

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

HARRY F. GIBBS, SR.; ROBERT BAILEY, :
SR.; ANTHONY D'ORAZIO, JR.; :
WILLIAM E. MOONEY; DONALD ST. JOHN; :
and, DEBORAH J. RACE, on behalf of :
themselves and a class of all :
persons similarly situated, :

Plaintiffs, :

vs. :

Civil Action No.: 93-CV-0497C

E. I. DuPONT DE NEMOURS & CO., INC.; :
ALLIED-SIGNAL INC., successor-in- :
interest to the Allied Chemical Corporation; :
FIRST MISSISSIPPI CORPORATION; :
FIRST CHEMICAL CORPORATION; :
AMERICAN CYANAMID COMPANY; and, :
USX CORPORATION, successor-in-interest to :
United States Steel Corporation, :

Defendants and Third-Party Plaintiffs, :

vs. :

THE GOODYEAR TIRE & RUBBER COMPANY, :

Third-Party Defendant. :

NOTICE TO THE CLASS OF PROPOSED SETTLEMENT AGREEMENT

PLEASE READ THIS NOTICE CAREFULLY AS YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT OF THE ABOVE CAPTIONED LAWSUIT NOW PENDING IN THIS COURT.

FOR MORE INFORMATION CALL ATTORNEY STEVEN H. WODKA AT 1-800-449-6352.

This notice is being sent to you as a member of the class in the case of Harry F. Gibbs, Sr., et al. v. E. I. DuPont de Nemours & Co., Inc., et al., Civil Action No. 93-CV-0497C.

The Class consists of: All retired and former employees of The Goodyear Tire & Rubber Company in Niagara Falls, New York, who were employed between January 1, 1957 and June 11, 1990 for more than 90 days in Department 245, in the Maintenance Department, as a janitor, in the Laboratory and Laboratory QC (Department 104), in the Yard (Department 191), and/or in Shipping (Department 121), and who were exposed to ortho-toluidine or aniline in the course of their job duties, and who have not been diagnosed with bladder cancer. This class shall also include current Goodyear employees, who otherwise meet the criteria of this class definition, when they either retire or leave the employment of Goodyear.

This notice is to advise you that counsel for the parties have reached an agreement to resolve this case and thereby making it unnecessary to proceed further with this litigation.

The purpose of the proposed settlement agreement is to enable Goodyear to provide and the class to receive an agreed program of bladder cancer surveillance without the necessity, expense, delay or uncertainty of continued litigation. It is important to understand that, in agreeing to this resolution, no party is admitting the validity of the claims of the other parties, and nothing contained in the proposed resolution is to be considered an admission otherwise.

The National Institute for Occupational Safety and Health (NIOSH), in a study conducted at the Goodyear Niagara Falls plant, concluded that workers who were employed or had job duties in locations where ortho-toluidine (also called "Dominic") and aniline (also called "Exine") were used had a greater than expected incidence of bladder cancer. NIOSH thereafter issued an alert warning that workers exposed to ortho-toluidine or aniline may have an increased risk of developing bladder cancer and recommended that such workers participate in bladder cancer surveillance programs.

In the proposed settlement of the lawsuit, Goodyear has agreed to provide a program of bladder cancer surveillance as described in the attachment to this notice (Appendix "A" attached hereto).

It is important to understand that this lawsuit does not provide, nor was it ever intended to provide, compensation or damages for persons who develop bladder cancer as a result of their work at Goodyear. The rights of a person to file a worker's compensation claim, or to sue for damages, as a result of developing bladder cancer due to their work at Goodyear, remain completely preserved and unaffected by this proposed settlement.

The only claims that would be released by this proposed settlement would be a claim for medical tests to detect bladder cancer by persons who have not developed bladder cancer. Persons who have already developed bladder cancer are not part of this class, and as stated above, their rights remain unaffected by this proposed settlement. Similarly, if a person participates in this medical testing program proposed by Goodyear and is found to have bladder cancer, that person's rights to file a worker's compensation claim, or to sue in court for damages, remain unaffected by this proposed settlement.

A copy of the entire Release and Settlement Agreement, which incorporates the proposed Goodyear bladder cancer surveillance program, is not being provided in order to save copying and postage costs. However, you are free to review the Settlement Agreement in this case at the Office of the Clerk of the Court, or you may request a copy at no expense to you from plaintiffs' counsel Steven H. Wodka, whose address and phone number appears below.

It is important to understand that no court has yet passed upon the merits of the claims or defenses raised in this lawsuit. The defendants and third-party defendant in this lawsuit do not agree with the conclusions reached by NIOSH, and deny any causal relationship between exposure to ortho-toluidine or aniline and the occurrence of bladder cancer or any increased risk of the occurrence of bladder cancer. Defendants and third-party defendant deny any negligence, impropriety or illegality with respect to the manufacture, sale, distribution, or use of ortho-toluidine and aniline. Defendants and third-party defendant

dispute the allegations contained in the complaint in this lawsuit and have entered into the Release and Settlement Agreement in order to avoid the continuing expenses and uncertainty of litigation.

The purpose of this notice is only to inform you of the proposed settlement and hearing described below so that you will have an opportunity to review the proposed bladder cancer surveillance program to be provided by Goodyear, and also the Release and Settlement Agreement, and decide what steps, if any, you wish to take in response.

If the proposed settlement is approved, you will subsequently receive a notice advising you how you can participate in the surveillance program.

This is to advise you that the Court will conduct a hearing on Wednesday, January 21, 1998, at 2:00 PM, in the Courtroom of the Honorable John T. Curtin, United States District Judge, which is on the 6th Floor of the United States Courthouse which is located at 68 Court Street in Buffalo, New York. The purpose of this hearing will be to determine whether the parties' proposed settlement is fair, adequate, and reasonable and should therefore be approved by the Court.

If you do not wish to object to the proposed settlement of this lawsuit, it is not necessary for you to appear at the hearing or take any other action. HOWEVER, IF YOU WISH TO OBJECT TO THE PROPOSED SETTLEMENT, YOU MUST FILE A NOTICE OF INTENT TO APPEAR AT THE HEARING, ALONG WITH YOUR WRITTEN OBJECTIONS, WITH THE CLERK OF THE COURT ON OR BEFORE DECEMBER 24, 1997, AND YOU MUST ALSO SERVE COPIES OF YOUR PAPERS ON COUNSEL FOR THE PARTIES IN THIS ACTION AS INDICATED BELOW. IF YOU FAIL TO DO SO, YOU WILL LOSE YOUR RIGHT TO OBJECT TO THE PROPOSED SETTLEMENT OF THIS CASE.

Your Notice of Intent to Appear and your objections must be sent to the Clerk of the Court as follows:

Clerk, U. S. District Court for
the Western District of New York
68 Court Street
Buffalo, NY 14202.

Copies of your papers must also be sent to counsel for the parties as follows:

Plaintiffs' Class Counsel:

Steven H. Wodka
Attorney At Law
577 Little Silver Point Road
P.O. Box 66
Little Silver, NJ 07739-0066

Attorney for Goodyear:

Diane F. Bosse
Volgenau & Bosse
750 Main Seneca Building
237 Main Street
Buffalo, NY 14203-2782

Attorney for DuPont and AlliedSignal:

Paul F. Jones
Phillips Lytle Hitchcock Blaine & Huber
3400 Marine Midland Center
Buffalo, NY 14203

Attorney for First Chemical, First Mississippi, and American Cyanamid:

David W. Kloss
Gibson McAskill & Crosby
900 Chemical Bank Building
69 Delaware Avenue
Buffalo, NY 14202

Attorney for USX Corporation:

Howard S. Rosenhoch
Jaeckle Fleischmann & Mugel
700 Fleet Bank Building
Twelve Fountain Plaza
Buffalo, NY 14202-2292.

Except as provided above, no person shall be entitled to contest the terms of the proposed settlement, and persons who fail to object as provided for in this notice shall be deemed to have waived their right to do so and shall be foreclosed forever from raising any such objections.

If you have any questions regarding the provisions of the proposed settlement, you may contact plaintiffs' class counsel, Steven H. Wodka, P.O. Box 66, Little Silver, NJ 07739-0066, or phone him at: 1-800-449-6352.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT WITH QUESTIONS ABOUT THE PROPOSED SETTLEMENT.

/s/ Clerk, U. S. District Court For the Western District of New York

Dated: November 12, 1997

APPENDIX "A"

GOODYEAR PROPOSED PROGRAM OF BLADDER CANCER SURVEILLANCE

1. Commencement and Duration. The Goodyear Tire & Rubber Company (hereinafter "Goodyear") will provide and maintain a program of bladder cancer surveillance for the participants as defined in paragraph "2" until such time as Goodyear determines either that there are no surviving active participants or there is substantial consensus in the medical community that the program is no longer needed. Goodyear's determination in this regard is subject to arbitration under paragraph "7." The program shall commence with the notification of potential participants as specified in paragraph "10" hereof by no later than thirty-five (35) days after the United States District Court enters the Final Judgment and

Order of Dismissal referred to in Paragraph 5 of the Release and Settlement Agreement to which this Appendix is attached, provided that no appeals are taken therefrom. In the event of an appeal, the program of bladder cancer surveillance shall so commence no later than thirty-five (35) days following entry of a final non-appealable order affirming the Final Judgment and Order of Dismissal.

2. Participants.

The Cohort: The cohort includes all former and retired employees of the Goodyear Niagara Falls plant who were employed between January 1, 1957 and June 11, 1990 for more than one year in Department 245, in the Maintenance Department, as a janitor, in the Laboratory and Laboratory QC (Department 104), the Yard (Department 191) and/or Shipping (Department 121).

Opt-in Participants: Former and retired employees of the Goodyear Niagara Falls plant who were employed between January 1, 1957 and June 11, 1990 for more than 90 days in Department 245, in the Maintenance Department, as a janitor, in the Laboratory and Laboratory QC (Department 104), the Yard (Department 191), and/or Shipping (Department 121) may request inclusion in the program. Such potential opt-in participants may be permitted to participate in the program, in the discretion of the Goodyear Medical Director, provided that they affirmatively indicate interest in such participation and provide information indicating the likelihood of more than 90 days of exposure to ortho-toluidine or aniline in the course of their job duties at the Goodyear Niagara Falls plant. The decision of the Goodyear Medical Director to exclude a potential opt-in participant from participation in the program is not subject to arbitration under paragraph "7".

In the event such a potential opt-in participant who requested inclusion in the program is excluded from participation, after providing the required information, such individual will be advised that they may provide additional information to the Goodyear Medical Director and/or may contact plaintiff's Medical Advisor and/or plaintiff's counsel whose names, addresses, and telephone numbers will be provided to the excluded individual. Additionally, in the event potential opt-in participants requesting inclusion in the program are excluded, the number so excluded and a statement as to why such individuals were excluded will be incorporated into the quarterly report referred to in paragraph "9".

Goodyear will provide and maintain a program of bladder cancer surveillance for participants who reside more than 50 miles from Niagara Falls, New York which is substantially equivalent to the program provided to the participants who reside in the Niagara Falls area. The parties agree that while the method of providing the protocol might differ, the protocol itself will not vary with geographic location.

Persons who have been previously or are hereafter diagnosed with bladder cancer are not intended to be included in the program.

3. Program Purpose. The purpose of the program is to detect cases of bladder cancer at the earliest possible date, within the limitations of bladder cancer surveillance technology, by the use of the most effective, accurate and sensitive medical tests and technology in order to increase the likelihood of successful treatment and cure. The initial surveillance protocol will consist of semi-annual urine cytology and urine analysis, semi-annual 14-day dip stick test, and annual Lewis X antigen test. The protocol will be modified from time to time as

appropriate, to incorporate advances in surveillance technology. To be appropriate for inclusion in the program, a test must have been studied to such a degree that there is sufficient published work in the medical literature to enable an opinion to a reasonable degree of medical certainty that a particular test is more likely than another test in the existing protocol to detect a case of bladder cancer.

4. Referral. Participants with positive or atypical results on surveillance tests will be advised as soon as possible of the need for a referral to a urologist for cystoscopic examination and biopsy. On referral, urologists will be informed of the fact that a patient is a participant in a bladder cancer screening program and has already undergone surveillance tests, the results of which will be supplied. On referral, a participant will be advised that, at his or her option, and with his or her authorization, records regarding the surveillance tests and diagnostic procedures performed will be made available to the Medical Advisor.

5. Expense of Cystoscopic Examination. In the event of a referral to a urologist following a positive or atypical result on a surveillance test, Goodyear will pay the reasonable and customary uninsured or unreimbursed expense for cystoscopy and bladder biopsy (with such anesthesia as is customary and the treating urologist deems appropriate) and, if deemed reasonable and necessary by the treating urologist, for other procedures appropriate for the diagnosis of bladder cancer. It is anticipated these may include medical history and appropriate physical examination, complete chemical and microscopic urinalysis, complete blood count, and IV urogram. It will be suggested to the urologist that the screening tests which are part of the surveillance protocol should not be repeated, unless there is good cause for doing so. Goodyear's payment for the uninsured or unreimbursed expense of diagnostic procedures will include the payment of such expense of any participant who is without health insurance or Medicare.

6. Medical Advisor. Plaintiffs' counsel appoints Steven B. Markowitz, M.D. as Medical Advisor to consult with Goodyear's Medical Director on issues related to the program as set forth below. In the event Dr. Markowitz ceases to serve as plaintiffs' Medical Advisor, the parties agree to renegotiate the agreement with respect to the role and designation of a Medical Advisor. The fees and expenses of the Medical Advisor are solely and in all circumstances the responsibility of plaintiffs or their counsel, and are specifically not the responsibility of Goodyear.

7. Arbitration. In the event the plaintiffs' Medical Advisor and Goodyear's corporate Medical Director fail to agree on the matters listed in paragraph 8, or on any other matters which are subject to arbitration under this agreement, the matter will be referred to Dr. William Fehr, Chair of the Department of Urology at Sloan Kettering for arbitration as expeditiously as possible. In the event Dr. Fehr fails to serve as arbitrator, the Goodyear Medical Director and the Medical Advisor will agree on a substitute arbitrator as soon as practicable. If they are unable to agree, the Goodyear Medical Director will designate three possible choices for alternate arbitrator and the Medical Advisor will either pick one of the designated choices or designate three alternative choices, with the process continuing without undue delay until a substitute arbitrator is selected. The decision of the designated arbitrator will be final and binding. Under all circumstances, the issue to be determined by arbitration is whether the protocol is consistent with the criteria specified above in the program purpose.

The arbitrator shall direct that his fees and expenses be paid one-half by Goodyear and one-half by the plaintiffs. However, in the event the arbitrator determines that the conduct of one

of the parties, in the circumstances, was egregious and in bad faith, the arbitrator shall direct that his fees and expenses be paid by the non-prevailing party.

8. Role of Medical Advisor. The corporate Medical Director shall consult with plaintiffs' Medical Advisor on the following matters:

- a. Maintaining the surveillance protocol;
- b. Implementing improvements of the protocol and the program due to advances in medical and scientific technology;
- c. Determining the appropriateness of test centers and test kits;
- d. Information to be provided to treating urologists;
- e. The notification program and the content of mass mailings to the cohort and persons within the opt-in participant group;
- f. Statistical data generated by the program;
- g. Such other issues as may from time to time be appropriate.

9. Recordkeeping and Reporting. On a quarterly and annual basis, a participation report of the program will be prepared listing the number of persons in the cohort eligible to participate in the program, the number of active participants, the tests performed, the test results, and referrals to urologists. The annual reports will be a compilation of the participation reports for the preceding year, and will identify the number of bladder cancers successfully detected by the program. These reports will be a compilation of aggregate data. This aggregated information will be made available to the Medical Advisor and to plaintiffs' counsel, without personal identifiers. It is also intended that ultimately the program will collect records that will allow population-based analysis, which information when assembled will also be made available to the Medical Advisor and to plaintiffs' counsel without personal identifiers.

10. Notification. All persons within the cohort and opt-in participant groups who have not been previously diagnosed with bladder cancer will be provided with notification of the bladder cancer surveillance program, and will be encouraged to participate. Repeated notification, as deemed appropriate, will be provided.

As current Goodyear employees, who otherwise meet the criteria for the cohort or opt-in participant groups either retire or leave Goodyear's employment, they will likewise be notified of the program's availability and encouraged to participate, and shall receive follow-up notification as appropriate. Other persons who may have been formerly employed at the Goodyear Niagara Falls plant and/or who are retirees of the Goodyear Niagara Falls plant will not be notified of the program.

Goodyear will utilize the services of a commercial search service, as necessary, to locate individuals in the cohort or in the opt-in participant group or to confirm their addresses.

Notification will include information regarding the potential risk of bladder cancer, the benefits from detecting bladder cancer early, the limitations of bladder cancer surveillance technology, the fact that the program does not guarantee detection of bladder cancer and is not for the purposes of treatment of bladder cancer. Participants will be required to execute informed consents including a statement that participation does not guarantee that all bladder tumors can be detected by the program and its tests.

Plaintiffs' counsel will be provided with a list of the names and last known addresses of persons identified on Goodyear's Amended Response to Plaintiffs' First Set of Interrogatories,

served in the action of Gibbs, et al. v. E. I. duPont de Nemours and Company, et al., who are within the group of participants as defined in Paragraph "2" above. That list will be used by plaintiffs' counsel for the sole purposes of notification to the participants of the proposed settlement of that action and monitoring of this program. The list and/or its contents will not be disseminated or disclosed, in whole or in part, in any manner, to any other person or entity, and will not be utilized for any other purpose.

Plaintiffs' counsel will not send any written notice, inquiry, or other communication to the participants or any subset of the participant group, aside from an individual and personal communication not intended for distribution to more than one participant, without first submitting such communication to Goodyear for review and approval by Goodyear's Medical Director, which approval will not be unreasonably withheld or delayed. Except as hereafter provided, this limitation shall not restrict Plaintiffs' Counsel Steven H. Wodka in his communication with persons with whom he has a presently existing attorney-client relationship. Inclusion in the class definition in the action of Gibbs, et al. v. E. I. duPont de Nemours and Company, et al. is not considered to establish an attorney-client relationship for this purpose. Plaintiffs' counsel agrees to provide Goodyear with copies of all written surveys sent to ten (10) or more such persons.

All communications will identify the bladder cancer screening program as Goodyear's program.

11. Procedure on Breach. The parties agree that the United States District Court will not retain jurisdiction to enforce this Appendix "A."

12. Money Damages and Attorneys' Fees. Goodyear will make no monetary contribution in connection with the settlement of the action, including no contribution toward attorneys' fees. The parties agree that Goodyear will not be liable for any attorneys' fees in the event of any arbitration, enforcement proceeding, breach of contract action or any other proceeding with respect to this program of bladder cancer surveillance or the Release and Settlement Agreement to which this Appendix is attached.

13. Collateral Estoppel/Res Judicata. The parties and counsel agree for themselves and the participants that there is no collateral estoppel or res judicata or other preclusive effect of settlement. An individual participant's alleged exposure or risk may be contested in any subsequent proceeding or litigation in any forum or before any administrative body.

14. No Release of Other Potential Claims. All future claims for personal injury or for Workers' Compensation benefits due to bladder cancer are specifically preserved. The medical expenses associated with the program shall not be taken as a credit against future Workers' Compensation benefits in the event a participant establishes a Workers' Compensation claim for bladder cancer.

15. Cooperation. The parties agree to cooperate fully and execute any and all supplementary documents and to take any and all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this agreement.