

1/21/85

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PRISCILLA LEE, Personal
Representative of the ESTATE
OF JERRY LEE, Deceased,

Plaintiff,

Case No. 84-2398

vs.

Hon. Julian A. Cook, Jr.

UNION CARBIDE CORPORATION, a
foreign corporation, DIAMOND
SHAMROCK CORPORATION, a foreign
corporation, STAUFFER CHEMICAL
COMPANY, a foreign corporation,
TENNECO RESINS, INC., a foreign
corporation, UNIROYAL, INC., a
foreign corporation, ALLIED
CHEMICAL CORPORATION, a foreign
corporation, OCCIDENTAL CHEMICAL
CORPORATION, a foreign corporation,
FIRESTONE TIRE & RUBBER COMPANY,
a foreign corporation, B.F. GOODRICH
COMPANY, a foreign corporation,
GOODYEAR TIRE & RUBBER COMPANY,
a foreign corporation,

Defendants.

SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS COMPLAINT

Pending before the Court is defendants' Motion to
Dismiss for plaintiff's failure to file interrogatory answers
by November 19, 1984, as required by the October 31, 1984 Order
of the Court.

On January 11, 1985, defense counsel finally received
a document entitled Plaintiff's Answers to Defendants' First

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Set of Interrogatories and Request for Production to Plaintiff. However, in addition to being untimely, the interrogatory answers were wholly inadequate and only one of the requested documents (the death certificate) was attached. Plaintiff's cavalier attitude toward discovery and court orders warrants the sanction of dismissal.

Virtually no effort was made to compile information within the plaintiff's control and many interrogatories were left unanswered (and without objection). In particular, the following "answers" are inadequate (a copy of the interrogatories and answers is attached for the Court's convenience): -

5. The current addresses for the children are not listed, leaving the defendants totally unable to reconstruct the decedent's family medical history, critical to this and any "cancer" case.
8. The plaintiff did not answer subsections (c) and (d) about disability benefits or medical disqualifications relating to military service.
11. The Probate Court file number for the estate proceedings was not given.
18. The answer given in the Amendment to Answers states only the names of experts consulted, but fails to answer the questions relating to qualifications, opinions, and the bases therefor.
19. Plaintiff refers generally to hospital records rather than specifically answering the interrogatory.

- 20-30. Plaintiff states that she is unable to answer until discovery is completed.
31. Plaintiff gives no identifying information for siblings, parents, and grandparents and fails to give addresses for children.
- 32-33. Plaintiff states that she is unable to answer but gives no explanation for her inability.
34. Plaintiff states that she is unable to answer until discovery is completed.
35. Plaintiff states that she is unable to answer the question except for the period 1976 to present, but gives no explanation for her inability, and does not even answer that portion of the question which is within her ability to answer.
36. Plaintiff did not answer subsection (c), relating to the nature of the ailment for which the decedent was hospitalized.
39. Plaintiff states that she is unable to answer but gives no explanation for her inability.
40. Plaintiff says she gave the information about claims to the defendants, but these moving defendants were not provided such information.
41. Plaintiff answers the question only for the period 1976 to date when the prior period is critical, since the decedent already had diagnosed leukemia in 1973.
42. Plaintiff does not give the requested details about workers compensation claims, but simply states that she believes the decedent filed a claim against Ford.

- 43-44. Plaintiff states that she does not have any information available about medical expenses she claims as damages, including the amount of expenses.
47. Plaintiff does not give the dates of employment, job titles, job descriptions, or salary for previous employment.
48. Plaintiff failed to attach copies of tax returns as requested. Defendants cannot authorize the I.R.S. to produce the returns.
49. Plaintiff states that copies of the bills for funeral and burial expenses would be forwarded to the defendants when received by the plaintiff. The decedent died in May of 1983 and the interrogatories are over 6 months old. When will expense documentation be received?
50. Plaintiff does not identify persons claiming a share in any recovery by the estate. She states that the probate court will determine the answer.
51. Plaintiff states that she is unable to answer until discovery is completed.
- 53-54. Plaintiff states that she is unable to answer until discovery is completed.

In a nutshell, plaintiff has totally failed to honor her discovery obligations. She essentially wants the court and defendants to hold this case in abeyance while she leisurely determines whether she has any basis for suit. That completely thwarts discovery by defendants, and is a pace that may be acceptable with the 3-4 year track typical in state court, but should be unacceptable before this Court, which undoubtedly will impose a much shorter, stricter discovery schedule.

Of particular importance is plaintiff's refusal to disclose any information on her experts and the liability theories in this case. Defendants have no obligation to wait until discovery is complete before they can take discovery. Plaintiff's pleadings had to be "well founded in fact" after "reasonable inquiry" at the time they were filed. Fed. R. Civ. P. 11. The entire factual basis of the Complaint is called into question when a plaintiff repeatedly states that she is unable to provide even minimal facts supporting the allegations in her Complaint until after discovery is completed. See, e.g., Answers 24 through 30. Dismissal is the appropriate remedy.

Plaintiff similarly has not honored the obligation of a party to investigate and inquire among those she controls in an effort to provide responsive, complete, and unevasive answers. Trane Co. v. Klutznick, 87 F.R.D. 473, 476 (W.D. Wis. 1980); Greenbie v. Noble, 18 F.R.D. 414, 415 (S.D.N.Y. 1955).

This action is being prosecuted on behalf of the Estate of Jerry Lee, yet the plaintiff has given very little information about the decedent. The death certificate states that the decedent was stricken with Leukemia in approximately 1973, yet the plaintiff is willing to give answers covering only the period 1976 to date, coinciding with her marriage to the decedent. The earlier information is necessary to the case

and is far more within her control than within defendants'. The limited answers are inadequate. See, e.g., Answers 35 and 41.

Plaintiff's duty of inquiry certainly extends to bills incurred. Lowe v. Greyhound Corp., 25 F. Supp. 643, 645 (D. Mass. 1938). If the plaintiff has not received a bill for funeral and burial expenses (an unlikely proposition, considering that Mr. Lee died in 1983), she at least has the obligation to obtain the figures so she can answer the interrogatory completely or be precluded from seeking recovery of such expenses. See Answers 43, 44 and 49.

It is improper to refer generally to an entire document when a specific interrogatory is submitted, as such answers frustrate the goal of limiting the issues to be tried. Roberson v. Great American Ins. Cos., 48 F.R.D. 404, 409 (N.D. Ga. 1969); Pilling v. General Motors Corp., 45 F.R.D. 366, 369 (D. Utah 1968). The generic references in Answers 19 and 40 are inadequate in this regard.

This is not a situation where an isolated interrogatory was not answered. Plaintiff produced only one requested document (the death certificate) and the vast majority of her answers are inadequate, demonstrating a failure to investigate and a cavalier attitude that should not be condoned by the

Court, particularly when an Order of the Court also was ignored. This Court should exercise its power under Rule 37(b)(2)(C) to dismiss this case.

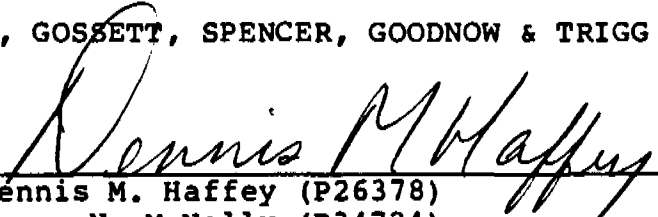
RELIEF REQUESTED

The moving defendants request the Court to dismiss the claims against these defendants with prejudice and to assess costs including reasonable attorney fees.

Respectfully submitted,

DYKEMA, GOSSETT, SPENCER, GOODNOW & TRIGG

By:


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