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 LOHRMANN, A.A. Rochester Gas & Electric Corp.  
 RECIP.NAME RECIPIENT AFFILIATION  
 DINIY2, I.P. Antitrust & Indemnity Group

**SUBJECT:** Forwards Moran & Krenzer summons & complaint, US District Court for Western District of NY Civil Action 79-1009.

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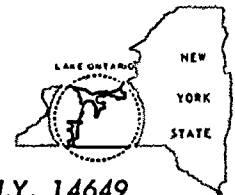
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ROCHESTER GAS AND ELECTRIC CORPORATION • 89 EAST AVENUE, ROCHESTER, N.Y. 14649

TELEPHONE  
AREA CODE 716 546-2700

February 4, 1980

Mr. Ira P. Dinitz  
Nuclear Regulatory Commission  
Washington, D. C. 20555

Re: Notice of Claim: R. E. Ginna Nuclear Power  
Plant, Unit 1; Docket No. 50-244

Jan B. Burba and Nancy Burba  
Edward W. Garrett and Doreen Garrett  
Donald C. Gray  
Thomas E. Michaels and Elaine Michaels  
Albert H. Morrison and Sharonlee Morrison  
Aaron W. Salter and Carol M. Salter  
Gordon D. Sheehan and Cheryl Sheehan  
vs. Rochester Gas and Electric Corporation

Dear Mr. Dinitz:

Enclosed herewith is a summons and complaint regarding  
the above captioned plaintiffs.

As discussed in our telephone conversation, similar  
actions have been brought in New York State Supreme Court.  
The issue of whether the cases will be heard in State or  
Federal Court is still to be resolved.

If you have any further questions, please feel free to  
call upon me.

Very truly yours,

Alan A. Lohrmann, Manager  
Claims and Insurance Department

AAL:lmv  
Enclosure

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United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

Rec'd  
January 7, 1980  
1055 AM  
DW Baple

CIVIL ACTION FILE No. 79-1009

JAN B. BURBA and NANCY BURBA  
EDWARD W. GARRETT and DOREEN GARRETT  
DONALD C. GRAY  
THOMAS E. MICHAELS and ELAINE MICHAELS  
ALBERT H. MORRISON and SHARON LEE MORRISON  
AARON W. SALTER and CAROL M. SALTER  
GORDON D. SHEEHAN and CHERYL SHEEHAN,

Plaintiff s

ROCHESTER GAS and ELECTRIC CORPORATION  
89 East Avenue  
Rochester, New York,

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon Moran & Krenzer

Notes:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

[SEAL]

plaintiff's attorney , whose address is 257 Elmwood Avenue  
Buffalo, New York 14222

Subscribed and sworn to before me this

By \_\_\_\_\_ United States Marshal

an answer to the complaint which is herewith served upon you, within \_\_\_\_\_ days after service of this  
summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be  
taken against you for the relief demanded in the complaint.

JOHN K. ADAMS  
Clerk of Court.

Diane Spiller  
Deputy Clerk.

Date: December 28, 1979

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.



*al Johnson*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK.....

JAN B. BURBA and NANCY BURBA  
347 Daytona Drive  
Goleta, California 93017, and

EDWARD W. GARRETT and DOREEN GARRETT  
8 Karen Drive  
Rochester, New York 14606, and

DONALD C. GRAY  
1380 Electric Avenue  
Lackawanna, New York 14218, and

THOMAS E. MICHAELS and ELAINE MICHAELS  
421 Eden Street  
Buffalo, New York 14220, and

ALBERT H. MORRISON and SHARONLEE MORRISON  
70 Schutt Court  
Grand Island, New York 14072, and

AARON W. SALTER and CAROL M. SALTER  
597 Norfolk Avenue  
Buffalo, New York 14216, and

GORDON D. SHEEHAN and CHERYL SHEEHAN  
162 Rhea Crescent  
Rochester, New York 14615

Plaintiffs

vs.

ROCHESTER GAS AND ELECTRIC CORPORATION  
89 East Avenue  
Rochester, New York

Defendant

COMPLAINT FOR  
DECLARATORY  
JUDGMENT AND  
DAMAGES

JURY TRIAL  
DEMANDED

Civil No. 79-1009

The plaintiffs, by and through their attorneys, Moran  
and Krenzer, seek Declaratory Judgment and damages for  
injuries, and for their Complaint respectfully state:

JURISDICTION

1. This Court has Jurisdiction under Article III,

States Constitution; Article I, Sections One and Eight of the United States Constitution; Title 28 USC Sections 1331 and 1337; and Title 42 USC Sections 2011 et seq., as amended, as well as Title 42 USC Sections 2201 and 2401; and Rule 57 of the Federal Rules of Civil Procedure.

This being a civil action brought under the actual and/or implied authority and jurisdiction of this Court under an Act of Congress and under the provisions of Title 42 USC Sections 2011 et seq., as amended (commonly referred to as the "Price-Anderson Act") for claims of radiation injury resulting from radiation exposure during the regulation of, possession, use in interstate commerce facilities, use in utilization facilities licensed and pervasively regulated by the United States, of atomic energy; special nuclear material; and other federally licensed activities of the defendant under those statutory provisions.

This also being a civil action brought under the jurisdiction of this Court, since it arises under an Act of Congress regulating commerce (28 USC 1337) and which arises under the Constitution and Laws of the United States where the sum or value in controversy exceeds \$10,000.00, exclusive of interest and costs (28 USC 1331).

This also being a civil action seeking Declaratory Judgment (42 USC 2201 and 2401 and Rule 57) that the provisions of Title 42 USC Sections 2201 et seq., and regulations made pursuant thereto, grant a federal cause of action to plaintiffs, either expressly or as necessarily implied, to recover for injuries and



damages sustained by them for the matters set forth herein below.

This also being a civil action seeking a Declaratory Judgment (42 USC 2201, 2401 and Rule 57) that the provisions of Title 42 USC 2201 et seq. and regulations made pursuant thereto, under the Supremacy Clause, create an actual or implied federal statute of limitations for claims of injuries and damages sustained by persons at federally licensed nuclear facilities as complained of herein, which permit suit for recovery within such federal limitations.

This also being a civil action seeking a Declaratory Judgment, under the provisions aforesaid, that Congress has pre-empted, through pervasive regulation (statutorily and under the code of Federal Regulations), the entire field of nuclear energy and radiation control and that the jurisdiction of United States District Courts are exclusive and original for claims arising out of injuries to non-employees of licensees through radiation or alternatively such jurisdiction is at least jointly with the Courts of the several States.

This also being a civil action seeking a Declaratory Judgment, under the provisions aforesaid, and by virtue of the Fourteenth Amendment and Title 28 USC 1343 (Sub-sections 3 and 4) as well as the organic law which authorizes the institution of this suit founded upon Title 42 USC 1983, with respect to the facial validity and/or the application of CPLR 214 of the State of New York to these plaintiffs under the circumstances complained of herein.



This, also being a civil action seeking a Declaratory Judgment, under the provisions, aforesaid, that the provisions of CPLR 214 of the State of New York denies to the plaintiffs substantive and/or procedural Due Process as written and/or as authoritatively construed by granting the right to sue and recover to citizens of the State of New York and the United States who may visit the State of New York and/or seek recovery therein while denying the same to plaintiffs and access to the Courts under the circumstances herein contrary to the Fourteenth Amendment and the provisions of life, liberty and property therefrom.

2. At all times herein relevant the plaintiffs were residents of the State of New York.

3. Upon information and belief, at all times herein relevant, the defendant was and continues to be a New York State business corporation with its principal place of business located at 89 East Avenue, Rochester, New York.

4. Upon information and belief, at all times herein relevant, the defendant owned, operated, maintained and controlled a nuclear power plant known as the R.E. Ginna Nuclear Plant (hereinafter referred to as Ginna Nuclear Plant) located at Ontario Center, New York.

5. Upon information and belief, at all times herein relevant, the defendant was and continues to be controlled, regulated and licensed by the United States through the Nuclear Regulatory Commission and as such is subject to all the provisions of Title 42 USC 2201 et seq. and the Code of Federal Regulations, Title 10 thereof, and all controls of the United States with respect to radiation, protection therefrom and compensation for

any injurious radiation and radiation injuries complained of herein.

6. That at all times herein relevant, the State of New York, by statute, provides for under Article 2, Section 214 of the CPLR, that all suits for injuries and damages, in the Courts of New York, must be commenced within three (3) years of the date of the infliction of the injury if based upon State founded common law negligence. Further, that the Courts of New York have construed the term "injury" to commence and occur at the time the substance was injected into or inflicted upon the body and not when the injury is manifested and discovered by the injured party.

7. That at all times herein relevant, the State of New York had in force statutes and construction of statutes which permitted certain classes of persons to be exempt from the 3 years statute of limitations.

8. That at all times herein relevant, the United States, under various congressional provisions including Title 42 USC 2201 et seq., granted a period of limitations which permits the filing of this suit and enforcement for radiation injuries sustained as complained of herein.

9. That upon information and belief, the defendant was notified of a damage claim made by an employee of Nisco and of two other claims by other employees of Nisco within recent months.

Further, that defendant, acting through Francis E. Drake, Chairman of the Board, by letter to the employees of

defendant and by written statement to the press and by its attorneys, state that "it (defendant) intends to contest the claims vigorously". And further that the provisions of CPLR 214 are available in contest of plaintiffs' claims herein by the defendant.

AS AND FOR DECLARATORY  
JUDGMENT

10. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered 1 through 9 above, the same as if more fully herein set forth.

11. That the plaintiffs were thereby injured and otherwise damaged through and by reason of the excessive and prohibited overexposure to radiation by defendant which occurred on or about the month of December 1973 or the months of January and February 1974.

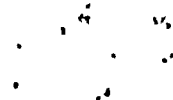
Further, that no injury manifested itself to plaintiffs, nor did they otherwise become aware of the excessive radiation and the progressive injury they were subjected to until the same was confirmed by them immediately prior to the filing of this suit, some 5 years and several months after the radiation overexposures occurred.

12. That Congress, by 42 USC 2011, declared the legislative intent in enactment of the Price-Anderson Act which declared the policy of the United States to be to direct the development, use and control of atomic energy so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of common defense and security.

Further that Congress, by 42 USC 2012, made specific findings in relation to the development, use and control of atomic energy. That is, that the same must be regulated in the national interest, inter alia, to protect the health and safety of the public(d); affects interstate and foreign commerce(c); the same and utilization facilities in connection therewith must be regulated to protect the health and safety of the public(e); the operation of utilization facilities places them in interstate commerce(f); to protect the public....in the interest of the general welfare....the United States makes funds available for a portion of the damages suffered by the public from nuclear incidents and may limit liability of those persons liable for such losses(i).

And that Congress, by 42 USC 2013, specifically set forth the legislative purpose for the act, inter alia, as to effectuate the congressional policies to encourage widespread participation in utilization of atomic energy for peaceful purposes consistent with the health and safety of the public(d).

13. That by Congressional definition set forth in 42 USC 2014(k), the term "financial protection" means the ability to respond in damages for public liability.... Further definition as to "nuclear incident" means inter alia any occurrence, within the United States causing within the United States, bodily injury, sickness, disease or death arising out of or resulting from the radioactive, toxic or other hazardous properties of the material. Further, that under sub-section (w), the term "public liability" means any legal liability arising out of or resulting from a



nuclear incident except inter alia claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the incident occurs.

14. That the Congress retained federal control over radiation and the protection against radiation hazards (42 USC 2021(k)). Further, that domestic distribution, ownership, possession and use of nuclear material remains controlled and licensed by the United States (42 USC 2073 through 2094).

15. Further, that Congress has controlled the publishing and distribution of all information relating to atomic energy in the national interest and usurped the right to patent inventions and discoveries pertaining thereto.

16. That Congress pursuant to 42 USC 2210 the utilization facilities (including defendant) is required to have such financial protection to cover public liability claims and sets up provisions of federal indemnity, joint agreements, settlement of claims, and limits of liability as well as waiver of defenses.

17. That Congress has, in other respects, regulated and required licensing of virtually every aspect for use facilities and has granted the Nuclear Regulatory Commission exclusive authority over the maintenance of radiation controls and protection and permits its determination of specifications and standards of facilities and radiation exposure. Further, that the Commission has pervasively regulated all aspects of human exposure to radiation and utilization facilities to the exclusion of the

various states.

18. Further, that the several States are not permitted to regulate radiation or the exposure to radiation under the Act and the regulations promulgated thereunder.

19. That Congress has seen fit to set forth specific federal Court jurisdiction under various provisions of the Act. Section 2021(c) (Retention of Authority); Section 2021(k) (Retention of Authority against radiation hazards); Section 2160(a) (Prohibiting any Court reviewing Proliferation Statement); Section 2184 (Injunctions and damages relating to patents); Section 2210(n) (Public liability claims in extraordinary nuclear occurrence, then the District Court of the district of occurrence); Section 2210(o) (Allocation of funds if claims may be in excess of limit of liability, then District Court of that district may apportion); Section 2239 (District Court review of hearings); Section 2272 (criminal violations); and, Section 2281 (contempt proceedings).

20. That because of the pervasive regulation of atomic energy activities and in particular radiation and its hazards together with Congressional modifications of insurance requirements, limitations, immunities and procedures including settlements together with specific District Court jurisdiction for specified claims with exclusions only running to workmen's compensation claims, the entire field has been pre-empted.

Further, that therefore jurisdiction for plaintiffs' claims lie jointly, if not exclusively, within the District Court



Further, that Congress' failure to specifically grant such jurisdiction was an oversight or at least an assumption that all persons on site who were exposed to a covered incident would be employees of the licensee or the United States as delineated under Section 2014(w).

21. That by reason thereof this Court has such jurisdiction and should issue its Declaratory Decree determining such jurisdiction.

22. That by reason of the clear recognition of the United States Congress in its 1975 amendment of Section 2210(n) from an overall limitation of 10 years to 20 years from occurrence and an initial limitation of 3 years from knowing or reasonably could have known about the injury, the Congress intended injured parties to be able to recover up to 3 years after such knowledge generally.

23. That by reason thereof the provisions of the New York CPLR 214 are in conflict and would deny to plaintiffs Due Process under the Fourteenth Amendment and this Court should issue its Declaratory Decree determining such construction of limitations and the invalidity of CPLR 214 in respect to foreclosure of limitations before such radiation injury is manifested or before plaintiffs could reasonably have known of such injury.

24. That by reason of certain exemptions of classes of persons from the restrictions of CPLR 214 which are not founded upon any rational basis and the denial of such exemptions to plaintiffs similarly situated constitutes a denial of Equal

Protection of the Laws under the Fourteenth Amendment and this Court should issue its Declaratory Decree determining such to be repugnant to the constitutional provisions aforesaid and therefore invalid..

25. That, by reason of all of the above, Congress has created express and/or implied federal causes of action sounding in negligence, as well as fraud, with the ability of injured parties to file suit and recover in the various federal District Courts under the Price-Anderson Act. Further that such express or implied jurisdiction and cause of action of the District Court of the District of occurrence is either exclusive original or at the minimum jointly with the jurisdiction and claims available in the Courts of the several States. Further, that such express and/or implied jurisdiction has been, at least by dictum if not through a direct holding, noted by the various federal Courts including the United States Supreme Court and therefore this Court should issue its Declaratory Decree determining such causes of action and jurisdiction.

AS AND FOR CAUSES OF ACTION  
IN FRAUD IN BEHALF OF THE PLAINTIFFS,  
JAN B. BURBA, EDWARD W. GARRETT, DONALD  
C. GRAY, THOMAS E. MICHAELS, ALBERT H.  
MORRISON, AARON W. SALTER and GORDON D.  
SHEEHAN

26. These plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered 1 through 25 above, the same as if herein more fully set forth.

27. Upon information and belief, in the latter part of 1973, the defendant entered into a contract with Nisco, a company

from New Jersey, in which Nisco agreed to perform work on a containment vessel located at the Ginna Nuclear Plant.

28. Upon information and belief, at the time that the defendant entered into a contract with Nisco and at all relevant times thereafter, the defendant knew that exposing individuals to radiation could cause such individuals to suffer physical injuries and damage.

29. Thereafter, Nisco employed these plaintiffs to perform a portion of the work to be done by Nisco at the Ginna Nuclear Plant.

30. (a) As a result of his employment with Nisco, Mr. Burba worked at the Ginna Nuclear Plant for a period of time in January and February, 1974.

(b) As a result of his employment with Nisco, Mr. Garrett worked at the Ginna Nuclear Plant for a period of time in January and February, 1974.

(c) As a result of his employment with Nisco, Mr. Gray worked at the Ginna Nuclear Plant for a period of time in January, 1974.

(d) As a result of his employment with Nisco, Mr. Michaels worked at the Ginna Nuclear Plant for a period of time in January, 1974.

(e) As a result of his employment with Nisco, Mr. Morrison worked at the Ginna Nuclear Plant for a period of time in January, 1974.

(f) As a result of his employment with Nisco, Mr.

Salter worked at the Ginna Nuclear Plant for a period of time in December, 1973.

(g) As a result of his employment with Nisco, Mr. Sheehan worked at the Ginna Nuclear Plant for a period of time in January and February, 1974.

31. Upon information and belief, during the aforementioned periods, these plaintiffs' activities and their exposure to radiation were monitored by the defendant.

32. Upon information and belief, at all times herein relevant, the defendant knew, or should have known, the maximum amount of radiation which each of these plaintiffs should have been allowed to receive per calendar quarter pursuant to the rules and regulations of the United States Atomic Energy Commission.

33. Upon information and belief, during the period of time that these plaintiffs worked at the Ginna Nuclear Plant, they each received amounts of radiation which the defendant knew, or should have known, were substantial enough to cause each of them physical injuries and damage.

34. Upon information and belief, during the period of time that these plaintiffs worked at the Ginna Nuclear Plant, they each received amounts of radiation in excess of the amount permitted by the rules and regulations of the United States Atomic Energy Commission.

35. Upon information and belief, within several weeks after these plaintiffs finished working at Ginna Nuclear Plant, the defendant knew that each of these plaintiffs had received an amount of radiation which was substantial enough to cause him

physical injuries and damage.

36. Upon information and belief, within several weeks after these plaintiffs finished working at Ginna Nuclear Plant, the defendant knew that each of these plaintiffs had received an amount of radiation in excess of the amount permitted by the rules and regulations of the United States Atomic Energy Commission.

37. (a) Within several weeks after Mr. Burba finished working at the Ginna Nuclear Plant, the defendant, with intent to deceive and defraud Mr. Burba, represented to him that he had received 5.580 rems of radiation while working at the Ginna Nuclear Plant.

(b) Within several weeks after Mr. Garrett finished working at the Ginna Nuclear Plant, the defendant, with intent to deceive and defraud Mr. Garrett, represented to him that he had received 3.660 rems of radiation while working at the Ginna Nuclear Plant.

(c) Within several weeks after Mr. Gray finished working at the Ginna Nuclear Plant, the defendant, with intent to deceive and defraud Mr. Gray, represented to him that he had received 2.030 rems of radiation while working at the Ginna Nuclear Plant.

(d) Within several weeks after Mr. Michaels finished working at the Ginna Nuclear Plant, the defendant, with intent to deceive and defraud Mr. Michaels, represented to him that he had received 2.660 rems of radiation while working at the Ginna Nuclear Plant.

(e) Within several weeks after Mr. Morrison finished

working at the Ginna Nuclear Plant, the defendant, with intent to deceive and defraud Mr. Morrison, represented to him that he had received 4.170 rems of radiation while working at the Ginna Nuclear Plant.

(f) Within several weeks after Mr. Salter finished working at the Ginna Nuclear Plant, the defendant, with intent to deceive and defraud Mr. Salter, represented to him that he had received 1.200 rems of radiation while working at the Ginna Nuclear Plant.

(g) Within several weeks after Mr. Sheehan finished working at the Ginna Nuclear Plant, the defendant, with intent to deceive and defraud Mr. Sheehan, represented to him that he had received 3.980 rems of radiation while working at the Ginna Nuclear Plant.

38. Upon information and belief, these representations were false when made by the defendant and known by the defendant to be false when made.

39. When the defendant so notified these plaintiffs, the defendant, with intent to deceive and defraud these plaintiffs concealed from them and did not inform them of the fact that the amount of radiation each had received was substantial enough and known to be substantial enough to cause physical injuries and damage.

40. When the defendant so notified these plaintiffs, the defendant, with intent to deceive and defraud these Plaintiffs concealed from them and did not inform them of the fact that the amount of radiation each had received was in excess of and known

to be in excess of the amount permitted by the rules and regulations of the United States Atomic Energy Commission.

41. These plaintiffs believed and relied upon these representations and misrepresentations and were thereby caused to refrain from seeking medical care and treatment, which each one would have sought had each one been informed that he had received an amount of radiation which was known to be substantial enough to cause physical injuries and damage and an amount of radiation which was in excess of the amount permitted by the rules and regulations of the United States Atomic Energy Commission.

42. As a result of their failing to seek medical care and treatment, based upon their reliance upon the representations and misrepresentations of the defendant, these plaintiffs each sustained the injuries and damages hereinafter set forth.

43. (a) As a result of this incident, Mr. Burba sustained physical injuries and pain, as well as emotional distress and psychological damages. He has suffered a reduced income earning potential and, upon information and belief, will incur medical expenses as a result of these injuries. All of this is to his damage in the sum of \$2,000,000.00

(b) As a result of this incident, Mr. Garrett sustained physical injuries and pain, as well as emotional distress and psychological damages. He has suffered a reduced income earning potential and, upon information and belief, will incur medical expenses as a result of these injuries. All of this is to his damage in the sum of \$2,000,000.00.

(c) As a result of this incident, Mr. Gray sustained physical injuries and pain, as well as emotional distress, psychological damages, lost income and has incurred medical expenses. He has suffered a reduced income earning potential and, upon information and belief, will incur future medical expenses as a result of these injuries. All of this is to his damage in the sum of \$2,000,000.00.

(d) As a result of this incident, Mr. Michaels sustained physical injuries and pain, as well as emotional distress, psychological damages, lost income and has incurred medical expenses. He has suffered a reduced income earning potential and, upon information and belief, will incur future medical expenses as a result of these injuries. All of this is to his damage in the sum of \$10,000,000.00.

(e) As a result of this incident, Mr. Morrison sustained physical injuries and pain, as well as emotional distress, psychological damages, lost income and has incurred medical expenses. He has suffered a reduced income earning potential and, upon information and belief, will incur future medical expenses as a result of these injuries. All of this is to his damage in the sum of \$2,000,000.00.

(f) As a result of this incident, Mr. Salter sustained physical injuries and pain, as well as emotional distress, psychological damages, lost income and has incurred medical expenses. He has suffered a reduced income earning potential and, upon information and belief, will incur future medical expenses as a result of these injuries. All of this is to his damage in the

sum of \$2,000,000.00.

(g) As a result of this incident, Mr. Sheehan sustained physical injuries and pain, as well as emotional distress and psychological damages. He has suffered a reduced income earning potential and, upon information and belief, will incur medical expenses as a result of these injuries. All of this is to his damage in the sum of \$2,000,000.00.

AS AND FOR CAUSES OF ACTION  
IN BEHALF OF JAN B. BURBA, EDWARD  
W. GARRETT, DONALD C. GRAY, THOMAS  
E. MICHAELS, ALBERT H. MORRISON,  
AARON W. SALTER and GORDON D. SHEEHAN  
BASED UPON BREACH OF WARRANTY

44. These plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered 1 through 43 above, the same as if herein more fully set forth.

45. Upon information and belief, at some time prior to the times that these plaintiffs began working at the Ginna Nuclear Plant, the defendant entered into a contract with Nisco in which the defendant agreed to pay Nisco a certain sum of money provided that Nisco would perform certain repair work on a containment vessel located at the Ginna Nuclear Plant.

46. Upon information and belief, as part of that contract, the defendant agreed to provide equipment and personnel to monitor and safeguard the health and safety of these plaintiffs and other employees of Nisco while they were employed at the Ginna Nuclear Plant.

47. At the times that these plaintiffs were employed by Nisco to work at the Ginna Nuclear Plant, the defendant, through

its agents, officers, servants and employees expressly and impliedly warranted to them and other employees of Nisco that if they took all of the precautions outlined by the defendant that they would not receive an amount of radiation substantial enough to cause them physical injuries and damage, nor an amount of radiation in excess of the amount permitted by the rules and regulations of the United States Atomic Energy Commission.

48. These plaintiffs relied upon these warranties made by the defendant in accepting employment by Nisco to work at the Ginna Nuclear Plant.

49. Each of these plaintiffs took all of the precautions he was told to take by the defendant, but nevertheless each received an amount of radiation substantial enough to cause him physical injuries and damage.

50. Each of these plaintiffs took all the precautions he was told to take by the defendant, but nevertheless each received an amount of radiation which was in excess of the amount permitted by the rules and regulations of the United States Atomic Energy Commission.

51. The injuries and damages suffered by each of these plaintiffs as outlined above were proximately caused by the breach of the implied and express warranties of the defendant and without any negligence on the part of the plaintiffs contributing thereto.

AS AND FOR CAUSES OF ACTION IN  
BEHALF OF JAN B. BURBA, EDWARD W.  
GARRETT, DONALD C. GRAY, THOMAS E.  
MICHAELS, ALBERT H. MORRISON, AARON W.  
SALTER AND GORDON D. SHEEHAN BASED UPON  
VIOLATIONS OF NEW YORK STATE LABOR LAW  
SECTION 200

52. These plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered 1 through 51 above, the same as if herein more fully set forth.

53. At all times herein relevant, the New York State Labor Law Section 200, subparagraph 1 read in pertinent part as follows:

"All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places."

54. In causing and allowing each of these plaintiffs to receive the amount of radiation he received while working at the Ginna Nuclear Plant, the defendant violated the foregoing section of the New York State Labor Law.

55. At all times herein relevant, each of these plaintiffs was a member of the class of persons meant to be protected by the foregoing statute.

56. The injuries and damages sustained by each of these plaintiffs, as outlined above were first medically diagnosed within the last three years, and, upon information and belief, could not have been medically diagnosed more than three years ago.

57. The injuries and damages sustained by each of



these plaintiffs as outlined above were proximately caused by the defendant's violation of New York State Labor Law, Section 200, sub-paragraph 1 and without any negligence on the part of the plaintiffs contributing thereto.

AS AND FOR CAUSES OF ACTION IN  
BEHALF OF JAN B. BURBA, EDWARD W.  
GARRETT, DONALD C. GRAY, THOMAS E.  
MICHAELS, ALBERT H. MORRISON, AARON W.  
SALTER AND GORDON D. SHEEHAN BASED  
UPON NEGLIGENCE

58. These plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered 1 through 57 above, the same as if herein more fully set forth.

59. Upon information and belief, during the times herein relevant, the defendant violated 10 CFR, Section 20.101(a).

60. Upon information and belief, during the times herein relevant, the defendant violated 10 CFR, Section 20.101(b).

61. Upon information and belief, during the times herein relevant, the defendant violated 10 CFR, Section 20.102.

62. Upon information and belief, during the times herein relevant, the defendant violated 10 CFR, Section 20.103.

63. Upon information and belief, during the times herein relevant, the defendant violated 10 CFR, Sub-section 20.201.

64. Upon information and belief, during the times

herein relevant, the defendant violated 10 CFR, Section  
20.202.

65. Upon information and belief, during the times  
herein relevant, the defendant violated 10 CFR, Section  
20.203.

66. Upon information and belief, during the times  
herein relevant, the defendant violated 10 CFR, Section  
19.12.

67. Upon information and belief, during the times  
herein relevant, the defendant violated 10 CFR, Section  
19.13.

68. Upon information and belief, the defendant caused  
and allowed each of these plaintiffs to receive an amount of  
radiation which the defendant knew, or should have known, to  
be substantial enough to cause physical injuries and damage.

69. Upon information and belief, the defendant caused  
and allowed each of these plaintiffs to receive an amount of  
radiation in excess of the amount permitted by the rules and  
regulations of the United States Atomic Energy Commission.

70. Upon information and belief, the defendant failed  
to prevent each of these plaintiffs from receiving an amount  
of radiation known by the defendant to be substantial enough  
to cause physical injuries and damage.

71. Upon information and belief, the defendant failed  
to prevent each of these plaintiffs from receiving an amount  
of radiation in excess of the amount permitted by the rules  
and regulations of the United States Atomic Energy

Commission.

72. Upon information and belief, the defendant failed to properly monitor the amounts of radiation these plaintiffs were receiving while working at the Ginna Nuclear Plant.

73. Upon information and belief, the defendant failed to adequately apprise each of these plaintiffs within a reasonable period of time that each had received an amount of radiation, which was known to be substantial enough to cause physical injuries and damage.

74. Upon information and belief, the defendant failed to adequately apprise each of these plaintiffs within a reasonable period of time that each had received an amount of radiation in excess of the amount permitted by the rules and regulations of the United States Atomic Energy Commission.

75. Upon information and belief, the defendant failed to advise each of these plaintiffs to seek medical care and treatment within a reasonable period of time, when it knew that they had each received an amount of radiation substantial enough to cause physical injuries and damage.

76. Upon information and belief, the defendant failed to take reasonable precautions to prevent each of these plaintiffs from receiving an amount of radiation substantial enough to cause physical injuries and damage..

77. Upon information and belief, the defendant failed to take reasonable precaution to prevent each of these plaintiffs from receiving an amount of radiation in excess of the amount permitted by the rules and regulations of the

United States Atomic Energy Commission

78. Upon information and belief, the defendant failed to maintain individual whole body doses for each of these plaintiffs within the limits specified by the United States Atomic Energy Commission.

79. Upon information and belief, the defendant failed to make adequate surveys to assure that individual whole body doses received by each of these plaintiffs did not exceed the amounts permitted by the rules and regulations of the United States Atomic Energy Commission.

80. Upon information and belief, the defendant failed to limit each plaintiff's exposure within the limits set forth in the rules and regulations of the United States Atomic Energy Commission.

81. Upon information and belief, the defendant failed to provide adequate instruction to each of these plaintiffs in accordance with the rules and regulations of the United States Atomic Energy Commission.

82. Upon information and belief, the defendant failed to issue to each of these plaintiffs adequate radiation monitoring devices in accordance with the defendant's own procedures.

83. Upon information and belief, the defendant failed to maintain training records for each of these plaintiffs in accordance with the defendant's own established procedures.

84. Upon information and belief, the defendant failed to provide continuous supervision of each of these plaintiffs

while he was working in the containment vessel.

85. Upon information and belief, the defendant failed to insure that each of these plaintiffs did not inadvertently cause the shielding of the radiation measuring devices each was wearing.

86. Upon information and belief, the defendant failed to provide proper management controls for each of these plaintiffs with respect to the conduct of the work being performed in a manner that was consistent with the needs.

87. Upon information and belief, the defendant failed to determine the level of comprehension of each of these plaintiffs as a result of their purported training.

88. Upon information and belief, the defendant failed to determine if each of these plaintiffs was following the requirements of certain procedures by appropriate audits and surveillance.

89. Upon information and belief, the defendant failed to adequately instruct each of these plaintiffs regarding the precautions necessary and the danger involved in working in the containment vessel.

90. Upon information and belief, the acts of the defendant set forth in paragraphs numbered 59 through 89 above, taken individually or collectively, were acts of negligence.

91. The injuries and damages sustained by each of these plaintiffs as outlined above were proximately caused by

the aforementioned acts of negligence of the defendant and without any negligence on the part of the plaintiffs contributing thereto.

AS AND FOR CAUSES OF  
ACTION IN BEHALF OF JAN B.  
BURBA, EDWARD W. GARRETT,  
DONALD C. GRAY, THOMAS E.  
MICHAELS, ALBERT H. MORRISON,  
AARON W. SALTER and GORDON D. SHEEHAN  
BASED UPON STRICT LIABILITY

92. These plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered 1 through 91 above, the same as if herein more fully set forth.

93. The defendant, in subjecting the plaintiffs to exposure to nuclear radiation, was engaging in an inherently dangerous and hazardous activity.

94. These plaintiffs' exposure to this radiation resulted from this inherently dangerous and hazardous activity and the injuries and damages sustained by these plaintiffs were proximately caused by their exposure to this radiation by the defendant.

AS AND FOR CLAIMS FOR  
PUNITIVE DAMAGES IN BEHALF  
OF JAN B. BURBA, EDWARD W.  
GARRETT, DONALD C. GRAY, THOMAS  
E. MICHAELS, ALBERT H. MORRISON,  
AARON W. SALTER and GORDON D. SHEEHAN

95. These plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered 1 through 94 above, the same as if herein more fully set forth.

96. Upon information and belief, all of the above



outlined actions of the defendant, through its officers, agents, servants or employees, were done willfully, wantonly and recklessly; they were done with total disregard for each of these plaintiff's health, safety and welfare at the time; they were done with total disregard for each of these plaintiff's future health, safety and welfare; and they were done through intentionally concealing and continuing to conceal knowledge and information it had in its possession and control.

Accordingly:

(a) Jan B. Burba requests that punitive damages be assessed against the defendant in the sum of \$3,000,000.00.

(b) Edward W. Garrett requests that punitive damages be assessed against the defendant in the sum of \$3,000,000.00.

(c) Donald C. Gray requests that punitive damages be assessed against the defendant in the sum of \$3,000,000.00.

(d) Thomas E. Michaels requests that punitive damages be assessed against the defendant in the sum of \$40,000,000.00.

(e) Albert H. Morrison requests that punitive damages be assessed against the defendant in the sum of \$3,000,000.00.

(f) Aaron W. Salter requests that punitive damages be assessed against the defendant in the sum of \$3,000,000.00.

(g) Gordon D. Sheehan requests that punitive damages be assessed against the defendant in the sum of \$3,000,000.00.

AS AND FOR CAUSES OF ACTION IN  
BEHALF OF NANCY BURBA, DOREEN  
GARRETT, ELAINE MICHAELS, SHARONLEE  
MORRISON, CAROL M. SALTER AND  
CHERYL SHEEHAN

97. These plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered 1 through 94 above, the same as if herein more fully set forth.

98. (a) At all times herein relevant, Nancy Burba was and continues to be the wife of Jan B. Burba;

(b) At all times herein relevant, Doreen Garrett was and continues to be the wife of Edward W. Garrett.

(c) At all times herein relevant, Elaine Michaels was and continues to be the wife of Thomas E. Michaels.

(d) At all times herein relevant, Sharonlee Morrison was and continues to be the wife of Albert H. Morrison.

(e) At all times herein relevant, Carol M. Salter was and continues to be the wife of Aaron W. Salter.

(f) At all times herein relevant, Cheryl Sheehan was and continues to be the wife of Gordon D. Sheehan.

99. (a) As a result of the injuries sustained by Jan B. Burba as outlined above, Nancy Burba has been deprived of his society, companionship and services, and upon information and belief, will continue to be so deprived for a long period of time. All of this is to her damage in the sum of \$1,000,000.00.

(b) As a result of the injuries sustained by Edward W. Garrett as outlined above, Doreen Garrett has been deprived of his society, companionship and services, and upon information and

belief, will continue to be so deprived for a long period of time. All of this is to her damage in the sum of \$1,000,000.00.

(c) As a result of the injuries sustained by Thomas E. Michaels as outlined above, Elaine Michaels has been deprived of his society, companionship and services, and upon information and belief, will continue to be so deprived for a long period of time. All of this is to her damage in the sum of \$2,000,000.00.

(d) As a result of the injuries sustained by Albert H. Morrison as outlined above, Sharonlee Morrison has been deprived of his society, companionship and services, and upon information and belief, will continue to be so deprived for a long period of time. All of this is to her damage in the sum of \$1,000,000.00.

(e) As a result of the injuries sustained by Aaron W. Salter as outlined above, Carol M. Salter has been deprived of his society, companionship and services, and upon information and belief, will continue to be so deprived for a long period of time. All of this is to her damage in the sum of \$1,000,000.00.

(f) As a result of the injuries sustained by Gordon D. Sheehan as outlined above, Cheryl Sheehan has been deprived of his society, companionship and services, and upon information and belief, will continue to be so deprived for a long period of time. All of this is to her damage in the sum of \$1,000,000.00.

WHEREFORE:

A. (a) Jan B. Burba demands compensatory damages against the defendant in the sum of \$2,000,000.00 and requests that punitive damages be assessed against the defendant in the sum of \$3,000,000.00; Nancy Burba demands compensatory damages against



the defendant in the sum of \$1,000,000.00;

(b) Edward W. Garrett demands compensatory damages against the defendant in the sum of \$2,000,000.00 and requests that punitive damages be assessed against the defendant in the sum of \$3,000,000.00; Doreen Garrett demands compensatory damages against the defendant in the sum of \$1,000,000.00;

(c) Donald C. Gray demands compensatory damages against the defendant in the sum of \$2,000,000.00 and requests that punitive damages be assessed against the defendant in the sum of \$3,000,000.00;

(d) Thomas E. Michaels demands compensatory damages against the defendant in the sum of \$10,000,000.00 and requests that punitive damages be assessed against the defendant in the sum of \$40,000,000.00; Elaine Michaels demands compensatory damages against the defendant in the sum of \$2,000,000.00;

(e) Albert H. Morrison demands compensatory damages against the defendant in the sum of \$2,000,000.00 and requests that punitive damages be assessed against the defendant in the sum of \$3,000,000.00; Sharonlee Morrison demands compensatory damages against the defendant in the sum of \$1,000,000.00;

(f) Aaron W. Salter demands compensatory damages against the defendant in the sum of \$2,000,000.00 and requests that punitive damages be assessed against the defendant in the sum of \$3,000,000.00; Carol M. Salter demands compensatory damages against the defendant in the sum of \$1,000,000.00; and,

(g) Gordon D. Sheehan demands compensatory damages against the defendant in the sum of \$2,000,000.00 and requests that

punitive damages be assessed against the defendant in the sum of \$3,000,000.00; Cheryl Sheehan demands compensatory damages against the defendant in the sum of \$1,000,000.00;


B. the plaintiffs request that this Court grant the Declaratory Judgment as prayed,

all together with the cost and disbursements of this action.

Dated: Buffalo, New York  
December 28, 1979

Yours, etc.  
MORAN and KRENZER

by

  
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