IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

LORI ANNE ZERBY,	)	
	)	
Plaintiff,	)	
	)	
5.	)	C.A. No.: 00C-07-068-FSS
	)	
ALLIED SIGNAL INC., et al.,	)	
	)	
Defendants.	)	

Submitted: January 31, 2001
Decided: February 2, 2001

OPINION and ORDER

Upon Defendants' Motion To Dismiss -- ***GRANTED,***
As To Counts 1 through 6 and ***DENIED*** As to Count 7 and 8.

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SILVERMAN, J.

This is a mass tort case concerning vinyl chloride. Plaintiff claims that exposure to vinyl chloride[1] at levels unknown to her and to which she did not consent destroyed her health. Plaintiff's 174 page complaint contains general conduct allegations

[1] **In her complaint plaintiff refers to vinyl chloride as a "monomer used in the production of plastics." It does not refer to the finished product.**

and eight specific causes of action against five supplier defendants and twenty-one non-supplier defendants. Plaintiff seeks money damages. Defendants, alleging various defects in the complaint, have moved to dismiss, or alternatively, for a more definite statement.

To understand this decision, it is necessary to appreciate its context. Most importantly, it is essential to consider what this decision does not cover. Plaintiff has obtained substantial workers' compensation from the entity directly responsible for her exposure to vinyl chloride, her employer. Furthermore, plaintiff is litigating claims against those who supplied the vinyl chloride to which she was exposed. The Court is not addressing those claims now. This decision only concerns claims against the vinyl chloride industry. As discussed below, the issues presented concern general industry practices, especially allegations regarding the vinyl chloride industry's governmental lobbying for lower safety standards.

Resolving defendants' preliminary motion was a challenge because the complaint is sprawling. It is piled so high, the Court has struggled to get to its core. For the Court's convenience and for the sake of any jury that might have to sit on this case, the Court urges plaintiff to file an amended complaint reflecting this decision and which is consistent with Superior Court Civil Rule 8(a)[2] and Delaware practice.

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[2] **Super. Ct. Civ. R. 8(a): A pleading that sets forth a claim for relief . . . shall contain (1) a short and plain statement of the claim showing that the**

I.

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pleader is entitled to relief and (2) a demand for judgment for the relief to which the party deems itself entitled.

Plaintiff alleges that, while employed at Plastiline, Inc., in 1978, she was exposed to vinyl chloride. She was required to "work with and in the vicinity of Vinyl Chloride and products containing Vinyl Chloride." Plaintiff suffers from liver cancer, epithelioil hemangioendothelioma. She claims that, "[a]s a result of her exposure, [she] was diagnosed as having a variant of angiosarcoma of the liver." There are 26 named defendants. As mentioned, they fall into two groups: five suppliers[3] and twenty-four alleged "conspirators,"[4] including four of the five suppliers[5].

II.

A. Plaintiff

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[3] **The supplier defendants are: B.F. Goodrich, Co.; Robintech, Inc.; Compudyne, Inc.; National Pipe & Plastics; and John Doe Vinyl Chloride Corporations A-Z.**

[4] **The conspirator defendants are: PPG Industries, Inc.; Borden Chemical, Inc.; Allied Signal, Inc.; Conoco, Inc.; The Dow Chemical Co.; EPEC Polymers, Inc.; Teneco, Inc.; Ethyl Corp.; American Chemistry Council, f/k/a The Chemical Manufacturers Assoc. and Manufacturing Chemicals Assoc.; Occidental Electrochemicals Corp.; Monsanto, Co.; Union Carbide Corp.; Uniroyal, Inc.; Bridgestone/Firestone, Inc.; Gencorp, Inc.; Oxychem/Occidental Chemical Corp.; Rhone-Polenc, Inc.; Pantasote of New York, Inc.; Diamond Alkali Co., the Diamond Shamrock Co.; Goodyear Tire & Rubber. Co.; Zeneca, Inc.. Note that plaintiff lists Zeneca, Inc. in the case caption, but does not include it among named conspirator defendants in the complaint.**

[5] **Plaintiff includes all supplier defendants except John Doe Vinyl Chloride Corporations "A" through "Z" among conspirator defendants.**

As mentioned, plaintiff's massive complaint contains general tortious conduct allegations, and eight specific causes of action. The first general conduct allegation is:

> [s]ince at least the early 1960's United States Vinyl Producers and their trade organizations were aware of the toxic nature of vinyl chloride and misrepresented and [c]oncealed their awareness.

Further, plaintiff claims that defendant manufacturers shared information "'off-the-record'" that vinyl chloride was "more toxic than provided for by accepted standards and that was publicly known." Plaintiff also alleges that defendants secretly monitored and suppressed Eastern European studies on vinyl chloride's health risks. Second, plaintiff claims that since 1965, "there has been in place an ongoing conspiracy among major United States Vinyl Chloride producers to suppress the public dissemination of knowledge with regard to the latent hazards of chronic, low-level Vinyl Chloride exposure." Particularly, she asserts that in 1966, manufacturers met and colluded to hide the existence of vinyl chloride disease. Plaintiff also alleges:

> [b]y 1970, the medical staffs of the American vinyl producers were receiving reports of cancer related to Vinyl Chloride exposure, and by 1973 the Conspiring defendants had signed a pledge of secrecy to keep secret information regarding Vinyl Chloride's carcinogenicity.

Third, plaintiff contends that in response to a federal request for information about vinyl chloride and other substances, information supplied by defendants intentionally misinformed and misled the government as to vinyl chloride's carcinogenic nature.

Further, plaintiff alleges that defendants "purposefully" sponsored inaccurate and misleading studies that were published and relied upon by vinyl chloride workers, experts and professional communities, regarding diseases caused by vinyl chloride.

Next, plaintiff alleges eight specific causes of action:

- negligence;
- gross negligence;
- strict liability for defective and unreasonably dangerous product;
- battery;
- fraud;
- constructive fraud;
- civil conspiracy; and
- aiding and abetting.

For the negligence claim plaintiff asserts that defendants had "actual or constructive knowledge" that vinyl chloride was an "inherently defective and unreasonably dangerous product," and about its "toxic nature." Plaintiff alleges that defendants knew or should have known "that workers whose employment responsibilities exposed them to Vinyl Chloride were at extreme risk of contracting diseases associated with exposure to Vinyl Chloride particulate and vapors such as Vinyl Chloride disease" and "cancer, including liver cancer." Further, she contends that defendants had a "duty of reasonable care to avoid reasonably foreseeable injuries to those who might use or be exposed to their products" and

> at a minimum, a duty and responsibility to provide adequate warnings or instructions to potential users . . . of the dangerous characteristics of Vinyl Chloride, such that the user would be on guard against the harmful consequences that might result from use of or exposure to the product.

Finally, plaintiff asserts that her current health problems and illness are directly and proximately caused by defendants' breach of duties.

For gross negligence, plaintiff begins by reasserting the negligence claims. Additionally, plaintiff argues that despite the fact that defendants knew or should have known vinyl chloride's exposure dangers, they "consciously, knowingly, intentionally and willfully disregarded an obvious and imminent danger of serious injury or death to persons exposed to Vinyl Chloride." Thus, she maintains that defendants acted "in reckless disregard for human life and safety," and, as claimed above, they directly and proximately caused plaintiff's damages -- "substantial medical expenses, [plaintiff] suffered severe pain of mind and body, disability, limitation, loss of the pleasure of life and loss of both past and future wages."

Plaintiff also asserts strict liability against all defendants except Chemical Manufacturers Association. She contends that her exposure was intentional and foreseeable by defendants, and that defendants "directly engaged in the manufacture, distribution and/or sale of Vinyl Chloride." Specifically, defendants "placed Vinyl Chloride into the stream of commerce . . . sold Vinyl Chloride resin to plants such as Plastiline which used it in the manufacture of PVC piping and fasteners." Moreover, plaintiff asserts that Vinyl Chloride is "a defective and unreasonably dangerous product as it cannot be made

safe for its intended and ordinary use." Plaintiff claims that defendants knew or should have known "through information available exclusively to them and others that the Vinyl Chloride they sold was defective and unreasonably dangerous . . . " and that her injury directly and proximately resulted from defendants' described misconduct.

For battery, plaintiff argues that she was "unaware of the true dangers associated with Vinyl Chloride and . . . extent of the risks associated with working in areas where she would be exposed to Vinyl Chloride." Plaintiff maintains that, without her consent, she was intentionally overexposed to vinyl chloride by defendants' conduct, claiming that consent was "vitiated by conspiring defendants' acts concerning the concealment, misrepresentation, and manipulation of scientific, medical, and other data indicating [vinyl chloride exposure's dangers]."

For fraud and constructive fraud, plaintiff asserts that defendants knew "and possessed medical and scientific data and other information, which clearly indicated that Vinyl Chloride products were very hazardous to the health and safety of [plaintiff] and [others similarly situated] whose employment responsibilities exposed them to Vinyl Chloride." She alleges that defendants "fraudulently concealed that [her] exposure to Vinyl Chloride posed a great possibility of her developing angiosarcoma of the liver . . . [among other diseases] . . . and failed to properly advise or inform [her] of this danger." Plaintiff also contends that defendants intended to deceive the government,

general public, and workers, like plaintiff, whose jobs exposed them to vinyl chloride. Defendants did this by:

> failing to place warning labels on products; failing to recommend respirator and other protective device use when working with vinyl chloride; deliberately concealing what they knew regarding the true nature of industrial exposure to vinyl chloride and that harmful material in vinyl chloride could cause pathological effects without noticeable trauma; deliberately failing to provide medical and scientific information to the government and general public regarding the true hazardous nature of vinyl chloride and actively concealing known medical facts regarding such; failing to provide protections prescribed by reasonable safety policies and procedures; and deliberately suppressing damaging research data regarding the health effects of vinyl chloride.

Plaintiff further claims that defendants had a duty to reveal these facts to the government, the general public, plaintiff and others similarly situated. Defendants, however, deliberately concealed known dangers regarding vinyl chloride, to maintain profits and prevent the government from enacting stricter vinyl chloride regulations. Again, plaintiff claims that her damages and injuries were directly and proximately caused by reliance on defendants' misrepresentations.

Against the 24 conspiring defendants, plaintiff asserts a civil conspiracy claim. She maintains that the conspiracy's purpose and goals were to conceal and misrepresent the nature and extent of health hazards from vinyl chloride exposure, "with the ultimate goal of preserving the manufacture and sale of [vinyl chloride products.]" Plaintiff claims that each member voluntarily

entered the conspiracy, as evidenced by express "secrecy agreements" among the conspiring defendants. Plaintiff further claims that the conspirator defendants "granted the MCA authority and agency to act on their behalf . . . [to keep] recent findings of low dose cancer secret." Ultimately, plaintiff alleges that every defendant signatory has destroyed the alleged secrecy agreement in order to conceal their own misconduct, except Conoco, Dow and Monsanto.

Plaintiff asserts that defendants engaged in various overt acts to further their conspiracy. She contends that conspiring defendants, along with their trade associations, "negligently or intentionally untruthfully misrepresented their present and historical knowledge of the nature and extent of the hazards posed by Vinyl Chloride." Plaintiff claims that defendants acted in concert through their business associations. Plaintiff further states that in 1972, the chemical safety data sheet "'SD-56,'" on vinyl chloride intended by defendants to be relied upon by the government, general public and vinyl chloride workers, was published by MCA under authority from conspiring defendants, misrepresenting known information regarding vinyl chloride health hazards. Defendants also, according to plaintiff, suppressed relevant vinyl chloride studies and "'defocus[ed]' the cancer aspect."

Plaintiff maintains that the conspiracy's consequences were deceiving and misleading government regulators, preventing proper assessment and control of vinyl chloride exposure health

hazards. Plaintiff claims that her injuries and her subsequent medical expenses, suffering, limitation, disability, also were direct consequences of the conspiracy.

Regarding her final cause of action, aiding and abetting, plaintiff contends that the trade associations and conspiring defendants "knowingly and substantially aided and assisted each other []in fraudulently misrepresenting, suppressing, and concealing" material information regarding vinyl chloride exposure's health hazards. Plaintiff avers that all conspiring defendants knew vinyl chloride's hazards, and were well aware of their overall role in the tortious activity.

B. Defendants

In various combinations, non-supplier defendants filed motions to dismiss, or in the alternative, for a more definite statement. Generally, the motions contend that plaintiff's complaint should be dismissed for the following reasons:

- failure to comply with Rule 9(b) pleading requirements;
- Delaware does not recognize strict liability;
- battery does not stand because the named defendants are not alleged to have manufactured, sold, or supplied product to plaintiff's employer;
- failure to comply with Superior Court Civil Rules 8(a)(1) and 8(e); and
- failure to plead sufficient facts to state a claim for tortious conduct.

Defendants also maintain that plaintiff's conspiracy theory fails as a matter of law. They argue that plaintiff's alleged exposure in 1978 occurred four years after OSHA promulgated rules and regulations for vinyl chloride exposure and warnings

regarding its carcinogenic nature. Additionally, defendants state that the OSHA rules,

> imposed carefully circumscribed duties on manufacturers of vinyl chloride, set, as a matter of law, the amount of vinyl chloride to which an employee could be exposed, and even required that signs and labels identifying vinyl chloride as a 'cancer suspect agent' be placed in work areas.

Defendants further contend that the 1974 OSHA regulations set the "permissible exposure limit at 1 [part per million] averaged over an eight hour period." Thus, defendants argue, because "exposure risks became a matter of public record" in 1974, plaintiff's claim fails as a matter of law. Additionally, Rhone-Polenc argues that mere attendance at industry meetings cannot be a basis for liability, because that violates freedom of speech and association.

III.

Delaware's standards for Rule 12(b)(6) motions to dismiss are clear. The Court must accept all well-plead allegations as true.[6] It must then apply a broad sufficiency test: whether a plaintiff may recover under any "reasonably conceivable set of circumstances susceptible of proof under the complaint."[7] Dismissal will not be granted if the complaint "gives general notice as to the nature of the claim asserted against the defendant."[8] Further,

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[6] ***Spence v. Funk*, Del. Supr., 396 A.2d 967, 968 (1978).**

[7] **Id. (Citing *Klein v. Sunbeam Corp.*, Del. Supr., 94 A.2d 385 (1952)).**

[8] ***Diamond State Tel. Co. v. University of Delaware*, Del. Supr., 269 A.2d 52, 58 (1970).**

a complaint will not be dismissed "unless it is clearly without merit, which may be either a matter of law or fact."[9] "Vagueness or lack of detail," by itself, is insufficient to dismiss a claim.[10] If there is a basis upon which the plaintiff may recover, the motion is denied.[11]

IV.

The general conduct allegations and six of the eight specific tort allegations fail to state causes of action against the non-supplier defendants. The common flaw is plaintiff's failure to allege direct causation between non-supplier defendants' acts and her injuries. In short, her injuries are too remote. As callous as defendants' alleged acts appear, if they are true, they did not proximately cause plaintiff's injuries. Delaware law is straightforward:

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[9] **Id.**

[10] **Id.**

[11] ***Spence*, 396 A.2d at 968 ("If the plaintiff may recover, the motion must be denied."); *see also Diamond State*, 269 A.2d at 58.**

To state a valid claim in tort, a plaintiff must allege an intentional wrong (or a breech of duty to the plaintiff) committed by the defendant, which constitutes the legal or "proximate" cause of some legally cognizable harm.[12]

[12] ***E.I. DuPont de Nemours & Co. v. Admiral Ins. Co., et al.*, Del. Super., C.A. No. 89C-AU-99, Steele, V.C. (Aug. 3, 1994) Mem. Op. at *5.**

Furthermore, Delaware uses a "but for" test to determine proximate cause. A defendant's conduct is "a cause of the event if the event would not have occurred but for that conduct; conversely, the defendant's conduct is not a cause of the event if the event would have occurred without it."[13] For six of plaintiff's eight specific tort claims, the connection between non-supplier defendants' alleged conduct and plaintiff's injuries is too tenuous and remote. As to those claims, plaintiff fails to allege sufficiently that "but for" their conduct, her injuries would not have occurred. Her claims do not warrant further litigation.

For example, under Delaware law, battery is "the intentional, unpermitted contact upon the person of another which is harmful or offensive."[14] Its elements are:

> Lack of consent . . . . The intent necessary for battery is the intent to make contact with the person, not the intent to cause harm. . . . the contact need not be harmful, it is sufficient if the contact offends the person's integrity. . . . The fact that a person does not discover the offensive nature of the contact until after the event does not, ipso facto, preclude recovery.[15]

Further,

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[13] ***Culver v. Bennett*, Del. Supr., 588 A.2d 1094, 1097 (1991); *see also Duphily v. Delaware Elec. Co-op., Inc.*, Del. Supr., 662 A.2d 821, 829 (1995); Moreover, *Duphily* states that, "proximate cause is one 'which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.'" (citing *Culver*).**

[14] ***Brzoska v. Olson*, Del. Supr., 668 A.2d 1355, 1360 (1995).**

[15] **Id. (Citations omitted).**

> A plaintiff must establish that the defendant intentionally caused harm or offensive physical contact to the plaintiff. The mental state necessary to recover for battery requires a showing that defendant intended to make contact with plaintiff, but does not require proof that defendant intended to actually cause the harm.[16]

In short, it cannot be said that non-supplier defendants "intended to make contact with plaintiff." And her complaint does not support that claim.

By the same token, plaintiff also fails to state a claim for fraud. The elements of common law fraud are:

> (1) a false representation, usually one of fact, made by the defendant;
> (2) the defendant's knowledge or belief that the representation was false or made with reckless indifference to the truth;
> (3) an intent to induce the plaintiff to act or refrain from acting;
> (4) the plaintiff's action or inaction taken in justifiable reliance on the representation; and

[16] ***Atamian v. Gorkin*, Del. Super., C.A. No. 97C-08-001, Witham, J. (Aug. 13, 1999), Mem. Op. at *2 (citing *Brzoska*), *aff'd* Del. Supr., 746 A.2d 275 (2000).**

(5) damage to the plaintiff as a result of such reliance.[17]

Based on the allegations in plaintiff's complaint, she misses the third and fourth elements. She does not allege that defendants intended her to act or refrain from acting. Nor does the complaint specifically allege how plaintiff relied on any representation by any non-supplier defendant.

[17] ***Stephenson v. Capano Development, Inc.*, Del. Supr., 462 A.2d 1069, 1074 (1983).**

Under Delaware law, constructive fraud generally arises in settings where the plaintiff and defendant have a special closeness, such as corporate fiduciaries[18] or patients and physicians.[19] Specifically, it requires "a fiduciary or confidential relationship."[20] Nowhere in her copious complaint does plaintiff allege a special relationship between plaintiff and the non-suppliers defendants. Thus, her constructive fraud claim is even more tenuous than her basic tort claims, at least where the non-supplier defendants are concerned.

The fact, if it is a fact, that the non-supplier defendants fraudulently concealed or misrepresented the dangers of vinyl chloride "with the intent to deceive and mislead and to be relied upon by Ms. Zerby and persons like Ms. Zerby whose employment responsibilities exposed them to Vinyl Chloride," does not state a cause of action where plaintiff was not employed by defendant or a company supplied with defendant's products. The relationship between plaintiff and the non-supplier defendants is too remote to impose on them a duty of honesty and candor toward plaintiff. The notion that plaintiff relied on the non-supplier defendants' truth and candor is not supported by any specific allegation against them. To the contrary, the non-supplier

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18 ***See In re Santa Fe Pacific Corp. Shareholders Litig.*, Del. Supr., 669 A.2d 59 (1995).**

19 ***Allen v. Layton*, Del. Super., 235 A.2d 261 (1967) (citation omitted) *aff'd* Del. Supr., 246 A.2d 794 (1968).**

20 **Id. at 266.**

defendants' liability, as alleged, relates to their place in the vinyl chloride industry.

Yet, even more importantly, what plaintiff's complaint actually alleges, does not amount to a tort. Plaintiff's contentions regarding non-supplier defendants' conduct can be boiled down to: defendants misrepresented information to the federal government. If that is true, the government may have civil and criminal causes of action against the industry defendants. Zerby does not. Plaintiff relied on the government, not on defendants' representations to the government. The non-supplier defendants' conduct and plaintiff's injuries are too remote.

It is well-settled that Delaware does not recognize a strict liability cause of action.[21] That claim cannot stand.

The complaint does state a cause of action for civil conspiracy. Under Delaware law, civil conspiracy is a "combination of two or more persons or entities for an unlawful purpose or for accomplishment of a lawful purpose by unlawful means, resulting in damage."[22] It requires three elements:

(1) A confederation or combination of two or more persons;

(2) An unlawful act done in furtherance of the conspiracy; and

(3) Actual damage.[23]

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21 ***Cline v. Prowler Indus.*, Del. Supr., 418 A.2d 968, 980 (1980).**

22 ***Connolly v. Labowitz*, Del. Super., 519 A.2d 138, 143 (1986).**

23 ***Nicolet v. Nutt, Inc.*, Del. Supr., 525 A.2d 146, 149-150 (1987) (citing *McLaughlin v. Copeland*, 455 F.Supp. 749, 752 (D.Del. 1978) *aff'd* 595 F.2d 1213 (3rd Cir. 1979)).**

Further, co-conspirators are "jointly and severally liable for the acts co-conspirators committed in furtherance of the conspiracy."[24] Moreover,

[24] **Id. at 150 (citing *Laventhal, Krekstein, Horwath & Horwath v. Tuckman*, Del. Supr., 372 A.2d 168, 170 (1976)).**

> [s]ince a conspiracy may be proved by circumstantial evidence as well as by direct evidence, reasonable latitude may be permitted in establishing facts from which the conspiracy may be inferred.[25]

Plaintiff's complaint alleges a confederation of the vinyl chloride manufacturers and trade association defendants "beginning in the late 1950's and continuing to the present." Plaintiff claims her liver cancer, corresponding deteriorating health, medical expenses, and declining quality of life as actual damages.

Nicolet v. Nutt,[26] addresses:

> whether a cause of action exists against a party whose asbestos products did not cause the purported injury, but who allegedly conspired with other asbestos manufacturers to actively suppress and intentionally misrepresent medical evidence warning of the health hazards of asbestos.[27]

Nicolet holds:

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[25] ***Connolly*, 519 A.2d at 144 (citing *United States v. L.D. Caulk Co.*, D.Del., 126 F.Supp. 693, 702 (1954)).**

[26] **Del. Supr., 525 A.2d 146 (1987).**

[27] **Id. at 147.**

> if competent medical evidence as to the dangers of asbestos was intentionally misrepresented and suppressed in order to cause plaintiffs to remain ignorant thereof, coupled with proof that such suppression caused injury to a plaintiff, the alleged tort is established.[28]

Although it was an asbestos case, *Nicolet's* holding applies here. As described above, the non-supplier conspirator defendants cannot be liable for direct torts against plaintiff. Nevertheless, if they conspired with the suppliers to misrepresent and suppress vinyl chloride's dangers, all the conspirators, including the non-supplier conspirators, can be held liable. For now, the Court does not see the timing of the OHSA regulations' and plaintiff's exposure's dispositive significance. The Court may have to reconsider this issue on summary judgment. Again, it would help if plaintiff redrafts the complaint.

The same analysis applies to plaintiff's aiding and abetting claim. As to that, this Court has adopted the Second Restatement of Torts.[29] Section 876 of the Restatement provides:

> For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he

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[28] **Id.**

[29] ***Patton v. Simone*, Del. Super., C.A. Nos. 90C-JA-29 and 90C-JL-219, Herlihy, J. (June 25, 1992) Mem. Op. at *8 (citing *Monsen v. Consol. Dressed Beef Co., Inc.*, 579 F.2d 793, 799 (3rd Cir. 1978)).**

> (a) does a tortious act in concert with the other or pursuant to a common design with him, or
>
> (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or
>
> (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.[30]

As drafted, the complaint appears to reflect *§* 876's Clause (b). That is as it should be. Clause (c) cannot apply because, as discussed above, non-supplier defendants are not alleged to have breached a recognized duty to plaintiff. Clause (a) also does not come into play, although its inapplicability is less obvious. While the non-supplier defendants arguably committed tortious acts towards their customers' workers, and while the non-suppliers arguably conspired with Plastiline's suppliers in the suppliers' deceiving and harming plaintiff, the non-supplier defendants, themselves, did not commit a tort against plaintiff. In other words, the Court reads Clause (a) to require that the accused must be a tortfeasor in its own right against the plaintiff, as well as an aider and abettor.

Section 876's Clause (b), however, may apply here. In essence, plaintiff claims that the non-supplier defendants knew that the suppliers were breaching their civil duties to plaintiff.

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[30] **Restatement (Second) of Torts *§* 876 (1979).**

And plaintiff further claims that the non-supplier defendants gave the suppliers assistance and encouragement to injure plaintiff. If proved, that is aiding and abetting in Delaware.

In its motion to dismiss, defendant Rhone-Polenc cites two well-known United States Supreme Court cases[31] for the proposition that plaintiff's allegations "cannot serve as a basis for liability for they violate the rights of freedom of speech [and association] guaranteed by the First Amendment." At this point, the Court cannot tell if the complaint has true First Amendment implications.

V.

Finally, as mentioned, Superior Court Civil Rule 8(a)(1) requires claims for relief to contain "a short and plain statement of the claim showing that the pleader is entitled to relief."[32] The Rule's purpose is to "give the adverse party a clear indication of the precise nature of the pleader's claim in simple, plain, and

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[31] **Defendant directs the Court's attention to *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958) and *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).**

[32] **Super. Ct. Civ. R. 8(a)(1).**

understandable language."[33] It does not, however, require the pleader to,

[33] ***Costello v. Cording*, Del. Super., 91 A.2d 182, 184 (1952).**

> narrate facts sufficient to constitute a cause of action, nor is he [or she] required to spell out the definite verbiage of the wrongs complained of if the missing elements, or element, follow, or may reasonably be inferred from the facts that are alleged.[34]

Rule 8(e) requires, "[e]ach averment of a pleading shall be simple, concise and direct."[35] Although this complaint's averments are relatively simple and fairly direct, it is not short and concise. It is repetitive, argumentative and, at times, unclear. If the case goes to the jury and, preferably before summary judgment, the Court expects plaintiff to rewrite Counts 7 and 8 so that they are concise and litigable.

VI.

For the foregoing reasons, defendants' motion to dismiss is **GRANTED** as to Counts 1 through 6 and **DENIED** as to Count 7, civil conspiracy, and Count 8, aiding and abetting.

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Judge

oc: Prothonotary (Civil Division)

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[34] **Id. (Citing *Hollander v. Davis*, 120 F.2d 131 (5th Cir 1941).**

[35] **Super. Ct. Civ. R. 8(e).**