

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

KENNETH GRIMM, Personal
Representative of the Estate
of Helen Grimm, Deceased,

Plaintiff,

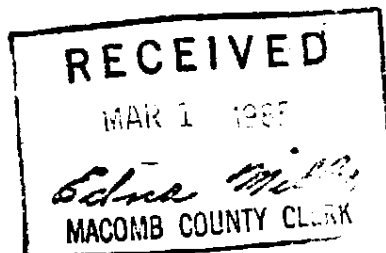
vs.

Case No. 83-2872-NO

Hon. Raymond R. Cashen

FORD MOTOR COMPANY, a foreign
corporation; UNION CARBIDE
CORPORATION, a foreign corpo-
ration; DIAMOND SHAMROCK CHEMICAL
CORPORATION, a foreign corporation;
STAUFFER CHEMICAL COMPANY, a foreign
corporation; TENNECO, INC., a foreign
corporation; TENNECO CHEMICALS, n/k/a
TENNECO RESINS, INC., a foreign
corporation; UNIROYAL, INC., a foreign
corporation; ALLIED CHEMICAL CORPORATION,
a foreign corporation; HOOKER CHEMICAL
& PLASTICS CORPORATION, n/k/a 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;
Jointly and Severally,

Defendants.



DEFENDANTS' REPLY BRIEF IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Pending before the Court is defendants' Motion For
Summary Judgment, which contends that the three-year
limitations period had long since expired by the time plaintiff
filed this wrongful death product liability claim on August 16,
1983, in that by 1976 defendants had completed the alleged
tortious act of shipping PVC-products and decedent had been
diagnosed as having the breast cancer plaintiff complains
resulted from those products. In his response to the Motion,
plaintiff does not dispute the facts upon which defendants

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rely, nor that Larson v Johns-Manville Sales Corp., ___ Mich App ___ (No. 64286, decided January 17, 1985) would mandate summary judgment if it applies. Plaintiff's sole argument is that Larson has no precedential force because an application for leave to appeal has been filed with the Michigan Supreme Court.

Plaintiff's response confirms that summary judgment should be granted. Plaintiff fails to recognize that Larson is not the sole pronouncement on the statute of limitations question, but is merely one in a continuous chain of cases upholding the unambiguous language of the limitations statute, MCLA 600.5827, which provides that "the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results."

This clear language has been applied by the courts on numerous occasions. See, e.g., H. Hirschfield Sons, Co v Colt Industries, 107 Mich App 720 (1981) lv den, 413 Mich 953 (1982); Hicks v Agney, 103 Mich App 767 (1981) aff'd, 413 Mich 556 (1982). In the clearest example, the Court of Appeals in Hawkins v Justin, 109 Mich App 743 (1981), held that the limitations period in libel actions begins to run from the time of publication even though the person defamed does not learn of it until a later date.

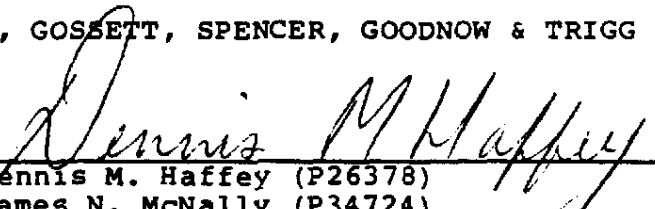
In the case at bar, any claim relating to alleged exposure to PVC products accrued by 1976 at the very latest. The Complaint alleges that the wrongful act of supplying PVC products to Ford Motor Company had been completed by 1976. Indeed, plaintiff's decedent moved from the neighborhood adjacent to the Ford plant in 1974.

Even assuming that if MCLA 600.5827 were not the law, and the limitations period did not begin to run until the elements of the tort were or should have been discovered, all elements of the cause of action here were complete and discovered or discoverable by 1976. The undisputed facts show that breast cancer had been discovered by 1976, by which time decedent complained several times of the noxious emissions from Ford and moved her residence to escape further exposure. Although death did not occur until 1980, additional injury or damage does not delay the accrual of the claim or extend the limitations period. Hawkins v Regional Medical Laboratories, 415 Mich 420 (1982).

Simply put, existing law without Larson supports the result that the limitations period had accrued long before suit was filed in 1983. Larson happens to provide a clear application of that existing law in a virtually identical fact setting, but its citation as legal precedent is superfluous in light of the wealth of cases supporting the defendants' position. The fact that leave is pending in the Larson case is immaterial to the issues raised here, and is no reason to delay entry of summary judgment.

DYKEMA, GOSSETT, SPENCER, GOODNOW & TRIGG

By:


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Dated: February 28, 1985

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Representative of the Estate
of Helen Grimm, Deceased,

Plaintiff,

vs.

Case No. 83-2872-NO

FORD MOTOR COMPANY, et al.,

Hon. Raymond R. Cashen

Defendants.

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Anne Cramton, being first duly sworn, deposes and
says that on the 28th day of February, 1985, she did serve
copies of the attached Defendants' Reply Brief In Support Of
Motion For Summary Judgment and this Proof of Service upon the
following:

FRANCIS P. HUGHES, Attorney for Plaintiff, 1000 W. University
Drive, Suite 314, Rochester, MI 48063; RALPH VALITUTTI, JR.,
Attorney for Defendant-Diamond Shamrock Corp., 2000 Buhl Bldg.,
Detroit, MI 48226; RALPH W. BARBIER, JR., Attorney for
Defendant-B. F. Goodrich Co., 34820 Harper Ave., Mt. Clemens,
MI 48043; W. GERALD WARREN, Attorney for Defendant-Ford Motor
Co., 800 First National Bldg., Detroit, MI 48226; RALPH R.
SAFFORD, Attorney for Defendant-Stauffer Chemical Co., 100 W.
Long Lake Rd., Suite 100, Bloomfield Hills, MI 48013 and
JOHN J. LYNCH, Attorney for Defendant-Goodyear Tire & Rubber Co.,
333 W. Fort, Suite 1600, Detroit, MI 48226

by placing copies of said pleading in envelopes addressed as
set forth above with first-class postage prepaid thereon and
depositing the same in the United States Mail receptacle
located in the Renaissance Center, Detroit, Michigah.

Anne Cramton
Anne Cramton

Subscribed and sworn to before me
this 28th day of February, 1985.

Patricia A. Schaller

PATRICIA A. SCHALLER
Notary Public, Macomb County, MI
My Commission Expires July 18, 1988