

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

KENNETH GRIMM, Personal
Representative of the ESTATE
OF HELEN GRIMM, Deceased,

Plaintiff,

Case No. 83-2872-NO

-vs-

Hon. Raymond R. Cashen

400 RENAISSANCE CENTER • 35TH FLOOR • DETROIT, MICHIGAN 48243
DYKEMA, GOSSETT, SPENCER, GOODNOW & TRIGG

FORD MOTOR COMPANY, a foreign
corporation, UNION CARBIDE
CORPORATION, a foreign corpora-
tion, DIAMOND SHAMROCK CORPORA-
TION, a foreign corporation,
STAUFFER CHEMICAL COMPANY, a
foreign corporation, TENNECO,
INC., a foreign corporation,
• TENNECO CHEMICALS, INC., a
foreign corporation, UNIROYAL,
INC., a foreign corporation,
ALLIED CHEMICAL CORPORATION, a
foreign corporation, HOOKER
CHEMICALS & PLASTICS CORP., a
foreign 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.

BRIEF IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

NATURE OF THE CASE AND MOTION

This is a wrongful death, product liability action in
which plaintiff seeks damages for decedent's August 16, 1980
death from breast cancer diagnosed more than three years
earlier.

Plaintiff claims the disease was caused by decedent's
exposure to the PVC-products supplied by the moving defendants

URL 09855

no later than 1976 to the Ford Motor Company Mt. Clemens Vinyl Plant, and discharged by Ford into the ambient air during the time decedent lived near that plant.

The case is barred by the three-year statute of limitations, which under Michigan law began to run no later than 1976, by which time defendants had completed their alleged wrongful acts, decedent had moved from the area and her disease had been diagnosed. The statute had long since expired when suit was filed on August 15, 1983.

STATEMENT OF UNDISPUTED FACTS

From 1957 to 1974, decedent Helen Grimm lived at 181 Lafayette, Mt. Clemens, adjacent to the Ford Motor Company Mount Clemens Vinyl Plant. In 1974, she moved to 50877 Fairchild, Mt. Clemens. (Plaintiff's Answer to moving defendants' Interrogatory 6.)

On April 12, 1966, Helen Grimm underwent a right mastectomy to remove a breast tumor. (Ex. 1) On April 14, 1975, she had surgery to remove a left breast tumor. (Ex. 2) On February 4, 1977, she had a left radical mastectomy. (Ex. 3) She had chemotherapy and other treatment for breast cancer thereafter. (Ex. 4)

On August 16, 1980, Helen Grimm died of breast cancer. (Complaint ¶18, Ex. 5)

On August 15, 1983, plaintiff filed the instant wrongful death, product liability suit, claiming that decedent's death from breast cancer was caused by exposure to the polyvinyl chloride (PVC) products the moving defendants supplied to Ford Motor Company no later than 1976. (Complaint ¶¶8, 11-15)

ARGUMENT

PLAINTIFF'S COMPLAINT IS BARRED BY
THE THREE-YEAR STATUTE OF LIMITATIONS
FOR PRODUCT LIABILITY ACTIONS

This is a product liability case and plaintiff's Complaint is barred by the three-year statute of limitations for product liability actions. M.C.L.A. 600.5805(9); M.S.A. 27A.5805(9).

The three-year limitations period begins to run from the date of the alleged wrong, i.e. the shipment by the moving defendants of PVC-products which plaintiff alleges was no later than 1976 and by which time decedent had the breast cancer which progressed to her death, rather than from the time of any "discovery" of any causal link between the disease and defendants. There is no such "discovery" rule for product liability actions.

Larson v Johns-Manville Sales Corporation et al., ___ Mich. App. ___ (Slip op. 64286 decided January 17, 1985 -- copy attached), is directly in point. There, the Michigan Court of Appeals held in four consolidated asbestos cases that the statute of limitations barred a wrongful death claim based on death from asbestos-related disease, applying the rule that the limitations period on product liability claims alleging death from latent diseases caused by chemical exposure begins to run from the date of the alleged wrong, not from the time the wrong is discovered:

In Michigan, we have not yet squarely addressed the issue of when a cause of action accrues in a situation where exposure to a substance at work results in a latent disease. We are constrained to hold that

the statute which suggests that the plaintiffs' cause of action accrues at the time of the wrongful act is controlling. (Slip op. p. 10.)

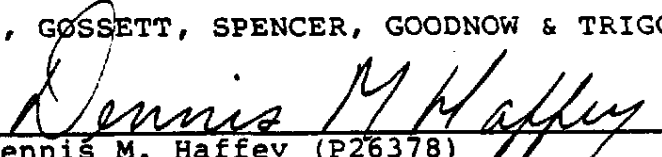
THE INSTANT CASE IS SIMILARLY BARRED. DEFENDANTS' alleged wrongful acts occurred no later than 1976, and by then the breast cancer alleged to have been caused by those wrongful acts had been diagnosed. That commenced the running of the three-year statute of limitations, which expired before decedent's August 16, 1980 death. Since the Complaint was not filed until August 15, 1983, the claims are time-barred.

RELIEF REQUESTED

Defendants Uniroyal, Inc., Union Carbide Corporation, Tenneco Resins, Inc., Allied Chemical Corporation, Occidental Chemical Corporation, and the Firestone Tire & Rubber Company request the Court to enter summary judgment in their favor on all claims by plaintiff against these defendants.

DYKEMA, GOSSETT, SPENCER, GOODNOW & TRIGG

By:


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DATED: February 5, 1985