civil suit for damages in light of the injuries suffered by Mrs. Hayden. Jurisdiction is based upon diversity pursuant to 28 U.S.C. Section 1332.

II. STATEMENT OF FACTS

On September 10, 1984 the clerical workers at B & G

Manufacturing for the first time used carbonless copy paper forms printed by Defendant Arnold Corporation with the carbonless copy paper manufactured by Defendant Appleton Papers Inc. All of the employees immediately noticed an offensive, overwhelming and irritating odor emanating from the Defendants' products. Several of the employees suffered acute physical reactions to the carbonless copy paper. Handling the carbonless copy paper caused contact dermatitis. Breathing the odors, caused drying of the skin around the mouth and nose, watering eyes, hoarseness, nausea and headaches.

Unfortunately, the most severe symptoms were suffered by Bonnie Hayden. Although Mrs. Hayden attempted to continue her work, her symptoms worsened and persisted. She has been unable to return to work since October, 1984. As the result of the exposure to Defendants' product, Mrs. Hayden has become allergically sensitized to exposure to formaldehyde. Even relatively minimal levels of exposure will result in the constriction of her larynx, central nervous system depression, respiratory irritation and headaches.

Mrs. Hayden's employer initially attempted to reduce the exposure by drying the paper at a commercial facility. Although some of the dampness was removed, the workers continued to suffer symptoms while handling the Defendants' product. After a short period of time, the employer discarded the forms. From the fall of 1984 to the present, the employer has used carbon copy forms as an effective replacement.

B & G Manufacturing immediately contacted the Arnold Corporation and was referred to Appleton Papers. Despite being told that workers were suffering throat irritation, watering eyes, skin

rashes, nausea and chest congestion, Appleton Papers took no affirmative steps to reduce the risk of further injury to the B & G Manufacturing employees. Rather, Appleton Papers misrepresented 'chat the emissions from the carbonless copy paper were not toxic and that there were no health risks associated with the use of its products in general, or of this sample in particular.

The Defendants' response in this case was the same boiler-plate response it has given to the hundreds of other health complaints it has received arising from the use of its carbonless copy paper products. From 1976 through 1986, Appleton Papers received over 750 reports of adverse health reactions from use of its carbonless copy paper products. Prior to the fall of 1984, the Defendant: had received innumerable reports of persons suffering the exact same type of injuries suffered by Mrs. Hayden as a result of the use of its product.

The symptoms displayed by the co-employees of Mrs. Hayden, the symptoms displayed by Mrs. Hayden, the medical test results and the Defendants' tasting of their products, all corroborate that the particularly significant toxic substance emitted in this case was formaldehyde.¹ By the fall of 1984, the potential health hazards of

¹ The back of a sheet of carbonless copy paper is coated with microcapsules of solvents. (Referred to as a "coated back" or "CB"). The microcapsules are constructed with either a melamine formaldehyde resin or a natural material, such as pig fat. The microcapsules are broken when one applies pressure to the tag of the paper. The solvents, released from the broken microcapsules then react with the coated front of the next page of the carbonless copy paper. (Referred to as a "coated front" or "CF").

Formaldehyde can be released if the coated back is made with a melamine formaldehyde resin and the resin partially decomposes, for example because of poor curing, increase in humidity, or increase in temperature.

formaldehyde were well known to the Defendants, both in general from the reports in the medical and scientific literature and in specific because of the Defendants' testing of the product as well as information provided to them by their chemical Suppliers. In 1983, the Defendant commissioned a "safety study" for its black print carbonless copy paper, such as was used by Mrs. Hayden. Eleven out of the twenty-four persons tested suffered adverse physical reactions to the type of carbonless copy paper used by Plaintiff. The Defendant interpreted this forty five percent (45%) positive response as proof that its product was "safe".

Regulation of exposure to formaldehyde, both in occupational and residential settings, is a subject of tremendous concern. On November 22, 1987, the Occupational Safety and Health Administration ordered a two-thirds reduction in the permissible exposure limit to formaldehyde. The Agency reported that the reduction would be expected to reduce the number of cases of respiratory irritation among workers by 6,000 a year and to reduce dermatitis cases by over 11,000 annually. This reduction in occupational exposure to formaldehyde was expected to reduce the medical and associated costs of formaldehyde related occupational illnesses by up to \$35.5 million a year.

Since 1982, Appleton Papers has been aware that its product emitted significant levels of formaldehyde. The Defendant has attempted, however, to trivialize the significance of the exposure and the associated health consequences. Appleton Papers has felt compelled to mount this vigorous campaign that its product does not emit harmful

levels of formaldehyde. The campaign is in response to loss of its customers who have learned that Appleton Papers' product emits Formaldehyde and is in response to other civil lawsuits where Appleton paper has been sued by other individuals injured by exposure to formaldehyde.

The primary source for the emission of formaldehyde is the melamine formaldehyde resin used to make the microcapsules on the coated back of the carbonless copy paper. The Defendant can, however, make its product out of natural materials which emit no detectable levels of formaldehyde. Appleton Papers Inc. has admitted that the carbonless copy paper forms used by Mrs. Hayden could have been made with the natural materials, thereby reducing the risk of injury.

The Defendants marketed a product which posed a significant risk of injury to foreseeable users. In the instant case, the Defendants' product emitted significant levels of formaldehyde. Despite their awareness as to the potential health risks, the Defendants provided absolutely no warnings to foreseeable users but rather falsely represented that their product was "safe". The Defendants had available an alternate formulation of their product which would have significantly reduced the risk of injury. It chose not to advise foreseeable users of this safer alternative product. As the result of the Defendants' negligence, defective product and misrepresentations, Mrs. Hayden will spend the rest of her life significantly isolated and precluded from all regular employment.

III. DAMAGES SOUGHT BY PLAINTIFFS

At the time of her injuries, Bonnie Hayden was forty-four years old and as a part-time employee for B & G Manufacturing, Mrs. Hayden earned \$8,912.00 annually. AS a result of the restrictions imposed by her injury, Mrs. Wayden is precluded from all employment in the competitive labor market. Mrs. Hayden has not returned to work since the toxic exposure to Defendants' product. Mrs. Hayden seeks the fair and reasonable compensation for her loss of earnings and permanent loss of earning capacity. Robert P. Wolf, a vocational expert, has evaluated the loss of earning capacity to be in excess of \$160,000.00.

As reasonable and necessary medical treatment of her injury, Mrs. Hayden has received medical treatment from Dr. Hedrick and Dr. Mansmann. Mrs. Bayden seeks reimbursement for the past, present and future medical treatment.

As a result of her injuries, Mrs. Hayden cannot be exposed to even minimal levels of formaldehyde, even levels which are encountered in normal settings. AS a result of her injuries, Mrs. Hayden does now, and will for the rest of her life, suffer allergic reactions which include upper airway irritation, constriction of her larynx, fatigue, and central nervous system depression. In order to accommodate these restrictions, Mrs. Hayden is isolated from most social, family, and work activities. Mrs. Hayden seeks damages for the pain, suffering, emotional distress, and loss of life's ordinary pleasures which were caused by the Defendants' conduct and defective product.

Julius Hayden seeks damages for the loss of the services, society and fellowship of his wife, Bonnie Hayden.

IV. PLAINTIFFS' WITNESSES

since the issues of liability and damages overlap so significantly in this case, Plaintiffs will offer all of the witnesses as liability and damage witnesses **except for** Robert Wolf, who will testify as a damage witness only.

1. Elaine S. Panitz, M.D.
East Windsor professional Park
1 Mile Road Extension
Heightstown, NJ 08520

Dr. Panitz will testify as both a fact witness and as an expert witness on behalf of Plaintiffs. Dr. Panitz graduated Magna Cum Laude from Vassar College and then attended Harvard Medical School. Dr. Panitz is board certified in Internal Medicine and specializes in the area of occupational and environmental medicine. From 1975 through 1981, Dr. Panitz was the Medical Director for McGraw-Hill, Inc. During the course of her work, Dr. Panitz has treated, counseled and examined several people who have become sensitized to formaldehyde as a result of occupational exposure.

2. Dr. Thaddeus J. Godish, Ph.D.
Indoor Air Quality Services, Inc.
5008 Isabella Lane
Muncie, IN 47304

Dr. Godish will testify as both a fact witness and an expert witness on behalf of the Plaintiffs. Dr. Godish is a professor of Natural Resources and the Director of the Indoor Air Quality Research Laboratory. For at least the past six years, Dr. Godish has devoted his research and studies to the potential health effects of formaldehyde and the industrial hygiene monitoring and sampling methods to determine levels of exposure to formaldehyde.

3. Dr. Alan Broughton, M.D.
Antibody Assay Laboratories
805 West Lafayette Avenue
Suite 201
Orange, CA 92668

Dr. Broughton will testify as both a fact and expert witness on behalf of Plaintiffs. Dr. Broughton is a board certified pathologist and the medical director of the Antibody Assay Laboratories. Dr. Broughton completed testing on a blood sample from Bonnie Hayden.

4. Dr. G. Winfield Hedrick, M.D.
20 south School Lane
Souderton. PA 18964

Dr. Hedrick was and is the Plaintiffs' family physician. Dr. Hedrick will testify as a fact witness.

5. Dr. Norman Loux
Penn Foundation for Mental Health
807 Lawn Avenue
Sellersville, PA 18960

Dr. Loux is and was the Plaintiffs' consulting psychiatrist from 1969 to the present. Dr. Loux will testify as a fact witness.

6. Fritz R. Henschel
English Village
Apartment 26-A5
North wales. PA 19454

Mr. Henschel was the supervisor of Bonnie Bayden at the time of her occupational exposure during 1984.

7. Joan Finkbinder
8. Loci Souder
9. Linda Smallwood
c/o B & G Manufacturing
3067 Unionville Pike
Hatfield, PA 19440

Ms. Finkbinder, Ms. Souder and Ms. Smallwood were co-employees of Mrs. Hayden at the time of Mrs. Hayden's exposure in September, 1984.

10. Richard DiNunzio
28 Indian Valley Lane
Telford, PA 19969

Mr. DiNunzio was a sales and purchasing manager at Mrs. Hayden's place of employment at the time of her exposure in September, 1984.

11. Lorraine Edmunds
c/o B & G Manufacturing
3067 Unionville Pike
Hatfield, PA 19440

Mrs. Edmunds is a senior manager, and spouse of the owner of B & G Manufacturing, Plaintiff's employer.

i

12. Jaes Burns
c/o B & G Manufacturing
3067 Unionville Pike
Hatfield, PA 19440

Mr. Burns was a senior manager at B & G Manufacturing at the time of Mrs. Hayden's exposure in September, 1984.

13. Joseph L. Mitchell
93 18th street
Menasha, WI 54952

Mr. Mitchell was a technical service representative for Defendant Appleton Papers Inc. in September, 1984.

14. Michael Fred Stevens
314 East Glendale Street
Appleton, WI 54910

Mr. Stevens was the health and safety specialist for Defendant Appleton Papers Inc. in September, 1984.

15. David G. Ashley
209 Waldo Drive
Chestertown, MD

Mr. Ashley was the plant manager at the Chestertown, Maryland facility for Defendant Arnold Corporation in September, 1984.

16. John Moore
927 Regina Drive
Baltimore, MD

Mr. Moore was the quality control manager for the Chestertown, Maryland facility for Defendant Arnold Corporation in September, 1984.

17. Patricia Duffield
RD 1, Box 168
Wyalusing, PA

Mrs. Duffield is the sister of Bonnie Hayden.

18. Johanna H. Fine
4023 Windsor Avenue
Philadelphia, PA 19143

Ms. Fine is a personal acquaintance of Mrs. Hayden through Mrs. Hayden's church.

19. Jay naydtn
20. Tim Hayden
21. Bradley Hayden
1902 Keystone Drive
Hatfield, PA

Jay Hayden, Timothy Hayden and Bradley Hayden are the children of Bonnie and Julius Bayden.

22. Robert Wolf
1228 Liberty Bell Drive
Cherry Hill, NJ 08003

Mr. Wolf, a diplomat of the American Board of Vocational Experts, will testify as an expert witness at the time of trial regarding the loss of earnings and earning capacity suffered by Mrs. Hayden as the result of the injuries she has sustained.

23. Julius A. Hayden
1902 Keystone Drive
Hatfield, PA
24. Bonnie T. Hayden
1902 Keystone Drive
Hatfield, PA

Plaintiffs reserve the right to call any witness listed by either of the Defendants in their Pre-Trial Memorandum. Plaintiffs also reserve the right to supplement their list of witnesses in accordance with Local Rules and also following completion of the outstanding discovery which include depositions of the corporate designees of the Defendants.

V. EXHIBITS

1. Sample of form.
2. Diary of Michael Stevens (Stevens No. 13).²
3. Notes made by Joseph Hitchell (Mitchell, Ex. No. 1).
4. Letter from Joseph Mitchell sent to Dave Ashley regarding subject paper (Sept., 1984) (Mitchell No. 4).
5. Technical Service Bulletin (Mitchell No. 7) of Appleton Papers Inc.

² References are to the Exhibit numbers for the deposition of the person listed.

6. Technical Services Bulletin (Mitchell No. 8) of Appleton Papers Inc.
7. Memorandum to Mr. Stevens from J. Mitchell regarding meeting of 12/84 (Mitchell No. 13).
8. In-house memorandum of Appleton Papers Inc. from M.F. Stevens, Re: Complaints of B & C Manufacturing. (9/19/84) (Hitchell 2, Ashley 3).
9. In-house memorandum of Appleton Papers Inc. from M.F. Stevens, Re: Complaints of B & C Manufacturing; (Stevens 15).
10. Letter from B & G Manufacturing Company to Joseph Mitchell, Appleton Paper Xnc. dated September 19, 1984; (DiNunzio 2, Mitchell 3, Stevens 16).
11. In-house memorandum of Appleton Papers Inc. from M.P. Stevens, Re: Conversation with Dave Ashley of Arnold Graphics: (9/28/84) (Stevens 17, Ashley 4).
12. Letter of October 18, 1984 to Arnold Corporation from Richard DiNunzio of B & G Manufacturing. (DiNunzio 2).
13. Letter from David G. Ashley of Arnold Corporation dated October 23, 1984 to Mike Stevens of Appleton Papers Inc. with attachments. (Stevens 18).
14. In-house memorandum of Appleton Papers Inc. dated October 30, 1984 from J.T. Ashman. Re: "Head Analysis" of NCR carbonless paper Prom B & G Manufacturing. (Ashman 21).
15. Letter from Appleton Papers Inc., by Michael F. Stevens dated October 31, 1984 directed to David G. Ashley, Arnold Corporation. [Stevens 18).
16. In-house memorandum of Appleton Papers Inc. from M.F. Stevens regarding telephone conversation with Leonard F. Girsh. (Stevens 19).
17. In-house memorandum of Appleton Papers Inc. per M.F. Stevens, Re: Telephone conversation with Dwight Staubs of Arnold Corporation. (Stevens 21).
18. Material Safety Data Sheet of Appleton Papers Inc., Re: Carbonless paper. (Mitchell 5,6; Stevens 231).
19. Material Safety Data sheet from SICPA New Jersey, Re: Life Desensitizing Printing Ink, Ink formula 809 170G. (Ashley 6).

20. Complaint report dated September 17, 1984 by Arnold Graphics Industries, Re: B & G Manufacturing Company. [Moore 1, Ashley 21.
21. Memo from L. Agriss, sales representative for Arnold Corporation with attachments dated October 16, 1984, November 7, 1984 and October 19, 1984. (Ashley 8).
22. In-house memorandum of Arnold Corporation from Becky Morris to Leon Agriss.
23. In-house memorandum from Dwight Staubs, Arnold Corporation to Paul Reese, Re: B & G complaint.
24. Letter from Joseph L. Hitchell of Appleton Papers Inc. to Dave Ashley of Arnold Corporation dated September 13, 1984 with attachment Material Safety Data Sheet.
25. In-house memorandum of the Arnold Corporation dated September 21, 1984. (Ashley 7J).
26. Memorandum of Leon Agriss to Dave Ashley of Arnold Corporation dated October 16, 1984.
27. Letter from SICPA North America by James F. Shaw dated November 27, 1984 to Dan Cole of the Arnold Corporation. (Ashley 51).
28. Pamphlet: "Plain Talk About Safety of Carbonless Paper". (Stevens 24).
29. Results of acute toxicity studies of NCR paper Re: formaldehyde emanation.
30. Final report: a study to determine the potential emanation of formaldehyde vapor from carbonless copy paper for Appleton Papers Inc.; conducted by Hazelton Laboratories America, Inc., March 11, 1985. (Stevens 7).
31. Protocol to determine emanation (5/10/83).
32. Draft of interim report (8/29/83).
33. Draft final report (8/29/83).
34. In-house evaluation by Appleton.
35. In-house evaluation by Appleton (9/22/83).
36. Cost.
37. Executive summary.

38. Memo: M.F. Stevens to R.C. Jezerc; Re: Latest "Gockel Test" of results from Hazelton Raltech.
39. Document 194. Results of formaldehyde emissions from NCR paper. (Stevens 41).
40. Document 194: Formaldehyde emissions (Stevens 5).
41. Investigation into formaldehyde emission from NCR paper, memo: M.F. Stevens to R.C. Jezerc (11/9/81).
42. Report No. 83-023-70 safety study of paper samples for Appleton Papers Inc.; Hill Top Research, Inc.; June 23, 1983. (Stevens 10a).
43. Report No. 83-06-965-70 safety study of paper samples for Appleton Papers Inc.; Hill Top Research, Inc.; October 17, 1983. (Stevens 10b).
44. Summary of Will Top studies (11/22/83) (Stevens 11).
45. Appleton Papers Inc.: in-house request for Analytical Services Analysis and Complaint Test record regarding B & G Manufacturing Paper (Ashman 1).
46. Head space analysis on Subject paper performed by the Institute of Paper Chemistry. (Ashman 3. 6).
47. Investigation into the Nature and Degree of Formaldehyde Emissions from Carbonless Paper (Stevens 6).
48. Lists of Major, Minor and Trace Ingredients of Carbonless copy Paper with Material Safety Data Sheets (Stevens No. 3).
49. Letter from M. Stevens to Walter Chcestak (Stevens 8).
50. Cover letter from Appleton Papers Inc. to NIOSH with attached bibliography and record regarding summary of health incident complaints. (Stevens 9).
51. memo: Proposed statement about formaldehyde (Stevens 12).
52. Memo: Formaldehyde statement 3/24/82 with condensation.
53. Memo: Sources of Statement Positions on Formaldehyde (3/23/82).
54. Memo: Formaldehyde statement (3/31/82) (Stevens 22).
55. Memo: Formaldehyde statement (12/20/82).

56. Appleton Papers Affirms Safety of Its Brand of carbonless Paper.
57. Shipment and purchase order and records from Appleton Papers Inc. to Arnold Corporation (Ex. A. to Defendant Appleton Papers Inc., Answers to Interrogatories).
58. Patents re: products manufactured by Defendant Appleton Papers Inc. (Ex. e to Defendant's Answers to Interrogatories).
59. Harks, et al., "Contact Urticaria and Airway Obstruction from Carbonless Copy Paper" (Stevens 14).
60. Memo: M.F. Stevens to E.F. Bush (12/7/82) re: June 17, 1982 Article in Trenton Times).
61. memo: R.C. Jezerc to J.W. Turner (3/24/82) CE: Formaldehyde.
62. Memo: M.F. Stevens to R.C. Jezerc, Re: Final Results of occupational Formaldehyde Measurements. (11/2/82).
63. medical records of Dr. Hedrick.
64. Medical records of Dr. Dulcey.
65. Report from Dr. Broughton Analytical Assays Laboratory re: B. Hayden.
66. Report of Dr. Burton Cohen, dated November, 1987.
67. Witness statement of Fritz Herschel.
68. Employer's Report of Inquiry re: Fritz Herschel.
70. Bonnie Hayden's attendance records, B & G Mfg.
71. Letter from Dr. Girsh to Joseph Mitchell of Appleton Papers dated November 1, 1984. (Mitchell No. 101.
72. Letter of November 2, 1984 from Michael P. Stevens, Appleton Papers, Inc. to Dr. Girsh. [Stevens 20].
73. Letter of November 12, 1984 from Leonard Girsh to Appleton Papers Inc.
74. Letter of December 14, 1984 from Michael Stevens of Appleton Papers Inc. to Dr. Girsh.
75. Letter of Dr. Girsh dated January 2, 1985 to Michael Stevens of Appleton Papers Inc. with attachment.

-14-

for liability and damages within four (4) days.

VII. SPECIAL COMMENTS

One of the disputed issues in this matter is the extent of exposure suffered by Mrs. Hayden as the result of the emission of chemicals from the Defendants' products. Plaintiffs intend to prove

-15-

the extent of this exposure both through lay and expert testimony, including the expert testimony of Dr. Panitz, who examined Mrs. Hayden. Because of the significant overlap of liability and damage witnesses, Plaintiffs request that this matter not be bifurcated.

The Defendant Appleton Papers Inc. has designated as Confidential certain documents and testimony which have been produced and taken during this litigation. Disclosure of this information to the jury is essential to the presentation of the Plaintiffs' case. The Defendant has waived any claim to confidentiality by the disclosure of some of these documents to third parties. Plaintiffs desire and intend to present these documents to the Jury within the limits prescribed by the Confidentiality Order.

Respectfully Submitted,

GALFAND, BERGER, SENESKY, LURIE & MARCH

By: 

MARTIN K. BRIGHAM
Attorney for Plaintiffs