

Superior Court  
of the  
State of Delaware

Jan R. Jurden  
Judge

New Castle County Courthouse  
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Date Submitted: July 30, 2010

Date Decided: August 5, 2010

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**RE: Codi Garcia, Trevor Garcia, Michael Garcia, and Lori Rippe**  
**v.**  
**Signetics Corporation, NXP Semiconductors USA, Inc., Philips Electronics North America Corporation, and Philips Semiconductors, USA, Inc.**  
**C.A. No. 09C-10-032**  
***Upon Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint Under Rules 8(a), 9(b), and 12(e): DENIED***

Dear Counsel:

In follow up to the July 30, 2010 oral argument on Defendants' "Motion to Dismiss Plaintiffs' Second Amended Complaint under Rules 8(a), 9(b), and 12(e)" (the "Motion"), the Court has again reviewed the Second Amended Complaint ("SAC"), the briefing, and the applicable case law. Defendants believe that this third attempt at pleading still fails to meet the requirements of 8(a) and 9(b), and ask this Court to apply the "three strikes and you're out" rule to the Plaintiffs,<sup>1</sup> or alternatively, to require them to try once again to meet their pleading requirements. For the reasons that follow, the Court finds that the SAC satisfies the pleading

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<sup>1</sup> Defendants cite no authority for the argument that the SAC should be dismissed because this is the third attempt. The Court knows of no rule that limits a plaintiff to three attempts to state a claim for relief. Therefore, the Motion to Dismiss on that basis is denied.

requirements of 8(a) and 9(b) and states a claim for relief. Super. Ct. Civ. R.8(a) states:

Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the party deems itself entitled. Relief in the alternative or of several different types may be demanded.

This section must be read in conjunction with sections (e)(1) and (f) which require that the pleading be “simple, concise and direct” and that “[a]ll pleadings shall be so construed as to do substantial justice.”<sup>2</sup> The purpose of Rule 8(a) is to give the opposing party fair notice of the claim against it.<sup>3</sup> As aptly noted by Judge Slights:

“Notice pleading” standards set boundaries that are appropriate for the stage of the litigation at which they are applied. Defendants must be given fair notice of the claims against them at the outset of the litigation before they can thoughtfully respond to the allegations and map out their defense.<sup>4</sup>

Super. Ct. Civ. R. 9(b) provides, in pertinent part:

In all averments of fraud, negligence or mistake, the circumstances constituting fraud, negligence or mistake shall be stated with particularity.

The particularity requirement embodied in Rule 9(b) operates to: (1) provide defendants with enough notice to prepare a defense; (2) prevent plaintiffs from using complaints as fishing expeditions to unearth wrongs to which they had no prior knowledge; and (3) preserve a defendant’s reputation and goodwill against baseless claims.<sup>5</sup> This Court has consistently recognized that “the sufficiency of a pleading under Rules 8(a) and 9(b) must be measured

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<sup>2</sup> *In re Benzene Litig.*, 2007 WL 625054, at \*5 (Del. Super. Feb. 26, 2007).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at \*6.

<sup>5</sup> *Id.*

according to the particular circumstances of the case.<sup>6</sup> This Court has also consistently recognized that toxic tort litigation presents “unique difficulties” in pleading because often plaintiffs in such cases are unwittingly exposed to the alleged toxin years before any injury manifests, and unable to identify the products or manufacturers because of the lapse of time.<sup>7</sup> The Court should consider these particular difficulties at the pleading stage and recognize that they “may justify some departure from the pleading standards that have emerged in more typical product liability actions.”<sup>8</sup> Applying these pleading standards to the SAC, the Court is not persuaded that the Defendants require more specificity from the Plaintiffs to prepare a defense to the claims pled by the Plaintiffs.

The SAC puts Defendants on notice that from approximately 1982 until 1986, plaintiff Michael Garcia was employed by defendants at their semiconductor plant in Albuquerque, New Mexico.<sup>9</sup> During that time, he worked in “clean rooms” and on the assembly line, among other places in the plant, where semiconductor wafers, microchips and boards were manufactured.<sup>10</sup> While working in the clean rooms, on the assembly line and/or other locations inside that plant, Mr. Garcia claims he was exposed to hazardous toxic chemicals and substances (hereinafter “substances”) utilized in the manufacture of the semiconductors.<sup>11</sup> The SAC puts Defendants on notice of the toxic substances at issue. These include, but are not limited to:

ethylene glycol ethers; propylene glycol ethers; positive photoresist systems and their respective ingredients over and above ethylene and propylene-based glycol ethers, specifically including the solvents; xylene; n-butyl acetate; n-methyl pyrrolidone, the catalyst trihydroxy benzophenone (THBP) and the diazo

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See SAC ¶14.

<sup>10</sup> See SAC ¶¶16, 18.

<sup>11</sup> See SAC ¶¶ 17, 18, 20, 21.

nepthoquinone (DNQ) resins; fluorine compounds used in various etch processes such as ammonium fluoride, aluminum fluoride, boron trifluoride and sulfur hexafluoride; radio frequency radiation and ionizing radiation used both in association with clean rooms process chemicals and for the purpose of generating new chemical mixtures; arsenic compounds including gallium arsenide, cleaning solvents trichloroethylene, methylene chloride, stabilized trichloroethane, and organic solvents toluene, acetone, methyl ethyl ketone, and epoxy resin-based glues made from epichlorohydrin and bisphenol.<sup>12</sup>

Defendants are on notice that Plaintiffs intend to prove that exposure to these substances proximately caused damage to Mr. Garcia's reproductive system,<sup>13</sup> and, as a proximate result of that damage, Mr. Garcia's sons Codi and Trevor sustained bilateral retinal blastoma, blindness, enucleation, physical pain and suffering, physical disabilities, mental anguish, earnings loss and medical expenses.<sup>14</sup> Defendants are also on notice the Plaintiffs expect to prove that Defendants willfully, recklessly and negligently: (1) failed and refused to warn or advise Mr. Garcia of the dangers and health hazards of the substances; (2) failed to provide warnings and information of the dangers and health hazards of the substances to Mr. Garcia and those who would reasonably and foreseeably come into contact with or be harmed by them; (3) failed to study, investigate, ascertain, impose or comply with reasonable standards and regulations to protect the health and safety of, or minimize dangers to, those using or coming into contact with the substances; (4) failed to fully and properly test and study the substances to fully learn of the hazards associated with them; (5) failed to develop, make available, provide or promote substances that were free of defect; and (6) failed to instruct on potentially safer methods of handling the substances.<sup>15</sup> Defendants are on notice that Plaintiffs intent to prove defendants breached their duty of care to

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<sup>12</sup> SAC ¶ 15.

<sup>13</sup> SAC ¶ 37.

<sup>14</sup> SAC ¶ 38.

<sup>15</sup> SAC ¶¶ 42-47.

provide a reasonably safe premises.<sup>16</sup> Defendants are on notice that Plaintiffs intend to hold them liable for the alleged defective, unsafe and unreasonably dangerous condition of Defendants' substances in Defendants' workplace.<sup>17</sup> Defendants are on notice that Plaintiffs intend to prove they knew or should have known that their wrongful conduct exposed plaintiffs to an "abnormally dangerous and ultra hazardous activity."<sup>18</sup> Defendants are on notice that Plaintiffs intend to prove that, but for Defendants' wrongful conduct, Mr. Garcia would not have sustained the damage to his reproductive system which, in turn, caused the injuries to his sons.<sup>19</sup>

Notwithstanding the notice described above, Defendants challenge each claim asserted by the Plaintiffs and claim that none of the claims meets the notice or pleading requirements.<sup>20</sup> Defendants rely heavily on Judge Slight's opinion in the *Benzene* case, yet *Benzene* seems far more supportive of Plaintiffs' position in this case. Plaintiffs are required to identify the product class with a description of the location and manner in which the product was used, a "meaningful time frame," and details sufficient to identify the premises where the exposure took place.<sup>21</sup>

The Court finds that the SAC meets the pleading standard, and states claims for relief. The Motion to Dismiss is therefore **DENIED** and the Motion for a More Definite Statement is also **DENIED**.

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<sup>16</sup> SAC ¶¶ 53-57.

<sup>17</sup> SAC ¶¶ 58-60.

<sup>18</sup> SAC ¶¶ 62-64.

<sup>19</sup> SAC ¶¶ 32, 37-39.

<sup>20</sup> Defendants argue that the particularity requirement of Rule 9(b) applies to the allegation that the Defendants "wrongfully, knowingly, fraudulently and with intent to deceive, misrepresented to Plaintiff . . . that working in cleanrooms and elsewhere in Defendants' facilities was safe. . . ." SAC ¶ 29. While this allegation does not meet the particularity requirement of 9(b) and Plaintiffs do not elsewhere supply the missing details, the Court notes that Plaintiffs do not include a count for fraud or misrepresentation in the SAC. Since Defendants have not moved to strike and Plaintiffs have not used this allegation for anything more than background, the Court fails to see the need for a more definite statement.

<sup>21</sup> See *In re Benzene Litig.*, 2007 WL 625054, at \*7-9.

**IT IS SO ORDERED.**

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Jan R. Jurden, Judge

cc: Prothonotary - Original