

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

ROBERT LEE ROSE and )  
HELEN MARIA ROSE, his wife, )

Plaintiffs, )

v. )

ID No. N11C-08-102 BEN

3M COMPANY, )  
3M COMPANY, Individually and )  
as successor-in-interest to BONDO )  
CORPORATION; BASF )  
CORPORATION, R-M Division; )  
E.I DUPONT DE NEMOURS AND )  
COMPANY; GLIDDEN COMPANY )  
d/b/a ICI PAINTS; )  
ITW FINISHING LLC; Evercoat, a )  
division of Illinois Tool Works Inc.; )  
PPG INDUSTRIES, INC.; SAFETY )  
KLEEN SYSTEMS, INC. f/k/a )  
SAFETY KLEEN CORPORATION; )  
SHERWIN-WILLIAMS COMPANY; )  
and, VALSPAR CORPORATION, )

Defendants. )

**OPINION**

Date Submitted: April 23, 2012

Date Decided: July 19, 2012

*Upon Valspar Corporation's Motion to Dismiss: DENIED*

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**Jurden, J.**

## I. INTRODUCTION

Before the Court is Valspar Corporation's Motion to Dismiss pursuant to Superior Court Civil Rules 8(a), 9(b), and 12(b)(6). According to Valspar, Plaintiffs' First Amended Complaint (hereinafter "FAC"): (1) lacks sufficient information to put it on notice of Plaintiffs' claims; (2) lacks sufficient particularity as required by Rule 9(b) to plead negligence; and (3) fails to state a claim upon which relief can be granted.<sup>1</sup> Plaintiffs contend that they have fully satisfied the pleading requirements required by this Court's rules of civil procedure, and alternatively, if they have not, move for leave to amend their Complaint.<sup>2</sup> For the reasons that follow, the Court finds that Plaintiffs have sufficiently pled their claims. Accordingly, Valspar's Motion to Dismiss is **DENIED**.

## II. FACTS

Robert and Helen Rose (Collectively "Plaintiffs") filed their FAC on November 17, 2011,<sup>3</sup> alleging injuries resulting from Robert Rose's ("Mr. Rose") occupational exposure to volatile organic compounds ("VOC's"), including benzene. Plaintiffs allege that in the course of Mr. Rose's employment as an auto body shop apprentice, auto body technician, and automobile painter at ten locations, between 1980 and 2011, he was "exposed to, inhaled, ingested, and/or

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<sup>1</sup> Valspar Corporation's Motion to Dismiss Plaintiffs' First Amended Complaint ("Mtn. to Dismiss") (Trans. ID No. 41468602) at ¶¶ 4-13.

<sup>2</sup> Plaintiffs' Brief in Opposition to Valspar's Motion to Dismiss ("Op. Br.") (Trans. ID No. 42129928) at 1.

<sup>3</sup> Plaintiff's First Amended Complaint ("FAC") (Trans. ID. No. 40950624).

otherwise absorbed aromatic hydrocarbons and volatile organic compounds (“VOC’s”), including, but not limited to, benzene.”<sup>4</sup> Plaintiffs further allege that as a direct and proximate result of exposure to VOC’s, Mr. Rose contracted acute myelogenous leukemia (“AML”), which was diagnosed on or about March 1, 2010.<sup>5</sup>

Plaintiffs’ FAC names multiple defendants and alleges that Mr. Rose worked with and around products that contained VOC’s that were manufactured, sold, and distributed by Defendants.<sup>6</sup> According to Plaintiffs, “Plaintiff used and was around Valspar products, including but not limited to, paints, lacquers, thinners, primers, activators, hardeners, reducers, and eliminators.”<sup>7</sup> Plaintiffs allege that, as a result of his usage of Valspar products during the course of his employment, Mr. Rose was exposed to “fumes from paints, lacquers, glazes, thinners, primers, activators, hardeners, reducers, and eliminators by (hands-on) mixing, pouring, spraying and otherwise applying” the products to automobiles and auto parts.<sup>8</sup> Plaintiffs further allege that Valspar knew or should have known

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<sup>4</sup> *Id.* at ¶ 3.

<sup>5</sup> *Id.* at ¶ 6.

<sup>6</sup> *Id.* at ¶ 3.

<sup>7</sup> *Id.* at ¶ 7, (l).

<sup>8</sup> *Id.* at ¶ 3, (b).

that the VOC's were toxic, and were therefore negligent when it included the VOC's in its products.<sup>9</sup>

### III. DISCUSSION

The pleading requirements of Superior Court Civil Rules 8(a)<sup>10</sup> and 9(b)<sup>11</sup> require a plaintiff to put the opposing party on notice of his claims.<sup>12</sup> The Court reads Rule 8(a) in conjunction with sections (e)(1) and (f), which require pleadings to be “simple, concise and direct” and that “[a]ll pleadings shall be so construed as to do substantial justice.”<sup>13</sup> The purpose of Rule 9(b) is 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>14</sup> As this Court has noted previously:

“Notice pleading” standards set boundaries that are appropriate for the stage of the litigation at which they are applied. Defendants must be given fair

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<sup>9</sup> *Id.* at ¶¶ 8-14.

<sup>10</sup> Sup. Ct. Civ. R. 8(a) states: “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 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.”

<sup>11</sup> Sup. Ct. 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.”

<sup>12</sup> *Garcia v. Signetics Corp.*, 2010 WL 3101918, at \* 1 (Del. Super.) (quoting *In re Benzene Litig.*, 2007 WL 625054, at \*5 (Del. Super.)).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (citing *In re Benzene Litig.*, 2007 WL 625054, at \*6).

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>15</sup>

Although Rule 9(b) requires a plaintiff to plead negligence with particularity, there is no template for success when drafting a complaint that alleges negligent conduct. This Court has previously recognized that “the sufficiency of a pleading under Rules 8(a) and 9(b) must be measured according to the particular circumstances of the case.”<sup>16</sup> Because “toxic tort litigation presents unique difficulties in pleading,”<sup>17</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 products liability actions.”<sup>18</sup> Applying the above standards, the Court is not satisfied that Valspar requires more specificity to prepare a defense to the claims pled by Plaintiffs.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* (internal quotation marks omitted).

<sup>18</sup> *Id.* (internal quotation marks omitted).

Valspar relies on *In re Benzene Litigation*<sup>19</sup> in arguing that Plaintiffs' FAC fails to provide Valspar with notice of Plaintiffs' claims. But Plaintiffs' First Amended Complaint ("FAC") puts Valspar on notice that that Mr. Rose "used and was around VALSPAR products, including but not limited to, paints, lacquers, thinners, primers, activators, hardeners, reducers and eliminators" between 1980 and 2011 when he worked as an auto body shop apprentice, auto body technician, and automobile painter.<sup>20</sup> The FAC also puts Valspar on notice that during and throughout the course of Mr. Rose's employment, Mr. Rose was "exposed to, inhaled, ingested, and/or otherwise absorbed aromatic hydrocarbons and volatile organic compounds ("VOC's"), including, but not limited to, benzene."<sup>21</sup> Moreover, the FAC specifically names numerous auto body shops, their locations, and the time-frames during which Mr. Rose worked in each during his 31-year career.<sup>22</sup> The FAC sets forth the nature of Mr. Rose's alleged exposure:

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<sup>19</sup> 2007 WL 625054, at \*8, n. 83 (noting that "[v]ague descriptions of product usage or locations of use ... will not be sufficient. There is simply no justifiable reason for plaintiffs to hold back in this regard. Alleging that a plaintiff used a 'solvent' while 'working as a mechanic' does nothing but leave the defendants and the Court guessing. Plaintiffs must provide more, e.g., 'plaintiff used defendant's cleaning solvent while working as a mechanic at x garage in [city and state] to clean carburetors and other internal engine parts'; 'plaintiff was exposed to x defendant's fuel while pumping gas at y defendant's service state in [city and state]'; 'plaintiff used defendant's benzene-containing finishes while refinishing furniture in his home garage in [city and state] for recreational purposes.'").

<sup>20</sup> FAC at ¶¶ 2, 7 (l)

<sup>21</sup> *Id.* at ¶ 3.

<sup>22</sup> *See id.* at ¶ 2 (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j).

(a) During his work as an auto body technician, Plaintiff Robert Rose used (hands-on) fillers and body putties to repair and restore automobile bodies, panels, sections and auto body parts, and used (hands-on) sealants and adhesives to affix, attach and seal the same. Plaintiff used (hands-on) undercoatings, which were sprayed on and/or otherwise applied to items such as replacement fenders and other panels exposed to road-wear. Plaintiff used (hands-on) cleaners to remove unwanted materials from (clean) and otherwise prepare areas and parts for repair, restoration and painting. Plaintiff was exposed to fumes emanating from such products and materials during the application and drying processes. Plaintiff was further exposed to fumes by working with and in the near vicinity of others performing the same or similar operations, and by working around auto painting operations as described below.

(b) During his work as an automobile painter, Plaintiff Robert Rose was exposed to fumes from paints, lacquers, glazes, thinners, primers, activators, hardeners, reducers, and eliminators by (hands-on) mixing, pouring, spraying and otherwise applying the same to automobiles, automobile bodies and auto body parts, as well as during the curing and drying of the same. Plaintiff was exposed to fumes from solvents incorporated into gun washers and parts washers, which he used (hands-on) to clean his painting equipment. Plaintiff was further exposed to fumes by working with and in the near vicinity of others performing the same or similar operations, and by working around auto body repair / restoration operations as described above.

(c) During his work as a body shop apprentice, Plaintiff Robert Rose was exposed to fumes from the products and materials in question primarily in the same manner as above described for his work as an auto body technician. He was, on occasion, exposed in the same manner described for his work as an automobile painter.<sup>23</sup>

In the FAC, Plaintiffs provide Valspar with notice that Mr. Rose allegedly used Valspar products (that allegedly contain toxic VOC's) while working in various

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<sup>23</sup> *Id.* at ¶ 3 (a), (b), and (c).



capacities at specific locations during specific time periods. As the Court in *In Re Benzene Litigation* noted:

[t]hese descriptions ... when coupled with a meaningful explanation of the location and manner in which the product was used, will begin to draw a picture from which the defendants can ascertain which of their products are involved in the litigation. The picture is further enhanced when the plaintiff provides a meaningful time frame within which he was exposed to the allegedly defective product.<sup>24</sup>

For the foregoing reasons, the Court is satisfied that that Plaintiffs' FAC meets the pleading standards as required by Rules 8(a) and 9(b), and states claims for relief.

Valspar's Motion to Dismiss is therefore **DENIED**.

**IT IS SO ORDERED.**

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Jan R. Jurden, Judge

**cc:** Prothonotary

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<sup>24</sup> *In re Benzene Litig.*, 2007 WL 625054, at \*8.