

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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GJD3713

PORT AUTHORITY OF NEW YORK
and NEW JERSEY,

Plaintiff,

-against-

ARCADIAN CORPORATION, HYDRO
AGRI NORTH AMERICA, INC.,
DYNO NOBEL INC., f/k/a IRECO
INCORPORATED, JOHN DOES 1-10
(names being fictitious), JOHN DOES
11-20 (names being fictitious),
and JOHN DOES 21-30 (names being
fictitious),

Defendants.

CIVIL ACTION NO. 96-1635(WGB)

AMENDED COMPLAINT

Plaintiff, by its attorneys, Tompkins, McGuire & Wachenfeld and Dugan,
Brinkman, Maginnis & Pace, as and for its complaint alleges as follows:

I. At all relevant times, plaintiff Port Authority of New York and New Jersey
("Port Authority") was an agency, both corporate and politic, created and regulated by compact

between the states of New York and New Jersey. At all relevant times, the Port Authority was a citizen of both states. Its purpose was to facilitate commerce in and around the Port of New York and it was empowered under the laws of New York and New Jersey to, among other things, own and operate real or personal property within specified territories of both states. Among the real property that it owned and operated was the World Trade Center Complex ("Trade Center") in downtown Manhattan.

2. At all relevant times, defendant Arcadian Corporation ("Arcadian") was a corporation incorporated under the laws of the state of Delaware, with its principal place of business in Memphis, Tennessee. Arcadian was engaged in the design, manufacture, marketing, distribution and/or sale of nitrogen chemicals and fertilizers, including urea prills used as a fertilizer.

3. Arcadian was transacting business in New Jersey, or knew that its actions would have consequences within the state, at all relevant times.

4. At all relevant times, defendant Dyno Nobel Inc., formerly known as Ireco Incorporated ("Dyno Nobel/Ireco"), was incorporated under the laws of the state of Delaware, with its principal place of business in Salt Lake City, Utah. Defendant Dyno Nobel/Ireco was engaged in the business of, among other things, designing, manufacturing, marketing, distributing and/or selling ammonium nitrate slurry and nitroglycerine-based explosives as well as agricultural chemicals and fertilizers, including ammonium nitrate prills used as a fertilizer.

5. At all relevant times, defendant Hydro Agri North America, Inc., ("HANA"), was incorporated under the laws of the state of Florida, with its principal place of business in Tampa, Florida. HANA was engaged in the business of, among other things, the

design, manufacture, marketing, distributing and/or sale of agricultural chemicals and fertilizers throughout the United States and Canada, including ammonium nitrate prills used as a fertilizer.

6. Defendants HANA and Dyno Nobel/Ireco performed their activities in concert of action in the design, manufacture, marketing, distribution and/or sale of ammonium nitrate prills.

7. Defendants HANA and Dyno Nobel/Ireco were involved in the stream of commerce for the design, manufacture, marketing, distribution and/or sale of ammonium nitrate prills.

8. Defendant HANA was transacting business in New Jersey, or knew that its actions would have consequences within the state, at all relevant times.

9. Defendant Dyno Nobel/Ireco was transacting business in New Jersey, or knew that its actions would have consequences within the state, at all relevant times.

10. After a good faith and diligent effort, plaintiff has been unable to identify the Doe defendants named in this case that committed acts of negligence, strict liability and other acts (i) that subject them to liability for the damages for which plaintiff now sues and/or (ii) that combined with the acts of negligence of the other named defendants to cause these damages.

11. Defendants John Does 1-10 (names being fictitious) were engaged in the design, manufacture, marketing, distribution and/or sale of ammonium nitrate prills.

12. Defendants John Does 1-10 were transacting business in New Jersey, or knew that their actions would have consequences within the state, at all relevant times.

13. Defendants John Does 11-20 (names being fictitious) were engaged in the design, manufacture, marketing, distribution and/or sale of urea prills.

14. Defendants John Does 11-20 (names being fictitious) were transacting business in New Jersey, or knew that their actions would have consequences within the state, at all relevant times.

15. Defendants John Does 21-30 (names being fictitious) were engaged in the design, manufacture, marketing, distribution and/or sale of nitric acid.

16. Defendants John Does 21-30 were transacting business in New Jersey, or knew that their actions would have consequences within the state, at all relevant times.

FACTS

17. Plaintiff Port Authority's Trade Center property suffered property damage, business interruption losses, lost rent and other damages as a result of the detonation on February 26, 1993 of an explosive charge that included ammonium nitrate, urea, and nitric acid designed, manufactured, marketed, distributed and/or sold by defendants Arcadian, HANA, Dyno Nobel/Ireco, John Does 1-10, John Does 11-20 and John Does 21-30.

18. The ammonium nitrate, urea, and nitric acid products used to assemble the explosive charge were sold in New Jersey.

19. The explosive charge was assembled in New Jersey.

20. The explosive charge was assembled by persons who were New Jersey residents.

21. Once assembled, the explosive charge was transported directly from New Jersey to the Port Authority's Trade Center property by a vehicle that was rented in New Jersey.

22. Defendants' ammonium nitrate prills and urea prills were easily susceptible to mixture into a highly explosive charge and were so used in a reasonably foreseeable manner.

23. Defendants' ammonium nitrate was designed, manufactured, marketed, distributed and/or sold as a prill. A prill is a white, round, hardened droplet of ammonium nitrate that is about the size of the tip of a ball point pen. With the addition of fuel oil or other sensitizing substances, defendants' ammonium nitrate prills could be readily sensitized, effectively rendering them into explosive and energetic materials.

24. The ammonium nitrate prills that were incorporated into the explosive charge that damaged the Port Authority's Trade Center property were purchased in Middlesex County, New Jersey. These prills were designed, manufactured, marketed, distributed and/or sold by defendants HANA, Dyno Nobel/Ireco and John Does 1-10.

25. At all times relevant, defendants HANA, Dyno Nobel/Ireco and John Does 1-10 knew, or in the exercise of reasonable care should have known, that ammonium nitrate fertilizer prills were easily rendered into explosive and energetic materials suitable for use as explosive charges and that such materials were utilized by terrorists associated with criminal activity, particularly the kind of bombing, involving deaths, large number of injuries and tremendous property damage, that took place at the Trade Center.

26. Defendants' urea was also designed, manufactured, marketed, distributed and/or sold as a prill. With the addition of water and nitric acid, defendants' urea prills could be readily nitrated, effectively rendering them into explosive and energetic materials.

27. The urea prills incorporated into the explosive charge that damaged the Port Authority's Trade Center property were purchased in Hudson County, New Jersey. These prills were designed, manufactured, marketed, distributed and/or sold by defendants Arcadian and John Does 11-20.

28. At all relevant times, defendants Arcadian and John Does 11-20 knew, or in the exercise of reasonable care should have known, that urea fertilizer prills were easily rendered into explosive and energetic materials suitable for use as explosive charges and that such materials were utilized by terrorists associated with criminal activity, particularly the kind of bombing, involving deaths, large number of injuries, and tremendous property damage that took place at the Trade Center.

29. Defendants' nitric acid, a product commonly used in explosives throughout the world, was mixed with defendants' urea prills, rendering the urea into urea nitrate, an explosive and energetic material.

30. At this time, the Port Authority does not know the designer, manufacturer, marketer, distributor and/or seller of the nitric acid that was utilized in the explosive charge that damaged the Port Authority's Trade Center property. The nitric acid is believed to have been purchased in New Jersey and manufactured, distributed or sold by defendants John Does 21-30.

31. At all relevant times, defendants John Does 21-30 knew, or in the exercise of reasonable care should have known that nitric acid was used to render urea fertilizer prills, among other things, into explosive and energetic materials suitable for use as explosive charges and that such materials were utilized by terrorists associated with criminal activity, particularly the kind of bombing, involving deaths, large number of injuries, and tremendous property damage that took place at the Trade Center.

COUNT I

**NEGLIGENCE BY (1) HYDRO AGRI NORTH AMERICA, INC.,
(2) DYNNO NOBEL INC., (3) JOHN DOES 1-10, (4) ARCADIAN CORPORATION,
(5) JOHN DOES 11-20, AND (6) JOHN DOES 21-30**

32. Plaintiff repeats and incorporates by reference paragraphs 1 through 31 above as though fully set forth herein.

33. Defendants HANA, Dyno Nobel/Ireco, and John Does 1-10 knew, or should have known, that the ammonium nitrate prills that they designed, manufactured, marketed, distributed and/or sold could have readily been produced with an additive that would have decreased or eliminated the explosive potential of those prills.

34. Defendants HANA, Dyno Nobel/Ireco, and John Does 1-10 negligently failed to design, manufacture, market, distribute and /or sell ammonium nitrate prills with a formulation that would render them less detonable or non-detonable.

35. Defendants HANA, Dyno Nobel/Ireco and John Does 1-10 negligently failed to properly and adequately research, design, test and inspect ammonium nitrate prills as to their capabilities to be used as explosives, even though such explosive capabilities were known within and outside the fertilizer industry, and were especially known by defendants HANA and Dyno Nobel/Ireco as preeminent producers and distributors of agricultural and chemical products, for many years before the Trade Center bombing.

36. In fact, as early as 1968, a Mr. Samuel Porter obtained a patent for a process that would make ammonium nitrate fertilizer non-detonable. The patented process was a simple yet effective formulation that called for the addition of 5 to 10 percent of diammonium

phosphate (a high grade of fertilizer) to be blended with the ammonium nitrate fertilizer product. Mr. Porter's testing of his patent proved that, when treated with this process, ammonium nitrate fertilizer would not detonate. Mr. Porter's patent was then made available to manufacturers of ammonium nitrate fertilizer, one of its explicit purposes being the deterrence of criminal use of ammonium nitrate fertilizer in bombs. In 1985, the Porter patent entered the public domain. Accordingly, from that point on, any fertilizer manufacturer was free to use Mr. Porter's patented process without any license or royalty. Moreover, the cost of this process would add only a nominal amount to the current cost of ammonium nitrate fertilizer.

37. Despite the ready access to Samuel Porter's patent, as described in the immediately preceding paragraph, defendants HANA, Dyno Nobel/Ireco and John Does 1-10 negligently failed to avail themselves of this process, thus proximately causing the damages that are the subject of this complaint.

38. Defendants HANA, Dyno Nobel/Ireco and John Does 1-10 knew, or should have known that ammonium nitrate fertilizer was an explosive and energetic material for many years prior to the Trade Center bombing.

39. For example, in 1947, catastrophic explosions occurred on two ships, the S.S. Grandcamp and the S.S. High Flyer that were docked at Texas City, Texas and laden with ammonium nitrate fertilizer. The S.S. Grandcamp, a freighter owned by the French Government, was the first to detonate when a shipboard fire spread to the ammonium nitrate cargo in one of the vessel's holds. This resulted in devastating property damage and the loss of approximately 468 lives. The fires wrought by the explosion of the S.S. Grandcamp spread to the ammonium nitrate cargo in the hold of a second vessel, the S.S. High Flyer, a United States ship. The

detonation of the ammonium nitrate cargo on this second ship greatly exacerbated the property damage caused by the S.S. Grandcamp's explosion.

40. Another well-publicized and infamous case involving ammonium nitrate fertilizer as an explosive occurred in 1970 when anti-war activists bombed Sterling Hall (the Mathematics Research Building that conducted work for the U.S. Army) at the Madison campus of the University of Wisconsin. This bombing resulted in massive injuries, death and property damage. It was also a harbinger to all – both inside and outside the fertilizer industry – that large scale acts of terrorism were a reality in the United States and that such acts could readily be accomplished with fertilizer products.

41. Indeed, in the early 1970's, in response to the University of Wisconsin bombing, legislation was introduced in several states, including Wisconsin and Louisiana that would have required all ammonium nitrate fertilizer to be desensitized by way of a chemical agent (as described in the Porter patent) that would reduce, if not eliminate, their explosive propensities. These legislative efforts were well publicized, both inside and outside the fertilizer industry and were resisted by various fertilizer manufacturers.

42. Defendants HANA, Dyno Nobel/Ireco and John Does 1-10 knew or should have known of numerous prior incidents where explosive charges were detonated using ammonium nitrate components. Furthermore, defendants HANA, Dyno Nobel/Ireco and John Does 1-10 knew or should have known of legislative efforts to reduce, if not eradicate, the explosive properties of ammonium nitrate fertilizer because of its prior use by terrorists in bombing incidents.

43. Nevertheless, defendants HANA, Dyno Nobel/Ireco, and John Does 1-10

failed to desensitize the destructive capacity of ammonium nitrate fertilizer, even though the technology to do so was available, the need to do so was clear and the cost for the procedure was negligible.

44. The failure of defendants HANA, Dyno Nobel/Ireco, and John Does 1-10 to desensitize the destructive capacity of ammonium nitrate fertilizer proximately caused and was the direct and legal result of the damages that the Port Authority suffered.

45. In addition to incidents occurring in the United States, the product had been used in many bombing incidents throughout Europe. These incidents prompted the European Economic Community Council (the "Council") on December 18, 1975 to issue a directive that established: (1) strict standards for the formulation of all solid ammonium nitrate fertilizer and (2) detonation tests that could be required by member countries to ensure that any such fertilizers sold in those countries had an extremely low potential for use as explosives. Many countries heeded the directive's mandates. For example, Belgium, Denmark, Germany and the Netherlands prohibited the sale of certain ammonium nitrate fertilizer. France mandated that all ammonium nitrate fertilizer be tested by detonation.

46. In fact, some three years prior to the issuance of the Council directive, both Northern Ireland and the Republic of Ireland, acting in response to terrorist bombings involving ammonium nitrate fertilizer, enacted regulations for the formulation of ammonium nitrate that were more restrictive than those in the directive. These regulations called for a limit in the amount of nitrate used in the fertilizer products and the addition of calcium, sulfates and other materials to reduce their detonability.

47. The explosive properties of ammonium nitrate fertilizer prills and the danger

of purchasers using this product for terrorist purposes are problems that ammonium nitrate fertilizer manufacturers were well aware of prior to the Trade Center bombing.

48. Defendants HANA, Dyno Nobel/Ireco, and John Does 1-10 also knew or should have known, of these events if they engaged in the design, manufacture, marketing, distribution and/or sale of ammonium nitrate fertilizer in Europe. Nevertheless, defendants HANA, Dyno Nobel/Ireco, and John Does 1-10 failed to design, manufacture, market, distribute and/or sell in the United States any formulation of ammonium nitrate prills that would have reduced their explosive capabilities in accordance with the standards in the European directive.

49. Similarly, defendants Arcadian and John Does 11-20 knew, or should have known, that the urea prills they designed, manufactured, designed, marketed, distributed and/or sold could have been formulated so as to decrease or eliminate their explosive properties.

50. Defendants Arcadian and John Does 11-20 negligently failed to design, manufacture, market, distribute and/or sell urea prills with a formulation that would decrease or eliminate their explosive properties.

51. Defendants Arcadian and John Does 11-20 negligently failed to properly and adequately research, test and inspect urea prills with regard to their capabilities to be used as an explosive, even though – as with ammonium nitrate prills – such capabilities were known within and outside the fertilizer industry.

52. Indeed, it was known that the addition of phosphate or other additives to urea prills would decrease or eliminate their use as explosive and energetic materials.

53. Despite the availability of phosphate and other desensitizing agents, defendants Arcadian and John Does 11-20 failed to avail themselves of this process, thus

proximately causing and being the direct and legal result of the damages that the Port Authority suffered.

54. Furthermore, defendants Arcadian and John Does 11-20 knew, or should have known, that -- as with ammonium nitrate prills -- nitrated urea prills had in fact been used in explosive charges prior to the Trade Center bombing.

55. Nitrated urea prills have been incorporated in explosive charges in the Middle East, South America, Pakistan, and in the United States prior the Trade Center bombing.

56. In 1992, as a result of the extensive use of urea and ammonium nitrate fertilizer prills in numerous explosives charges set off by the Shining Path terrorists, sales of urea and ammonium nitrate fertilizer in Peru were banned.

57. Defendants Arcadian and John Does 11-20 knew, or should have known, of the events described in the preceding paragraphs.

58. Nevertheless, defendants Arcadian and John Does 11-20 negligently failed to design, manufacture, market, distribute and/or sell any formulation of urea prills that would have reduced their explosive capabilities.

59. Defendants HANA, Dyno Nobel/Ireco, John Does 1-10, Arcadian, and John Does 11-20 negligently, improperly and indiscriminately distributed, marketed, and/or made available their products in the unrestricted public market where their use as explosive charges in unlawful activity was reasonably foreseeable.

60. Defendants John Does 21-30 negligently, improperly and indiscriminately distributed, marketed, and/or made available their products in the unrestricted public market where their use in explosive charges in unlawful activity was reasonably foreseeable.

61. As a direct and proximate result of the negligent acts, carelessness, wrongdoing and omissions of defendants HANA, Dyno Nobel/Ireco, John Does 1-10, Arcadian, John Does 11-20, and John Does 21-30, an explosive charge was detonated at the Port Authority's Trade Center property, which directly caused the Port Authority to suffer substantial property damage, business interruption losses, lost rent and other related damages and losses.

WHEREFORE, Plaintiff Port Authority demands judgment against defendants Hydro Agri North America, Inc., Dyno Nobel Inc., John Does 1-10, Arcadian Corporation, John Does 11-20 and John Does 21-30, jointly and severally, for damages, interest and cost of suit.

COUNT II

STRICT LIABILITY AS TO (1) HYDRO AGRI NORTH AMERICA, INC., (2) DYNNO NOBEL INC., (3) JOHN DOES 1-10, (4) ARCADIAN CORPORATION, (5) JOHN DOES 11-20

62. Plaintiff repeats and incorporates herein by reference paragraphs 1 through 61 above as though fully set forth herein.

63. Defendants HANA, Dyno Nobel/Ireco and John Does 1-10 are liable in strict liability in tort, as contemplated by the Restatement (Second) of Torts, Section 402(a) since the ammonium nitrate prills that they designed, manufactured, marketed, distributed and/or sold were unreasonably dangerous and defective when they left the respective control of each of the defendants.

64. The ammonium nitrate prills that defendants HANA, Dyno Nobel/Ireco and John Does 1-10 designed, manufactured, marketed, distributed and/or sold were used in a manner that was reasonably foreseeable.

65. The unreasonably dangerous and defective conditions present in the ammonium nitrate prills that defendants HANA, Dyno Nobel/Ireco and John Does 1-10 designed, manufactured, marketed, distributed and/or sold were a proximate cause of the explosion at Port Authority's Trade Center property on February 26, 1993, which thereby caused the Port Authority to suffer substantial property damage, business interruption losses, lost rent and other related damages and losses.

66. Similarly, defendants Arcadian and John Does 11-20 are liable in strict liability in tort, as contemplated by the Restatement (Second) of Torts, Section 402(A), since the urea prills that they designed, manufactured, marketed, distributed and/or sold were unreasonably dangerous and defective when they left the respective control of each of the defendants.

67. The urea prills that defendants Arcadian and John Does 11-20 designed, manufactured, marketed, distributed and/or sold were used in a manner that was reasonably foreseeable.

68. The unreasonably dangerous and defective conditions in the urea prills that defendants Arcadian and John Does 11-20 designed, manufactured, marketed, distributed and/or sold were a proximate cause of the explosion at the Port Authority's Trade Center property on February 26, 1993, which thereby caused the Port Authority to suffer substantial property damage, business interruption losses, lost rent and other related damages and losses.

WHEREFORE, Plaintiff Port Authority demands judgment against defendants Hydro Agri North America, Inc., Dyno Nobel Inc., John Does 1-10, Arcadian Corporation, John Does 11-20 and John Does 21-30, jointly and severally, for damages, interest and cost of suit.

COUNT III

**FAILURE TO WARN BY (1) HYDRO AGRI NORTH AMERICA, INC.,
(2) DYNNO NOBEL INC., (3) JOHN DOES 1-10, (4) ARCADIAN CORPORATION,
(5) JOHN DOES 11-20, AND (6) JOHN DOES 21-30**

69. Plaintiff repeats and incorporates herein by reference paragraphs 1 through 68 above as though fully set forth herein.

70. Defendants HANA, Dyno Nobel/Ireco and John Does 1-10, Arcadian, John Does 11-20, and John Does 21-30 knew, or in the exercise of reasonable care should have known that ammonium nitrate fertilizer prills, urea fertilizer prills and nitric acid products were used to render fertilizer prills into explosive and energetic materials suitable for use as explosive charges and utilized by terrorists associated with criminal activity, particularly the kind of bombing, involving deaths, large numbers of injuries, and tremendous property damage that took place at the Trade Center.

71. Nevertheless, defendants failed to provide guidelines, instructions, and/or warnings to their distributors, retailers, dealers or other suppliers to confirm that buyers in the general and unrestricted public market have legitimate and lawful purposes for the use of defendants' potentially explosive products.

72. The use of defendants' products as explosive charges in unlawful activity was reasonably foreseeable.

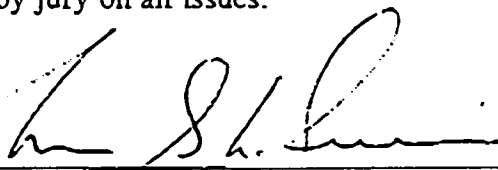
73. This failure to warn of the inherent dangers of ammonium nitrate fertilizer prills, urea fertilizer prills and nitric acid by the defendants was a proximate cause of the explosion at the Port Authority's Trade Center property on February 26, 1993, which thereby

caused the Port Authority to suffer substantial property damage, business interruption losses, lost rent and other related damages and losses.

WHEREFORE, Plaintiff Port Authority demands judgment against defendants Hydro Agri North America, Inc., Dyno Nobel Inc., John Does 1-10, Arcadian Corporation, John Does 11-20 and John Does 21-30, jointly and severally, for damages, interest and cost of suit.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues.

By: 

William B. McGuire

Dated: January ¹⁵~~13~~, 1997