

2/9/87

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Etta W. Wallace, etc.,	)	Case No. C84-7864
	)	
Plaintiff,	)	[Hon. Nicholas J. Walinski]
	)	
v.	)	REPLY BRIEF IN SUPPORT OF
	)	<u>MOTION FOR RECONSIDERATION</u>
Chrysler Plastic Products	)	
Corp., et al.,	)	
	)	
Defendants.	)	

On January 22, 1987, the Court ordered that this action be remanded to state court for lack of diversity jurisdiction. The order was premised on two erroneous assumptions. The first was that this action and its companion action, Dendinger v. Chrysler Plastic Products Corp., Case No. C84-7854, were consolidated for purposes of discovery and trial. The second was that this action, like Dendinger, involved non-diverse parties. Neither assumption is correct, however. The cases were consolidated only for the purpose of discovery, see Pretrial Order dated April 14, 1986 (Exhibit A). Most importantly, however, plaintiff in this action is a Florida resident (unlike Mrs. Dendinger, who is an Ohio resident) and therefore complete diversity existed between plaintiff and defendants (see Exhibit 2 to plaintiff's Memorandum in Opposition, this Exhibit being plaintiff's amended complaint filed in state court after remand,

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where plaintiff herself sets forth her current residence as being in Florida). For these reasons, defendants on January 29, 1987 filed a motion for reconsideration. Plaintiff on February 4, 1987 served a memorandum of law in opposition. This reply brief responds to the arguments advanced in plaintiff's opposing memorandum.

Plaintiff states two arguments: 1) the Court once it has remanded the case, no longer has jurisdiction to consider defendants' motion, and 2) there no longer exists diversity between plaintiff and defendants because plaintiff has consolidated her lawsuit with the Dendinger lawsuit. Neither argument is dispositive, however.

First, the case cited by plaintiff in support of her argument that this Court has no jurisdiction to consider its remand order, Boone Coal & Timber Co., v. Polan, 787 F.2d 1056 (6th Cir. 1986), is not applicable. Boone Coal addressed a remand to state court of a bankruptcy matter pursuant to 28 U.S.C. §1452, which statute involves removal of claims related to bankruptcy cases. This present action in no way involves a bankruptcy matter, and thus the cited authority is inapposite.

Second, to argue that this Court cannot reconsider its own order once that order is issued is preposterous. This court always has jurisdiction to consider whether it has jurisdiction over a particular matter. It should be noted that nowhere does

plaintiff address or contest the central point of defendants' motion for reconsideration -- that complete diversity does exist in this case, and the Court improperly remanded based upon a mistaken assumption that, like the Dendinger case, there was no complete diversity between the parties. Since there does exist diversity between the parties, the Court has subject matter jurisdiction over the controversy, the remand in the case was improper, and therefore this error may and should be rectified.

Third, the Court should note that, although this case and the Dendinger case were factually similar, they were consolidated only for purposes of discovery. At no time in this particular case was there a motion by plaintiff to remand.

There was no hearing held prior to the remand in this case, nor was notice given that the court would sue sponte order the case remanded. In light of this lack of notice and hearing, in light of the fact that the record clearly and unambiguously establishes that diversity jurisdiction exists in this case and that the action was properly removed, and in light of the fact that defendants are statutorily proscribed from appealing the order remanding this case to state court pursuant to 28 U.S.C. §1447(d), defendants have been denied their statutory right to federal court jurisdiction over this case without the application of due process of law. As such, the court's actions in remanding without notice and hearing unconstitutionally deprived defendants

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of their right to a federal forum, and that order must therefore be reconsidered and vacated.

Fourth, although plaintiff argues that the consolidation and amendment of her action with that of Dendinger in state court destroys any diversity which otherwise might have existed, and she attaches exhibits which purport to attest to the fact that the state court granted her motion to consolidate and amend, this argument must fail primarily because it is disingenuous. The two actions were brought separately by plaintiff's counsel originally in state court, and they continued as separate actions when removed to this Court. Plaintiff's consolidation is clearly a subterfuge intended to destroy diversity in a desperate attempt to preserve the outcome created by the mistaken action of this court in remanding this properly removed and properly diverse action. The separate and individual nature of the two actions has not changed, however.

This last point is in fact the basis for defendants having filed a petition for the removal of the Wallace and Dendinger consolidated action from the Erie Court of Common Pleas to this court pursuant to 28 U.S.C. §1441(c) on this date.

A secondary reason why plaintiff's argument must fail is that the facts which support it cannot possibly be true. Plaintiff's motion to consolidate which was filed in the state court was served on January 26, 1987 (Exhibit B). Plaintiff's

motion for leave to amend was filed on February 3, along with a proposed order (Exhibit C). The Erie County Local Rules provide that the parties are given fourteen days to respond to any motion (Exhibit D). However, the copy of the purported order attached to plaintiff's brief in opposition filed in this case was stamped February 4, 1987, less than fourteen days after service of both motions. Furthermore, defendants have never received a copy of any order of the Erie County Court of Common Pleas granting plaintiff's motion. It cannot be presumed that the Erie County Court violated its own Rules of Procedure, nor can it be presumed that plaintiff's counsel either unethically or innocently received such an order in time to then draft his brief in opposition in this Court, attach the order as an exhibit and mail it for service and filing before defendants were ever served with the order. Thus, this Court must conclude, as defendants have, that the purported consolidation order is bogus. Until plaintiff produces a certified copy of this order, and explains how her counsel came to be in possession of it at least five days before defendants, this court should disregard the exhibits attached to plaintiff's brief in opposition.

For the foregoing reasons, these defendants renew their request that the Court grant defendants' motion for reconsideration, that it vacate its order remanding the case to the Erie County Court of Common Pleas, and that it issue a writ of

certiorari to recover the pleadings in this action from that court.

Of Counsel for Defendants
The Goodyear Tire & Rubber
Company, The BFGoodrich
Company, Firestone Tire &
Rubber Company, Conoco, Inc.,
Uniroyal, Inc., Union Carbide
Corporation, Diamond Shamrock
Corporation, Tenneco, Inc. and
Occidental Chemical Corp.:

FULLER & HENRY
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P. O. Box 2088
Toledo, Ohio 43603

Respectfully submitted,

Louis E. Tosi / by RAB

Louis E. Tosi

Robert A. Bunda

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P. O. Box 2088
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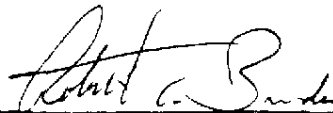
Trial Counsel for Defendants
The Goodyear Tire & Rubber
Company, The BFGoodrich
Company, Firestone Tire &
Rubber Company, Conoco, Inc.,
Uniroyal, Inc., Union Carbide
Corporation, Diamond Shamrock
Corporation, Tenneco, Inc.
and Occidental Chemical Corp.

UPL 07839

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply
Brief in Support of Motion for Reconsideration has been mailed by
United States mail, postage prepaid, to Kirk J. Delli Bovi, Esq.,
attorney for plaintiffs, at his office located at Murray & Murray
Co., L.P.A., 300 Central Avenue, Sandusky, Ohio 44870, and to

defense counsel as set forth in the attached Schedule of Service
this 9th day of February, 1987.



An Attorney for Defendants
The Goodyear Tire & Rubber
Company, The BF Goodrich
Company, Firestone Tire &
Rubber Company, Conoco,
Inc., Uniroyal, Inc., Union
Carbide Corporation, Diamond
Shamrock Corporation,
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Chemical Corp.

URL 07840

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URL 07841

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
1986 APR 17 AM 9 53

U.S. DISTRICT COURT
NORTHERN DISTRICT
TOLEDO, OHIO

HERMAN A. DENDINGER, et al.,)

Plaintiffs,)

-vs-)

CHRYSLER PLASTIC PRODUCTS)

CORP., et al.,)

Defendants.)

* * * *

No. C 84-7854

No. C 84-7864

PRETRIAL ORDER

This day this cause came on for pretrial conference pursuant to regular assignment, and the Court notes and approves the following actions taken at such conference:

JURY TRIAL scheduled APRIL 7, 1987 at 9:00 A.M.

Plaintiff to identify medical causation experts on or before October 14, 1986.

Parties granted leave to move for summary judgment. Causes remain consolidated for discovery. (ATTACHMENTS HERETO).

Michael J. Walsh
UNITED STATES DISTRICT JUDGE

Toledo, Ohio.
April 14, 1986

JRL 07842

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

MARY A. DENDINGER,
executrix of the Estate of Herman A.
Dendinger, et al.,

Plaintiffs,

vs.

CHRYSLER PLASTIC PRODUCTS CORPORATION,
et al.,

Defendants.

ETTA W. WALLACE,
executrix of the Estate of Fred A.
Wallace, et al.,

Plaintiffs,

vs.

CHRYSLER PLASTIC PRODUCTS CORPORATION,
et al.,

Defendants.

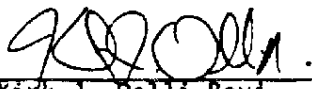
CASE NO. 46027
Judge Ann B. Maschari

MOTION FOR CONSOLIDATION AND
MEMORANDUM IN SUPPORT

URL 07843

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Plaintiffs move the Court for an order consolidating this action with the case of Mary A. Dendinger, executrix of the Estate of Herman A. Dendinger, Case No. 47238, pursuant to Civil Rule 42(A). The grounds supporting this motion are set forth in the accompanying memorandum.


Kirk J. Dell Bovi
MURRAY & MURRAY CO., L.P.A.
Attorneys for Plaintiffs

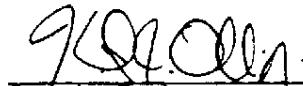
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MEMORANDUM IN SUPPORT OF MOTION

The case of Herman A. Dendinger, et al. v. Chrysler Plastic Products Corporation, et al., Case No. 46027, is a personal injury action asserting product liability, negligence and intentional tort claims. A number of defendants thereafter, removed the case to the Federal District Court where it was consolidated with Fred A. Wallace et al. v. Chrysler Plastic Products Corporation, U.S. District Court Case No. C-84-7864. Following the deaths of Messrs. Dendinger and Wallace, their widows were substituted as parties-plaintiff. Believing the Dendinger case was improperly before the Federal District Court, Mary A. Dendinger, plaintiff's widow, filed a wrongful death case in this Court captioned Mary A. Dendinger, executrix of the Estate of Herman A. Dendinger v. Chrysler Plastic Products Corporation, Case No. 47238. Since the personal injury action in the Dendinger case and the personal injury and wrongful death actions in the Wallace case have properly been remanded to this Court, the wrongful death action brought by Mary A. Dendinger should now be consolidated with this action pursuant to Civil Rule 42(A), and the case should continue to proceed under its original case number 46027.

URL 07844

Respectfully submitted,



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CERTIFICATION

This is to certify that a copy of the foregoing was served upon all counsel of record by mailing said copy, postage prepaid, addressed as follows:

M. Donald Carmin, Esq.
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Attorneys for Chrysler and Individual defendants

Ellis F. Robinson, Esq.
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Attorneys for Shintech, Inc.

Willis P. Jones, Jr., Esq.
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Attorneys for Diversified General

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Attorneys for Stauffer Chemical Company

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Attorneys for The Goodyear Tire & Rubber Company, The BF Goodrich Company, Firestone Tire & Rubber Company, Conoco, Inc., Uniroyal, Inc., Union Carbide Corporation, Diamond Shamrock Corporation, Tenneco, Inc. and Occidental Chemical Corp.

this 26th day of January, 1987.


Kirk J. Dell'Obi

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UPL 07845

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

MARY A. DENDINGER,
executrix of the Estate of Herman A.
Dendinger, et al.,

Plaintiffs,

vs.

CHRYSLER PLASTIC PRODUCTS CORPORATION,
et al.,

Defendants.

CASE NO. 46027

Judge Ann B. Maschari

MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT FOLLOWING
CONSOLIDATION AND MEMORANDUM
IN SUPPORT

ETTA W. WALLACE,
executrix of the Estate of Fred A.
Wallace, et al.,

Plaintiffs,

vs.

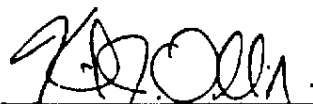
CHRYSLER PLASTIC PRODUCTS CORPORATION,
et al.,

Defendants.

CASE NO. 46046

MOTION

Pursuant to Ohio Civil Rules 15 and 42 plaintiffs move the Court for leave to file an amended complaint in case no. 46027 following the consolidation of case numbers 47238 and 46046 with and into that action. The grounds supporting this motion are set forth in the accompanying memorandum.



Dennis E. Murray
Kirk J. Delli Bovi
MURRAY & MURRAY CO., L.P.A.

Attorneys for Plaintiffs

MEMORANDUM IN SUPPORT
OF MOTION

Following the recent remand orders of the United States District Court for the Northern District of Ohio, Western Division, in District Court Case Nos. C-84-7854 and C-84-7864, there existed three separate cases in this Court involving a plethora of common legal and factual issues: Mary A. Dendinger, executrix, et al., v. Chrysler Plastic Products Corporation, et al., Case No. 46027; Etta W. Wallace, executrix, et al., v. Chrysler Plastic Products Corporation, et al., Case No. 46046 and Mary A. Dendinger, executrix v. Chrysler Plastic Products Corporation et al., Case No. 47238. In order to simplify the issues involved in these items of litigation into one all-emcompassing pleading, plaintiffs move for leave of Court to file an amended complaint in Case No. 46027 after consolidation of Case Nos. 46046 and 47238 with and into Case No. 46027. Plaintiffs will incorporate into that amended pleading all of the allegations asserted against all of the defendants in all of the above-referenced cases. (See proposed Amended Complaint attached hereto). Pursuant to Civil Rule 15, leave of court, under these circumstances, shall be "freely given."

Respectfully submitted,



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CERTIFICATION

This is to certify that a copy of the foregoing was served upon all counsel of record by mailing said copy, postage prepaid, addressed as follows:

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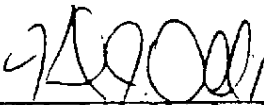
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Attorneys for The Goodyear Tire & Rubber Company, The BF Goodrich Company, Firestone Tire & Rubber Company, Conoco, Inc., Uniroyal, Inc., Union Carbide Corporation, Diamond Shamrock Corporation, Tenneco, Inc. and Occidental Chemical Corp.

this 3rd day of February, 1987.


Kirk J. Delli Bovi

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IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

MARY A. DENDINGER, executrix of the
Estate of Herman A. Dendinger,
deceased,
1823 West Monroe Street,
Sandusky, Ohio 44870

and

ETTA W. WALLACE,
personal representative of the
Estate of Fred A. Wallace, deceased,
881 N.W. Columbia Street
Port Charlotte, Florida 33948

Plaintiffs,

vs.

CHRYSLER PLASTIC PRODUCTS CORPORATION
3130 West Monroe Street
Sandusky, Ohio 44870

THE GOODYEAR TIRE & RUBBER COMPANY
1144 East Market Street
Akron, Ohio 44305

B.F. GOODRICH COMPANY
500 South Main Street
Akron, Ohio 44318

FIRESTONE TIRE & RUBBER COMPANY
1200 Firestone Parkway
Akron, Ohio 44317

CONOCO, INC.
1007 Market Street
Wilmington, Delaware 19898

UNION CARBIDE CORPORATION
Old Ridgebury Road, Section C-2
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CASE NO. 46027
Judge Ann B. Maschari

AMENDED COMPLAINT
(Following Consolidation)

Jury Demand Endorsed Hereon

URL 07849

UNIROYAL, INC.
World Headquarters
Middlebury, Connecticut 06749

DIAMOND SHANROCK CHEMICALS CO.
717 North Harwood Street
Dallas, Texas 75201

OCCIDENTAL CHEMICAL CORP.
Armond Hammer Blvd.
P.O. Box 699
Pottstown, Pennsylvania 19464

STAUFFER CHEMICAL CO.
NyaLa Farm Road
Westport, Connecticut 06880

SHINTECH, INC.
5618 Highway 332 East
Freeport, Texas 77541

DIVERSITECH GENERAL, INC.
One General Street
Akron, Ohio 44329

A. SCHULMAN, INC.
3550 West Market Street
Akron, Ohio 44313

TENNECO, INC.
1010 Milam
P.O. Box 2511
Houston, Texas

AKE V. LJUNG
General Manager
Chrysler Plastic Products Corporation
Sandusky, Ohio 44870
Current address unknown

NORMAN P. PHILLIPS
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ALBERT W. CRAMER
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UPL 07850

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RON C. ABBOTT
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Sandusky, Ohio 44870
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WILLIAM C. HOLSAPPLE
Production Color Department Supervisor
Chrysler Plastic Products Corporation
Sandusky, Ohio 44870
Current address unknown

Defendants.

-oOo-

Now come plaintiffs, and for their Amended Complaint
(Following Consolidation) against defendants state as follows:

FIRST CAUSE OF ACTION

1. Plaintiff Mary A. Dendinger's decedent, Herman A. Dendinger (hereinafter "Dendinger"), was, at all times pertinent hereto, a resident of Erie County, Ohio, and worked at Chrysler Plastic Products Corporation's plant in the City of Sandusky, Erie County, Ohio, from August, 1968 until October, 1980.

2. Plaintiff Etta W. Wallace's decedent, Fred A. Wallace (hereinafter "Wallace"), was, at all times pertinent hereto, a resident of Erie County, Ohio, and worked at Chrysler Plastic Products Corporation's plant in the City of Sandusky, Erie County, Ohio, from October, 1972 until April, 1978.

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3. Plaintiff Mary A. Dendinger is the widow and duly appointed executrix of the estate of Dendinger, who died on April 2, 1986.

4. Plaintiff Etta Wallace is the widow and duly appointed personal representative of the estate of Wallace, who died on July 23, 1985.

5. Plaintiff Mary A. Dendinger is a resident of the County of Erie, State of Ohio.

6. Plaintiff Etta W. Wallace is a resident of the State of Florida.

7. Defendant, Chrysler Plastic Products Corporation (hereinafter "Chrysler") is a corporation incorporated in the State of Delaware. Chrysler is licensed to do business in the State of Ohio and, at all times pertinent hereto, has transacted business and maintained operations in Erie County, Ohio, known as the Sandusky facility, that gave rise to the activities and claims set forth herein.

8. Defendants, Goodyear Tire and Rubber Co., B.F. Goodrich Co. and Firestone Tire and Rubber Co. are corporations incorporated in the State of Ohio and/or licensed to do business in the State of Ohio.

9. Defendants Ake V. Ljung, Norman P. Phillips, Albert W. Cramer, Robert D. Gustine, Richard Althiser, Ron C. Abbott, and William C. Holsapple (collectively hereinafter "Individual Defendants") are present and/or former employees of Chrysler and, at times pertinent hereto, exercised direct and/or ultimate supervision in a management capacity over Dendinger and/or Wallace at the Sandusky facility. The Individual Defendants are residents of various states, including Ohio.

URL 07652

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10. All defendants, at times pertinent hereto, transacted business and/or maintained operations in Erie County, Ohio, with the Chrysler facility that gave rise to the activities and claims set forth herein.

11. Defendants The Goodyear Tire & Rubber Company, B.F. Goodrich Company, Firestone Tire & Rubber Company, Conoco, Inc., Union Carbide Corporation, Uniroyal, Inc., Diamond Shamrock Chemicals Co., Occidental Chemical Corp., Stauffer Chemical Co., Shintech, Inc., Tenneco Chemicals, Inc., Diversitech General, Inc. and A. Schulman, Inc. (collectively hereinafter "PVC Resin Manufacturers"), at times relevant hereto, have been in the business of manufacturing and selling to the Sandusky facility of Chrysler in Erie County, Ohio, polyvinyl chloride resin (hereinafter "PVC"), a substance containing vinyl chloride monomer (hereinafter "VC"), a known human carcinogen.

12. At all times during their employment at the Sandusky facility of Chrysler, Dendinger and Wallace inhaled, ingested and/or absorbed into their bodies quantities of toxic and carcinogenic substances, to-wit PVC and VC, as a direct and proximate result of the activities Dendinger and Wallace were required to perform in their employment at Chrysler's Sandusky facility.

13. The levels of PVC and VC to which Dendinger and Wallace were exposed were above safe levels, permissible exposure limits, and threshold limit values.

14. Dendinger and Wallace's continuous, repeated exposure to PVC and VC at the Sandusky facility of Chrysler:

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(a) caused Dendinger and Wallace serious physical injuries, including cancer and associated pathologies, which resulted in their deaths;

(b) inflicted upon Dendinger and Wallace, prior to their deaths, severe physical and mental pain and suffering and extreme emotional distress;

(c) rendered Dendinger and Wallace, prior to their deaths, permanently and totally disabled from employment;

(d) repeatedly required Dendinger and Wallace, prior to their deaths, to obtain necessary hospital and medical care and to undergo surgeries and radiation and chemotherapy;

(e) resulted in a permanent loss of Dendinger and Wallace's earning capacities;

(f) caused Dendinger and Wallace's death.

15. At all times since Dendinger and Wallace's date of hire, Chrysler and the Individual Defendants knew or should have known that the work performed by Dendinger and Wallace at the Sandusky facility gave rise to the inhalation, ingestion and/or absorption into their bodies of quantities of toxic and carcinogenic PVC and VC, the dangerous and deadly propensities of which were known to, or should have been known by, Chrysler and the Individual Defendants.

16. Chrysler and the Individual Defendants intentionally exposed Dendinger and Wallace to toxic and carcinogenic PVC and VC at unsafe levels during the course of Dendinger and Wallace's employment at the Sandusky facility of Chrysler as a condition of continued employment, as a result of which Dendinger and Wallace sustained the injuries and losses, including the loss of life, referred to herein.

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17. During the course of Dendinger and Wallace's employment with Chrysler, and following the termination of Dendinger and Wallace's employment with Chrysler, Chrysler and the Individual Defendants intentionally withheld and/or concealed from Dendinger and Wallace and their physicians, material information and warnings concerning PVC and VC, including information as to the dangerous and deadly propensities of such substances, the effects of overexposure to such substances on human health, the signs and symptoms of overexposure, the routes and mechanisms of exposure and the precautions to take to avoid overexposure. Chrysler and the Individual Defendants knew or should have known of the material nature of the information described herein, information concerning which Dendinger and Wallace and their physicians were unaware and knowledgeable.

18. Chrysler and the Individual Defendants knew or should have known of the serious health hazards to Dendinger and Wallace which would result from their continuous, repeated exposure to PVC and VC, health hazards which could have been prevented had Chrysler and the Individual Defendants fulfilled the duties and obligations enumerated herein.

19. Chrysler and the Individual Defendants, by their intentional conduct, failed to provide Dendinger and Wallace with a safe place to work.

20. Chrysler and the Individual Defendants, by their conduct, acted in willful and/or wanton disregard for the life, health and safety of Dendinger and Wallace.

21. As a direct result of Chrysler's and the Individual Defendants' intentional conduct, Dendinger and Wallace sustained the injuries and losses, including the loss of life, described herein.

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22. This cause of action is brought by Mary A. Dendinger, executrix of the Estate of Dendinger and Etta W. Wallace, personal representative of the Estate of Wallace, pursuant to common law and R.C. 2305.21, to recover for the injuries and losses sustained by Dendinger and Wallace up to and including the time of their deaths.

WHEREFORE, plaintiff Mary A. Dendinger prays for compensatory damages from Chrysler and the Individual Defendants, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for punitive damages from Chrysler and the Individual Defendants, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for reasonable attorney and expert witness fees and costs; and for such other and further relief as the Court deems proper.

WHEREFORE, plaintiff Etta W. Wallace prays for compensatory damages from Chrysler and the Individual Defendants, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for punitive damages from Chrysler and the Individual Defendants, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for reasonable attorney and expert witness fees and costs; and for such other and further relief as the Court deems proper.

SECOND CAUSE OF ACTION

23. All well-pleaded allegations contained in paragraphs 1 through 22 of the First Cause of Action are repleaded as if fully rewritten herein.

24. The PVC Resin Manufacturers negligently failed to take proper steps to instruct and warn Dendinger and Wallace of the dangers of

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overexposure to PVC and VC and the routes and mechanisms of exposure; failed to provide Dendinger and Wallace with information on the dangerous carcinogenic propensities of PVC and VC; neglected to inform Dendinger and Wallace of the effects of overexposure to PVC and VC on human health; failed to instruct or warn Dendinger and Wallace concerning the signs and symptoms of overexposure to PVC and VC; and failed to provide information to Dendinger and Wallace as to precautions necessary to prevent overexposure to PVC and VC.

25. The above-described actions and omissions of the PVC Resin Manufacturers were in willful and/or wanton disregard of the life, health, and safety of the users of their product, including Dendinger and Wallace.

26. As a direct and proximate result of the conduct of the PVC Resin Manufacturers described herein, Dendinger and Wallace sustained the injuries and losses, including the loss of life, enumerated above.

WHEREFORE, plaintiff Mary A. Dendinger prays for compensatory damages from the PVC Manufacturers, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for punitive damages from the PVC Manufacturers, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for reasonable attorney and expert witness fees and costs; and for such other and further relief as the Court deems proper.

WHEREFORE, plaintiff Etta W. Wallace prays for compensatory damages from the PVC Manufacturers, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for punitive damages from the PVC Manufacturers, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for reasonable attorney and expert witness fees and costs; and for such other and further relief as the Court deems proper.

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THIRD CAUSE OF ACTION

27. All well-pleaded allegations contained in paragraphs 1 through 26 of the First and Second Causes of Action are repleaded as if fully rewritten herein.

28. PVC and VC are inherently dangerous, ultrahazardous products. As to the injuries and loss of life sustained by Dendinger and Wallace, the PVC Resin Manufacturers are strictly liable. PVC and VC were sold by the PVC Resin Manufacturers in a defective condition unreasonably dangerous to Dendinger and Wallace. Said PVC and VC reached Dendinger and Wallace without substantial change in the condition in which they were sold.

29. The above-described actions and omissions of the PVC Resin Manufacturers were in willful and/or wanton disregard of the life, health, and safety of the users of their product, including Dendinger and Wallace.

30. As a direct and proximate result of the conduct of the PVC Resin Manufacturers described herein, Dendinger and Wallace sustained the injuries and losses, including the loss of life, enumerated above.

WHEREFORE, plaintiff Mary A. Dendinger prays for compensatory damages from the PVC Manufacturers, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for punitive damages from the PVC Manufacturers, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for reasonable attorney and expert witness fees and costs; and for such other and further relief as the Court deems proper.

WHEREFORE, plaintiff Etta W. Wallace prays for compensatory damages from the PVC Manufacturers, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for punitive damages from the PVC

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Manufacturers, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for reasonable attorney and expert witness fees and costs; and for such other and further relief as the Court deems proper.

FOURTH CAUSE OF ACTION

31. All well-pleaded allegations contained in paragraphs 1 through 30 of the First, Second and Third Causes of Action are repleaded as if fully rewritten herein.

32. This cause of action is brought, in part, by Mary A. Dendinger, executrix of the Estate of Dendinger, pursuant to R.C. 2125.01 et seq., for the wrongful death of Dendinger and for the exclusive benefit of the surviving spouse and children of Dendinger, all of whom have suffered catastrophic damages by reason of Dendinger's terminal cancer and death, including:

- (a) funeral, burial, hospital and medical expenses;
- (b) loss of support as a result of the elimination of Dendinger's earning capacity;
- (c) loss of Dendinger's services;
- (d) loss of Dendinger's society, companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, education and love;
- (e) loss of prospective inheritance; and,
- (f) extreme physical and emotional pain and suffering and mental anguish.

33. This cause of action is also brought, in part, by Etta W. Wallace, personal representative of the Estate of Wallace, pursuant to R.C.

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2125.01 et seq., for the wrongful death of Wallace and for the exclusive benefit of the surviving spouse, children and father of Wallace, all of whom have suffered catastrophic damages by reason of Wallace's terminal cancer and death, including:

- (a) funeral, burial, hospital and medical expenses;
- (b) loss of support as a result of the elimination of Wallace earning capacity;
- (c) loss of Wallace's services;
- (d) loss of Wallace's society, companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, education and love;
- (e) loss of prospective inheritance; and,
- (f) extreme physical and emotional pain and suffering and mental anguish.

34. As a direct result of the conduct of the defendants enumerated herein, Dendinger contracted terminal cancer and died on April 2, 1986. As a direct result of the conduct of defendants enumerated herein and the consequent cancer and death of Dendinger, Mary A. Dendinger, Dendinger and the Dendinger's children: Maureen A. Dendinger, Lisa M. Dendinger, Brian F. Dendinger and Sean A. Dendinger, sustained the injuries, losses and damages described herein.

35. As a direct result of the conduct of the defendants enumerated herein, Wallace contracted terminal cancer and died on July 23, 1985. As a direct result of the conduct of defendants enumerated herein and

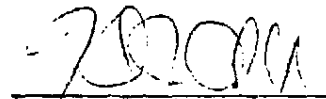
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the terminal cancer and death of Wallace, Etta Wallace and Etta's two minor children, Angela May Wallace and Sarah Joanne Wallace, and Wallace's father Roscoe Wallace, sustained the injuries, losses and damages described herein.

WHEREFORE, plaintiff Mary A. Dendinger prays for compensatory damages from Defendants, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for punitive damages from Defendants, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for reasonable attorney and expert witness fees and costs; and for such other and further relief as the Court deems proper.

WHEREFORE, plaintiff Etta W. Wallace prays for compensatory damages from Defendants, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for punitive damages from Defendants, jointly and severally, in the amount of ten million dollars (\$10,000,000.00); for reasonable attorney and expert witness fees and costs; and for such other and further relief as the Court deems proper.

JRL 07861



Dennis E. Murray
Kirk J. Delli Bovi
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Attorneys at Law
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Sandusky, Ohio 44870
Telephone (419) 627-9700
Attorneys for Plaintiffs

JURY DEMAND

Plaintiff hereby demands a trial by jury.



Dennis E. Murray
Kirk J. Delli Bovi
MURRAY & MURRAY CO., L.P.A.
Attorneys for Plaintiffs

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For the reasons set forth herein, this Court lacks jurisdiction to entertain defendants' motion. The Court, by letter, should so inform the parties. In the event, however, the Court deems it appropriate to respond to the motion, on the Record, the motion must clearly be denied as there is presently pending in the Erie County Common Pleas Court no complete diversity action necessitating removal.

Respectfully submitted,

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CERTIFICATION

This is to certify that a copy of the foregoing was served upon all counsel of record by mailing said copy, postage prepaid, addressed as follows:

M. Donald Carmin, Esq.
EASTMAN & SMITH
800 United Savings Building
Toledo, Ohio 43604-1141
Attorneys for Chrysler and the Individual Defendants

Ellis F. Robinson, Esq.
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610 United Savings Building
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Attorneys for Diversified General

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Attorneys for Stauffer Chemical Company

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Robert A. Bunda, Esq.
1200 Edison Plaza
P.O. Box 2088
Toledo, Ohio 43603
Attorneys for The Goodyear Tire & Rubber Company, The BF Goodrich Company, Firestone Tire & Rubber Company, Conoco, Inc., Uniroyal, Inc., Union Carbide Corporation, Diamond Shamrock Corporation, Tenneco, Inc. and Occidental Chemical Corp.

this 4th day of February, 1987.

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15
Kirk J. Delli Bovi

URL 07870

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

MARY A. DENDINGER,
executrix of the Estate of Herman A.
Dendinger, et al.,

Plaintiffs,

vs.

CHRYSLER PLASTIC PRODUCTS CORPORATION,
et al.,

Defendants.

ETTA W. WALLACE,
executrix of the Estate of Fred A.
Wallace, et al.,

Plaintiffs,

vs.

CHRYSLER PLASTIC PRODUCTS CORPORATION,
et al.,

Defendants.

CASE NO. 46027
Judge Ann B. Maschari

JUDGMENT ENTRY

CASE NO. 46046

URL 07871

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This matter is before the Court on plaintiffs' motion for leave to file an amended complaint in Case No. 46027 following consolidation of Case Nos. 46046 and 47238 with and into Case No. 46027. Having carefully considered the issues therein in light of applicable law, the Court finds

that said motion is well-taken. Case Nos. 46046 and 47238 are hereby consolidated with and into Case No. 46027. The Clerk of Court is instructed to file the original of plaintiffs' proposed Amended Complaint (Following Consolidation) in Case No. 46027. Defendants shall respond thereto pursuant to Rule.

Ann B. Maschari
JUDGE ANN B. MASCHARI

CERTIFICATION

This is to certify that a copy of the foregoing instrument was served upon all parties in the foregoing cause by sending a copy of same by ordinary mail with postage prepaid, addressed to each of the attorneys of record at their respective addresses as disclosed by the pleadings of record herein on this 3rd day of February, 1987.

MURRAY & MURRAY CO., L.P.A.

By Kirk J. Smith, Esq.

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UPL 07872

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

MARY A. DENDINGER, executrix of the
Estate of Herman A. Dendinger,
deceased,
1823 West Monroe Street,
Sandusky, Ohio 44870

and

ETTA W. WALLACE,
personal representative of the
Estate of Fred A. Wallace, deceased,
881 N.W. Columbia Street
Port Charlotte, Florida 33948

Plaintiffs,

vs.

CHRYSLER PLASTIC PRODUCTS CORPORATION
3130 West Monroe Street
Sandusky, Ohio 44870

THE GOODYEAR TIRE & RUBBER COMPANY
1144 East Market Street
Akron, Ohio 44305

B.F. GOODRICH COMPANY
500 South Main Street
Akron, Ohio 44318

FIRESTONE TIRE & RUBBER COMPANY
1200 Firestone Parkway
Akron, Ohio 44317

CONOCO, INC.
1007 Market Street
Wilmington, Delaware 19898

UNION CARBIDE CORPORATION
Old Ridgebury Road, Section C-2
Danbury, Connecticut 06817

MURRAY & MURRAY CO., L.P.A.

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ATTORNEYS AT LAW

MURRAY BUILDING

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SANDUSKY, OHIO 44870

CASE NO. 46027
Judge Ann B. Maschari

AMENDED COMPLAINT
(Following Consolidation)

Jury Demand Endorsed Hereon

URL 07873

"EXHIBIT 2"