

PHILADELPHIA COURT OF COMMON PLEAS  
**PETITION/MOTION COVER SHEET**

CONTROL NUMBER:  
**092053**  
 (RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE: <u>10-18</u>
Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at <a href="http://courts.phila.gov">http://courts.phila.gov</a>	

August Term, 2005  
 Month Year  
 No. 1918

William H. Brendley, Jr.

Name of Filing Party:  
Rohm and Haas Company

vs.  
Rohm & Haas Co.

(Check one)  Plaintiff  Defendant  
 (Check one)  Movant  Respondent

INDICATE NATURE OF DOCUMENT FILED:  
 Petition (Attach Rule to Show Cause)  Motion  
 Answer to Petition  Response to Motion

Has another petition/motion been decided in this case?  Yes  No  
 Is another petition/motion pending?  Yes  No  
 If the answer to either question is yes, you must identify the judge(s):  
Hon. Mark Bernstein

TYPE OF PETITION/MOTION (see list on reverse side) <u>Preliminary Objections</u>	PETITION/MOTION CODE (see list on reverse side) <u>DPROB</u>
---	---

**I. CASE PROGRAM**  
 Is this case in the (answer all questions):  
**A. COMMERCE PROGRAM**  
 Name of Judicial Team Leader: \_\_\_\_\_  
 Applicable Petition/Motion Deadline: \_\_\_\_\_  
 Has deadline been previously extended by the Court?  
 Yes  No  
**B. DAY FORWARD/MAJOR JURY PROGRAM** — Year \_\_\_\_\_  
 Name of Judicial Team Leader: \_\_\_\_\_  
 Applicable Petition/Motion Deadline: \_\_\_\_\_  
 Has deadline been previously extended by the Court?  
 Yes  No  
**C. NON JURY PROGRAM**  
 Date Listed: \_\_\_\_\_  
**D. ARBITRATION PROGRAM**  
 Arbitration Date: \_\_\_\_\_  
**E. ARBITRATION APPEAL PROGRAM**  
 Date Listed: \_\_\_\_\_  
**F. OTHER PROGRAM:** Class Action  
 Date Listed: \_\_\_\_\_

**II. PARTIES**  
 (Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)  
Ralph G. Wellington, Esquire  
Dennis R. Suplee, Esquire  
Samuel W. Silver, Esquire  
Jennifer A. L. Battle, Esquire  
Schnader Harrison Segal & Lewis LLP  
1600 Market Street, Suite 3600  
Philadelphia, PA 19103  
215-751-2488; 2068; 2309; 2647  
Attorneys for Defendant  
  
Aaron J. Freiwald, Esquire  
Patricia M. Giordano, Esquire  
Layser & Freiwald, P.C.  
1500 Walnut Street, 18th Floor  
Philadelphia, PA 19102  
215-875-8000  
Attorneys for Plaintiffs

**III. OTHER**

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

Jennifer A. L. Battle September 28, 2005 Jennifer A.L. Battle 86765  
 (Attorney Signature/Unrepresented Party) (Date) (Print Name) (Attorney I.D. No.)

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.

---

WILLIAM H. BRENDLEY, JR., Ph.D.,  
On behalf of himself and all others similarly  
situated,

Plaintiff,

v.

ROHM & HAAS CO.,

Defendant.

---

: COURT OF COMMON PLEAS  
: OF PHILADELPHIA COUNTY

:  
: CLASS ACTION

:  
: AUGUST TERM, 2005  
: NO. 001918

:  
: MOTION CONTROL NO. 090354  
:  
:

---

**ORDER**

---

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2005, it is hereby  
ORDERED AND DECREED that defendant Rohm and Haas's Preliminary Objection in the  
Nature of a Demurrer to Plaintiff's Complaint is SUSTAINED and plaintiff's Complaint is  
dismissed with prejudice.

BY THE COURT:

---

Bernstein, J.

**ATTEST**  
**SEP -6 2005**  
**D. VOGLER**  
**PRO. PROTHY**

SCHNADER HARRISON SEGAL & LEWIS LLP

By: Ralph G. Wellington (I.D. No. 10068)  
Dennis R. Suplee (I.D. No. 03336)  
Samuel W. Silver (I.D. No. 56596)  
Jennifer A. L. Battle (I.D. No. 86765)

Attorneys for Defendant  
Rohm and Haas Company

1600 Market Street, Suite 3600  
Philadelphia, PA 19103  
(215) 751-2488; 2068; 2309; 2647

WILLIAM H. BRENDLEY, JR., Ph.D.,  
On behalf of himself and all others similarly  
situated,

Plaintiff,

v.

ROHM & HAAS CO.,

Defendant.

COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY

CLASS ACTION

AUGUST TERM, 2005  
NO. 001918

**ATTEST**

**SEP 28 2005**

**D. VOGLER**  
**PRO. PROTHY**

**PRELIMINARY OBJECTION OF DEFENDANT  
ROHM AND HAAS COMPANY IN THE NATURE OF  
A DEMURRER TO PLAINTIFF'S COMPLAINT**

Pursuant to Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure, defendant Rohm and Haas Company ("Rohm and Haas"), by and through its undersigned counsel, preliminarily objects to plaintiff's complaint in the nature of a demurrer for legal insufficiency, and in support thereof, states as follows:

1. Plaintiff William H. Brendley, Jr., Ph.D. ("Brendley"), a former Rohm and Haas employee, has filed this class action lawsuit against his former employer on behalf of "the past and present employees of Rohm and Haas who worked at the Spring House research

3-2

facility,” seeking medical monitoring costs due to an allegedly increased rate of brain cancer at the Spring House facility.

2. Dr. Brendley’s claim and those of the putative class members are barred by the exclusivity provisions of the Pennsylvania Workmen’s Compensation Act.

3. The Workmen’s Compensation Act states, in relevant part:

The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employees, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death . . . or occupational disease . . . .

77 Pa. Con. Stat. § 481 (2005).

4. The Act therefore bars suits by an employee against an employer for “any work-related injury.” *Poyser v. Newman and Co.*, 514 Pa. 32, 36, 522 A.2d 548, 550 (1987).

5. Under Pennsylvania law, the term “injury” “has been broadly defined to encompass all work-related harm,” including, for example, risk of infection. *Jackson Township Volunteer Fire Co. v. Workmen’s Compensation Appeal Board*, 140 Pa. Commw. 620, 624-25, 594 A.2d 826, 828 (1991).

6. Accordingly, Pennsylvania courts have held that medical monitoring claims based on workplace exposure to alleged health risks are properly compensable only under Workmen’s Compensation. *Fried v. Sungard Recovery Servs., Inc.*, 900 F. Supp. 758, 768 (E.D. Pa. 1995) (granting motion to dismiss claim for medical monitoring as barred by Workmen’s Compensation because “injury” is risk of contracting disease); *Jackson Township, supra*, 140 Pa.

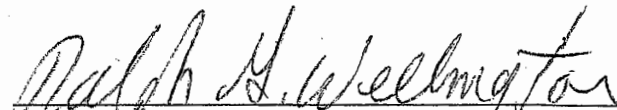
Commw. at 624-25, 594 A.2d at 828 (claim for medical monitoring due to workplace exposure to HIV and hepatitis viruses properly a Workmen's Compensation claim).

7. Courts in other jurisdictions have uniformly held that medical monitoring claims are barred by state workers' compensation exclusivity provisions. *See, e.g., Building and Constr. Dept. v. Rockwell Int'l. Corp.*, F.3d 1487, 1490 (10<sup>th</sup> Cir. 1993) (claim for medical monitoring due to workplace exposure to radiation barred by Colorado Workmen's Compensation Act); *Acevedo v. Consolidated Edison Co.*, 596 N.Y.S.2d 68, 71 (N.Y. App. Div. 1993) (claim for future medical surveillance costs due to workplace asbestos exposure barred by New York Workers' Compensation Law, "irrespective of the adequacy or inadequacy of that law's remedial provisions"); *Jones v. Utilities Painting Corp.*, 603 N.Y.S.2d 773 (N.Y. App. Div. 1993) (same).

8. Thus, plaintiff's complaint, which seeks medical monitoring for past and present employees of Rohm and Haas, is barred as a matter of law by the Pennsylvania Workmen's Compensation Act.

**WHEREFORE**, Rohm and Haas requests that the Complaint be dismissed and an Order entered dismissing plaintiff's Complaint in its entirety and granting such further relief as this Court deems just and proper.

Respectfully submitted,



Ralph G. Wellington (I.D. No. 10068)  
Dennis R. Suplee (I.D. No. 03336)  
Samuel W. Silver (I.D. No. 56596)  
Jennifer A. L. Battle (I.D. No. 86765)  
(215) 751-2488; 2068; 2309; 2647  
Attorneys for Defendant  
Rohm and Haas Company

SCHNADER HARRISON SEGAL & LEWIS LLP  
1600 Market Street, Suite 3600  
Philadelphia, PA 19103-7286  
Telephone: 215-751-2000  
Facsimile: 215-751-2205

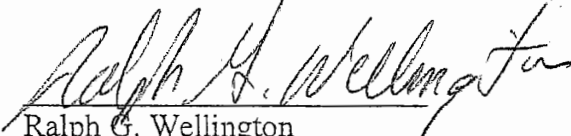
Of Counsel

Dated: September 6, 2005

CERTIFICATE OF SERVICE

I, Ralph G. Wellington, hereby certify that I caused to be served a true and correct copy of the foregoing Preliminary Objections upon the plaintiff by first class mail addressed as follows:

Aaron J. Freiwald, Esquire  
LAYSER & FREIWALD, P.C.  
1500 Walnut Street, 18th Floor  
Philadelphia, PA 19102  
*Attorney for Plaintiff*

  
Ralph G. Wellington

Dated: September 6, 2005



## ISSUE PRESENTED

Is a complaint seeking damages for medical monitoring expenses associated with alleged exposure to carcinogens in the workplace barred by the Workmen's Compensation Act?

Defendant submits that the Workmen's Compensation Act bars such claims and that the Complaint should therefore be dismissed.

## ARGUMENT

Plaintiff William H. Brendley, Jr., Ph.D. ("Brendley"), a former Rohm and Haas employee, has filed this class action lawsuit (a copy of which is attached as Exhibit 1) against his former employer on behalf of "the past and present employees of Rohm and Haas who worked at the Spring House research facility," seeking medical monitoring costs due to an allegedly increased rate of brain cancer at the Spring House facility.

The Workmen's Compensation Act states, in relevant part:

The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employees, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death . . . or occupational disease . . . .

77 Pa. Con. Stat. § 481 (2005).

The Act therefore bars suits by an employee against an employer for "*any work-related injury.*" *Poyser v. Newman and Co.*, 514 Pa. 32, 36, 522 A.2d 548, 550 (1987).

Under Pennsylvania law, the term “injury” “has been broadly defined to encompass all work-related harm,” including, for example, risk of infection. *Jackson Township Volunteer Fire Co. v. Workmen’s Compensation Appeal Board*, 140 Pa. Commw. 620, 624-25, 594 A.2d 826, 828 (1991). Accordingly, Pennsylvania courts have held that medical monitoring claims based on workplace exposure to alleged health risks are properly compensable only under Workmen’s Compensation. *Fried v. Sungard Recovery Servs., Inc.*, 900 F. Supp. 758, 768 (E.D. Pa. 1995) (granting motion to dismiss claim for medical monitoring as barred by Workmen’s Compensation because “injury” is risk of contracting disease); *Jackson Township, supra*, 140 Pa. Commw. at 624-25, 594 A.2d at 828 (claim for medical monitoring due to workplace exposure to HIV and hepatitis viruses properly a Workmen’s Compensation claim).

Courts in other jurisdictions have uniformly held that medical monitoring claims are barred by state workers’ compensation exclusivity provisions. *See, e.g., Building and Constr. Dept. v. Rockwell Int’l. Corp.*, 7 F.3d 1487, 1490 (10<sup>th</sup> Cir. 1993) (claim for medical monitoring due to workplace exposure to radiation barred by Colorado Workmen’s Compensation Act); *Acevedo v. Consolidated Edison Co.*, 596 N.Y.S.2d 68, 71 (N.Y. App. Div. 1993) (claim for future medical surveillance costs due to workplace asbestos exposure barred by New York Workers’ Compensation Law, “irrespective of the adequacy or inadequacy of that law’s remedial provisions”); *Jones v. Utilities Painting Corp.*, 603 N.Y.S.2d 773 (N.Y. App. Div. 1993) (same).

Thus, plaintiff’s complaint, which seeks medical monitoring for past and present employees of Rohm and Haas, is barred as a matter of law by the Pennsylvania Workmen’s Compensation Act.

**RELIEF REQUESTED**

Rohm and Haas requests that the Complaint be dismissed and an Order entered dismissing plaintiff's Complaint in its entirety.

Respectfully submitted,



Ralph G. Wellington (I.D. No. 10068)

Dennis R. Suplee (I.D. No. 03336)

Samuel W. Silver (I.D. No. 56596)

Jennifer A. L. Battle (I.D. No. 86765)

(215) 751-2488; 2068; 2309; 2647

Attorneys for Defendant

Rohm and Haas Company

SCHNADER HARRISON SEGAL & LEWIS LLP

1600 Market Street, Suite 3600

Philadelphia, PA 19103-7286

Telephone: 215-751-2000

Facsimile: 215-751-2205

Of Counsel

Dated: September 28, 2005