MAR 11 1983 → Bob Fischer

P. CHARLES JONES
Circuit Court, Br. III

Dave Stensby
File

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN,

Hagen Farm

Plaintiff,

83CV1115

v.

SUMMONS

UNIROYAL, INC.,
a foreign corporation, and
WASTE MANAGEMENT OF WISCONSIN, INC.,
a domestic corporation,

Defendants.

State of Wisconsin
County of Dane
I hereby certify this is a true copy of the original Summons and Complaint, filed in my office
Attest _____
Clerk of Courts
by Deputy Clerk

THE STATE OF WISCONSIN, to Said Defendant(s):

YOU ARE HEREBY SUMMONED and required to serve upon Bronson C. La Follette, Attorney General, and Carl A. Sinderbrand Assistant Attorney General, plaintiff's attorneys, whose address is 114 East, State Capitol, Madison, Wisconsin 53702, an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service, and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint.

BRONSON C. LA FOLLETTE
Attorney General
Carl A. Sinderbrand
CARL A. SINDERBRAND
Assistant Attorney General

ROBERT A. SELK
Assistant Attorney General

Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707
(608) 266-3936
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MAR 2 9 55 AM '83
CIRCUIT COURT

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v. Case No. 83CV1115

UNIROYAL, INC.,
a foreign corporation, and
WASTE MANAGEMENT OF WISCONSIN, INC.,
a domestic corporation,

Defendants.

COMPLAINT

NOW COMES the plaintiff, State of Wisconsin, by its attorneys, Bronson C. La Follette, Attorney General, and Carl A. Sinderbrand and Robert A. Selk, Assistant Attorneys General, and for claims for relief against the defendants shows to the court as follows:

FIRST CLAIM FOR RELIEF

1. The plaintiff is a sovereign state of the United States, having its principal office at the State Capitol, Madison, Dane County, Wisconsin 53702.

2. The defendant, Uniroyal, Inc. (Uniroyal), formerly U.S. Rubber Company, is a foreign corporation authorized to transact business in Wisconsin, within the meaning of sec. 180.801, Stats., and whose registered agent for service is Prentice-Hall Corporation, 110 East Main Street, Madison, Wisconsin 53703.

DANE
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CIRCUIT COURT

3. The defendant, Uniroyal, owns and operates a manufacturing plant in the City of Stoughton, Wisconsin. Uniroyal's production activities results in the generation of hazardous wastes, within the meaning of secs. 144.43(2), Stats., and hazardous substances, within the meaning of sec. 144.76, Stats.

4. The defendant, Waste Management of Wisconsin, Inc. (Waste Management), is a domestic corporation, whose registered agent for service is the C. T. Corporation, 222 West Washington Avenue, Madison, Wisconsin 53703.

5. The defendant, Waste Management, owns and operates the City Disposal Corporation in Stoughton, Wisconsin, which is a transporter of solid waste.

6. On information and belief, between the years 1955 and 1970, the defendants disposed of toxic, hazardous and other solid wastes in one or more gravel pits located on the property owned by Orrin and Ida Mae Hagen in the Town of Dunkirk (hereinafter known as the "Dunkirk site"), whose legal description is the East Half (E 1/2) of the Southwest Quarter (SW 1/4), Section 10, Township 5 North, Range 11 East, Town of Dunkirk, except that part lying south of County Trunk Highway A.

7. The wastes deposited by the defendants at the Dunkirk site included materials which are highly carcinogenic or otherwise harmful to human health and the environment, including, inter alia, vinyl chlorine, xylene, tetrahydrofuran, dichloroethylene, trichloroethylene, toluene, ethyl benzene and acetone.

8. On information and belief, the defendants disposed of these wastes in an irresponsible and negligent manner, and that the defendants knew or should have known that this manner of disposal would be likely to have a deleterious affect on human health, the environment and private and public property.

9. As a result of the irresponsible and negligent disposal of these wastes, the aforementioned contaminants have leaked and continue to leak into groundwater, and the quality of groundwater at and in the vicinity of the Dunkirk site has been significantly degraded.

10. Groundwater constitutes waters of the state, regulated by the State of Wisconsin for the benefit of the public. Hence, the defendants, by their irresponsible and negligent conduct, have substantially injured public resources.

11. The contamination of groundwater at and in the vicinity of the Dunkirk site threatens the health of local residents who rely on well water for potable water supplies. This contamination of groundwater constitutes a hazard to public health.

SECOND CLAIM FOR RELIEF

12. Plaintiff realleges each allegation in paragraphs 1 through 11 and incorporates the same by reference.

13. The leaking of toxic and hazardous wastes at the Dunkirk site to groundwater constitutes a discharge of a hazardous substance, within the meaning of sec. 144.76(1)(a), Stats.

14. Section 144.76(3), Stats., provides that any "person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state."

15. The defendants by their actions have caused and continue to cause the discharge of hazardous substances, within the meaning of sec. 144.76(3), Stats. Nevertheless, neither of the defendants have taken actions necessary to restore the environment or minimize the harmful effects from the discharge, in violation of sec. 144.76(3), Stats.

16. Section 144.98, Stats., provides that the attorney general shall enforce ch. 144, Stats. Section 144.99, Stats., provides that any person violating that chapter shall forfeit not less than $10 nor more than $5,000 for each violation, and that each day of continued violation is a separate offense.

THIRD CLAIM FOR RELIEF

17. Plaintiff realleges each allegation in paragraphs 1 through 11 and incorporates the same by reference.

18. The contamination of groundwater resulting from the disposal of toxic and hazardous wastes at the Dunkirk site constitutes a continuing public nuisance, within the meaning of sec. 144.98 and ch. 823, Stats.

19. Section 823.02, Stats., provides that the attorney general may commence an action to enjoin a public nuisance.

Section 823.03, Stats., provides that a prevailing plaintiff in a public nuisance action is entitled to judgment for damages, costs and abatement of the nuisance.

FOURTH CLAIM FOR RELIEF

20. Plaintiff realleges each allegation in paragraph 1 through 11 and incorporates the same by reference.

21. The disposition of the aforementioned toxic and hazardous wastes constitutes an extrahazardous activity.

22. The defendants by their conduct have engaged in an extrahazardous activity and are strictly liable for injuries caused thereby.

WHEREFORE, plaintiff demands judgment:

1. For a temporary injunction requiring the defendants to provide an alternative source of potable water to all citizens of the state whose well water supplies are or may be adversely affected by the groundwater contamination at and in the vicinity of the Dunkirk site;

2. For a temporary injunction requiring the defendants to analyze and characterize the quantity and characteristics of the wastes at the Dunkirk site, and to develop a program for abating the continuing contamination of groundwater;

3. For a permanent injunction requiring the defendants to abate the contamination of groundwater and restore the groundwater to its natural condition;

4. For an order requiring the defendants to pay not less than $10 nor more than $5,000 for each violation of ch. 144, Stats.;

5. For an order awarding compensatory damages;

6. For costs, disbursements and attorneys fees; and

7. For such other relief as the court deems just.

Dated this 2nd day of March, 1983.

BRONSON C. LA FOLLETTE
Attorney General

Carl A. Sinderbrand

CARL A. SINDERBRAND
Assistant Attorney General

ROBERT A. SELK
Assistant Attorney General

Attorneys for Plaintiff.

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