

ONTARIO COURT (GENERAL DIVISION)

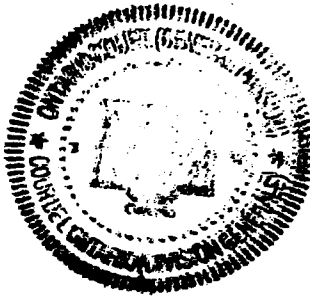
BETWEEN

MICHAEL GARIEPY and LYNE Marion

WAYNE MCGOWAN and PAUL BERTHELOT

Plaintiffs

and DALE ELLIOTT - and -



**SHELL OIL COMPANY,
E.I. DU PONT DE NEMOURS and COMPANY,
HOECHST CELANESE CORPORATION**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in the Court Office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

AMENDED THIS 26 DAY OF MARCH, 99
FILED IN THE COURT OF JUSTICE AT MISSISSAUGA
1999
[Signature]

If you are served in another province or territory of Canada or in the United States of America, the period of serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

Date: **FEB 1 8 1995**

Issued by: *J. Edwards*
Local Registrar

Address of
Court Office:

London Court House
Civil, Landlord/Tenant Section
Group Floor, Unit "A"
80 Dundas Street
London, Ontario
N6A 6A3

TO: SHELL OIL COMPANY
P.O. 2463
Houston, Texas
USA 77252

AND TO: E.I. DU PONT DE NEMOURS AND COMPANY
Room 8042 Dupont Building
1007 Market St.
Wilmington, DE
USA 19898

AND TO: HOECHST CELANESE CORPORATION
1041 Route 202-206
Somerville, NJ
USA 08876

CLAIM

1. The Plaintiffs claim:
 - (a) Damages in the amount of \$60,000.00 (each);
 - (b) Punitive, aggravated, and exemplary damages in the amount of \$1,000,000.00;
 - (c) Interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43 and amendments thereto;
 - (d) Costs on a solicitor-and-client basis; and
 - (e) Such further and other relief as to this Honourable Court may seem just.

2. The Plaintiffs, Michael Gariepy and Lyne Marion, reside in the City of Gloucester, in the Regional Municipality of Ottawa-Carleton. The Plaintiff Wayne McGowan resides in the Town of Orleans, in the Regional Municipality of Ottawa-Carleton. The Plaintiff Paul Berthelot resides in the City of Peterborough. The Plaintiff Dale Elliott resides in the City of Barrie.

3. The Defendant, Shell Oil Company, carrying on business as Shell Chemical Company ("Shell"), is a corporation organized under the laws of the State of Delaware in the United States of America with its head office and main place of business at Post Office Box 2463, in the City of Houston, State of Texas, United States of America.

4. The Defendant, Hoechst Celanese Corporation ("Celanese") is a corporation organized under the laws of the State of Delaware in the United States of America with its head office and main place of business at 1041 Route 202-206, in the City of Somerville, in the State

of New Jersey, United States of America.

5. The Defendant, E.I. du Pont de Nemours and Company ("du Pont") is a corporation organized under the laws of Delaware in the United States of America with its head office and main place of business at Room 8042 Dupont Building, 1007 Market Street, in the City of Wilmington, in the State of Delaware, United States of America.

6. Shell, Celanese, and du Pont acted together in the development, engineering, manufacture, marketing and/or promotion of polybutylene for use in "polybutylene plumbing systems". Where referred to herein, polybutylene plumbing systems are intended to refer to water supply plumbing containing, among other things, pipes fabricated, in whole or in part, from polybutylene, and fittings, including tees, elbows, and couplings, fabricated in whole or in part, from Celcon and/or Delrin acetal copolymer resin (hereinafter the "resin"), whether sold and/or installed as a system or as separate pieces.

7. The Defendants, individually, or in concert with each other, represented to various plumbing pipe manufacturers, plumbing pipe distributors, testing and industry code authorities, and the public generally, including the Plaintiff, both in the U.S.A. and in Canada that its polybutylene plumbing systems and specifically the resin used in the polybutylene plumbing system was suitable for use in domestic and commercial water systems, that it would be reliable, that it would last the normal lifetime of the buildings or other applications in which it was installed, and that it was also reasonably fit for use in fittings in such systems.

8. In or about 1998, a polybutylene plumbing system was installed at the Plaintiffs', Michael Gariepy and Lyne Marion's residence. In or about 1991, a polybutylene plumbing system was installed at the Plaintiff, Wayne McGowan's residence. In or about 1988, a polybutylene plumbing system was installed at the Plaintiff, Paul Berthelot's residence. In or about 1987, a polybutylene plumbing system was installed at the Plaintiff, Dale Elliott's residence. These plumbing systems and the plumbing systems used by the Plaintiff Class herein are composed of or were composed of polybutylene pipe and insert acetal fittings manufactured from materials sold and supplied by Shell, Celanese, and du Pont.

9. The polybutylene plumbing systems installed in the property owned by the Plaintiffs and the Plaintiff Class have failed and/or are failing for a variety of reasons including, but not limited to the fact that they leak, allow the permeation of gases, cause corrosion to internal parts of the water system and are subject to oxidative degradation leading to micro-cracking in the tubing under certain conditions, all of which is directly related to and is caused by the resin which was designed, developed, manufactured and sold to the Plaintiffs as an integral part of this polybutylene plumbing system either directly, or indirectly, by the Defendants individually or acting in concert with each other.

10. The Plaintiffs state that their damages have been caused by the negligence or ~~fraudulent misrepresentations~~ of the Defendants.

11. Such negligence includes but is not limited to the following:

- (a) the design of the polybutylene pipe systems, Celcon, or Delrin was defective:
 - (i) the Defendants failed to conduct adequate tests on the products;
 - (ii) the Defendants failed to conduct tests which would have indicated that the polybutylene used in the pipe and the resins used in the insert acetal fittings degrade or corrode and fail when exposed to chemicals found in ordinary water;
 - (iii) the Defendants failed to conduct long term tests to determine whether the polybutylene used in the pipe and the resins used in the insert acetal fittings would last the normal lifetime of the buildings in which they were installed;
- (b) the Defendants failed to properly warn the Plaintiff and members of the Plaintiff Class of the limitations of use of the "polybutylene plumbing system" or components thereof;
- (c) such further and other negligence which is within the knowledge of the Defendants.

12. The Plaintiffs state that in the course of their business marketing polybutylene, Celcon, and/or Delrin for use in "plumbing systems," Defendants have each made numerous material misrepresentations and omissions of material facts. The Plaintiffs and the Plaintiff Class relied on these representations to their detriment.

13. The Defendants expressly and implicitly warranted that polybutylene plumbing systems were fit for the purpose intended, and that they were of merchantable quality. The Defendants are in breach of these express and implied warranties.

14. Further, even after they were aware of the premature failure of the polybutylene plumbing systems, the Defendants continued to represent to their customers and the public that the

polybutylene resin and plumbing parts manufactured using this resin was acceptable for use in the manufacture and installation of plumbing systems in residential housing and other applications.

15. The Plaintiffs plead that all misrepresentations and warranties which are the subject of this action were given by the Defendant in Ontario and/or were made or given for the purpose of inducing residents of Ontario to purchase polybutylene plumbing systems in Ontario for installation on or in Ontario property.

16. The Plaintiffs plead and rely upon the provisions of the *Sale of Goods Act*, R.S.O. 1990, Chapter S.1, as amended, and in particular, section 15 of the *Act*.

17. The Plaintiffs plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, Chapter N.1, as amended.

18. As a result of the conduct of the Defendants, the Plaintiffs and the Plaintiff Class have suffered damages. The polybutylene plumbing systems installed in the property owned by the Plaintiffs and the Class have failed and/or are failing. The polybutylene pipe and the insert acetal fittings are degrading, cracking, leaking, and spraying water, have done so in the past, and/or are likely to do so in the near future, in each event causing substantial damages to the property owned by Plaintiffs and the Class.

19. In addition to the replacement and/or repair of the actual plumbing system, as a

result of the defective polybutylene plumbing systems, the Plaintiffs and the Plaintiff Class will or have suffered damage to other components of their homes caused by water damage or by the requirement to remove walls, ceilings, or floors in order to access the leaking pipes. Damage of this nature requires the repair or replacement of, *inter alia*, drywall, plaster, flooring, woodwork, carpet, wallpaper, painting, paving, landscaping and other fixtures.

20. The Plaintiffs plead that all damage was sustained in Ontario.

21. The Plaintiffs plead that by virtue of the Defendants' knowing disregard for or reckless indifference to the rights of the Plaintiffs and Plaintiff class, the Plaintiffs are entitled to recover aggravated, punitive, and exemplary damages.

22. The Plaintiffs plead and rely upon the provisions of the *Class Proceedings Act*, 1992, S.O. 1992, c.6.

23. The Plaintiffs plead and rely upon the provisions of the *Sale of Goods Act*, R.S.O. 1990, Chapter S.1, as amended, and in particular section 15 of the *Act*.

24. The Plaintiffs state that the members of the class which they represent have sustained damages arising out of the conduct of the Defendants as described herein.

25. The Plaintiffs plead and rely upon the provisions of Rule 17 of the *Rules of Civil*

Procedure, including particularly Rule 17.02(a), (f), (g), and (h) and Rule 17.04(l) allowing for the service of this Claim outside Ontario without leave.

26. The Plaintiffs propose that this action be tried at the City of London, in the County of Middlesex, as a proceeding under the *Class Proceedings Act, 1992*.

February 18, 1999

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