

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

Mary A. Dendinger, et al.	)	Case No. C87-7117
	)	
Plaintiffs,	)	[Hon. Richard B. McQuade, Jr.]
	)	
vs.	)	ANSWER OF VARIOUS DEFENDANTS
	)	<u>TO PLAINTIFFS' AMENDED COMPLAINT</u>
Chrysler Plastic Products	)	
Corporation, et al.,	)	[Louis E. Tosi
	)	Robert A. Bunda
Defendants.	)	Peggy A. Whipple
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	)	Telephone: (419) 155-8220
	)	Trial Counsel for Defendants
	)	The Goodyear Tire & Rubber Co.,
	)	The BFGoodrich Company,
	)	Firestone Tire & Rubber Co.,
	)	Conoco, Inc., Uniroyal, Inc.,
	)	Union Carbide Corporation,
	)	Diamond Shamrock Corporation,
	)	Occidental Chemical Corporation,
	)	and Tenneco, Inc.

UJRL 06639

For their Answer to plaintiffs' amended complaint, and separately stating each of their defenses thereto, defendants The Goodyear Tire & Rubber Co., The BFGoodrich Company, Firestone Tire & Rubber Co., Conoco, Inc.,

Uniroyal, Inc., Union Carbide Corporation, Diamond Shamrock Corporation, Occidental Chemical Corporation, and Tenneco, Inc. say that:

FIRST DEFENSE

1. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 1 of the amended complaint.

2. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 2 of the amended complaint.

3. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 3 of the amended complaint.

4. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 4 of the amended complaint.

5. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 5 of the amended complaint.

6. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 6 of the amended complaint.

7. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 7 of the amended complaint.

8. They admit the averments recited in paragraph 8 of the amended complaint.

9. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 9 of the amended complaint.

10. They admit that defendants The Goodyear Tire & Rubber Company, The BFGoodrich Company, Firestone Tire & Rubber Company, Conoco, Inc., Uniroyal, Inc., Union Carbide Corporation, Diamond Shamrock Corporation, and Occidental Chemical Corporation transacted business with the Chrysler facility in Erie County, Ohio; but are without knowledge or information sufficient to form a belief as to the truth of the remaining averments recited in paragraph 10 of the amended complaint.

11. They admit that defendants The Goodyear Tire & Rubber Company, The BFGoodrich Company, Firestone Tire & Rubber Company, Conoco, Inc., Uniroyal, Inc., Union Carbide Corporation, Diamond Shamrock Corporation, and Occidental Chemical Corporation have been in the business of manufacturing polyvinyl chloride resin, admit that defendants The Goodyear Tire & Rubber Company, The BFGoodrich Company, Firestone Tire & Rubber Company, Conoco,

Inc., Uniroyal, Inc., Union Carbide Corporation, Diamond Shamrock Corporation, and Occidental Chemical Corporation have supplied polyvinyl chloride resin to the Sandusky facility of Chrysler in Erie County, Ohio; deny the remaining averments of paragraph 11 of the amended complaint as they pertain to these defendants; and are without knowledge or information sufficient to form a belief as to the truth of the remaining averments recited in paragraph 11 of the amended complaint.

12. They deny the averments recited in paragraph 12 of the amended complaint.

13. They deny the averments recited in paragraph 13 of the amended complaint.

14. They deny the averments recited in paragraph 14(a) through (f) of the amended complaint.

15. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 15 of the amended complaint.

16. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 16 of the amended complaint.

17. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 17 of the amended complaint.

-18. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 18 of the amended complaint.

19. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 19 of the amended complaint.

20. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 20 of the amended complaint.

21. They lack knowledge or information sufficient to form a belief as to the truth of the averments recited in paragraph 21 of the amended complaint.

22. They admit that this action is brought by Mary A. Dendinger, executrix of the Estate of Dendinger, and by Etta W. Wallace, personal representative of the Estate of Wallace, but deny that this action is properly brought pursuant to common law and Ohio Revised Code §2305.21, and lack knowledge or information sufficient to form a belief as to the truth of the remaining averments recited in paragraph 22 of the amended complaint.

23. They adopt by reference paragraphs 1 through 22 hereinabove in response to the averments contained in paragraph 23 of the amended complaint.

24. They deny the averments recited in paragraph 24 of the amended complaint.

25. They deny the averments recited in paragraph 25 of the amended complaint.

26. They deny the averments recited in paragraph 26 of the amended complaint.

27. They adopt by reference paragraphs 1 through 26 hereinabove in response to the averments contained in paragraph 27 of the amended complaint.

28. They deny the averments recited in paragraph 28 of the amended complaint.

29. They deny the averments recited in paragraph 29 of the amended complaint.

30. They deny the averments recited in paragraph 30 of the amended complaint.

31. They adopt by reference paragraphs 1 through 30 hereinabove in response to the averments contained in paragraph 31 of the amended complaint.

32. They admit that this cause of action is brought, in part, by Mary A. Dendinger, executrix of the Estate of Dendinger, but deny that this action is properly brought pursuant to Ohio Revised Code §2125.01 et seq., and lack knowledge or

information sufficient to form a belief as to the truth of the remaining averments recited in paragraph 32(a) through (f) of the amended complaint.

33. They admit that this cause of action is brought, in part, by Etta W. Wallace, personal representative of the Estate of Wallace, but deny that this action is properly brought pursuant to Ohio Revised Code §2125.01 et seq., and lack knowledge or information sufficient to form a belief as to the truth of the remaining averments recited in paragraph 33(a) through (f) of the amended complaint.

34. They deny the averments recited in paragraph 34 of the amended complaint.

35. They deny the averments recited in paragraph 35 of the amended complaint.

36. They deny each and every averment of plaintiffs' amended complaint which has not hereinabove been specifically and expressly admitted to be true, and, further answering, aver that:

SECOND DEFENSE

37. Plaintiffs' amended complaint fails to state a claim against these answering defendants upon which relief may be granted.

THIRD DEFENSE

38. The admissions, denials and averments of paragraphs 1 through 37 hereinabove are adopted by reference.

39. Plaintiffs' decedents, Herman A. Dendinger and Fred A. Wallace assumed the risks incident to their activities at the appropriate times and places involved. The dangers of said courses of conduct were obvious and clearly apparent and known to, and appreciated, by plaintiffs' decedents and thereby bar the derivative claims asserted in plaintiffs' amended complaint.

FOURTH DEFENSE

40. The admissions, denials and averments of paragraphs 1 through 39 hereinabove are adopted by reference.

41. In seeking to prosecute this action, plaintiffs have failed to join necessary parties.

FIFTH DEFENSE

42. The admissions, denials and averments of paragraphs 1 through 41 hereinabove are adopted by reference.

43. Any injuries or damages claimed in plaintiffs' amended complaint resulted in whole or in part from substantial intervening causes, negligence or misuse by others for which these defendants have no responsibility.

SIXTH DEFENSE

44. The admissions, denials and averments of paragraphs 1 through 43 hereinabove are adopted by reference.

45. Plaintiffs' amended complaint and the claims asserted therein are barred by the failure to commence the same within the applicable period of limitations.

SEVENTH DEFENSE

46. The admissions, denials and averments of paragraphs 1 through 45 hereinabove are adopted by reference.

47. The state of scientific knowledge as to any effect to the body from working with PVC resin, and the published literature and other materials reflecting said state-of-the-art, at all times pertinent hereto was such that these defendants neither knew, nor could have known, that the pertinent elements of PVC presented a foreseeable reasonable risk of harm to Herman A. Dendinger or to Fred A. Wallace in its normal and expected use.

EIGHTH DEFENSE

48. The admissions, denials and averments of paragraphs 1 through 47 hereinabove are adopted by reference.

49. Plaintiffs' decedents, Herman A. Dendinger and Fred A. Wallace, were themselves negligent, which negligence

contributed to cause the injuries of which plaintiffs complain, and exceeded the negligence of any other parties defendant herein, thereby barring their direct claims and the derivative claims asserted by plaintiffs' amended complaint.

NINTH DEFENSE

50. The admissions, denials and averments of paragraphs 1 through 49 hereinabove are adopted by reference.

51. This Court lacks jurisdiction over the person of some of these defendants.

TENTH DEFENSE

52. The admissions, denials and averments of paragraphs 1 through 51 hereinabove are adopted by reference.

53. This Court lacks jurisdiction over the subject matter of this action.

ELEVENTH DEFENSE

54. The admissions, denials and averments of paragraphs 1 through 53 hereinabove are adopted by reference.

55. Ohio Revised Code Section 4123.741 is, or may be, applicable to plaintiffs' claims and accordingly plaintiffs are barred from proceeding with this action.

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TWELFTH DEFENSE

56. The admissions, denials and averments of paragraphs 1 through 55 hereinabove are adopted by reference.

57. These defendants' products of which plaintiffs complain were manufactured under, and in accordance with, the prescribed regulations of the federal government, Title 21 of the Code of Federal Regulations, Section 1910.1017. Plaintiffs are estopped to assert the claims averred in the amended complaint because the federal government has preempted the field of law applicable to the permissible exposure limits and warnings, definitions and labels to be used on the aforesaid defendants' products.

THIRTEENTH DEFENSE

58. The admissions, denials and averments of paragraphs 1 through 57 hereinabove are adopted by reference.

59. If plaintiffs' decedents were exposed to these defendants' products, that exposure was so minimal as to be insufficient to establish a reasonable degree of probability that the products caused plaintiffs' claimed injuries.

FOURTEENTH DEFENSE

60. The admissions, denials and averments of paragraphs 1 through 59 hereinabove are adopted by reference.

61. These defendants were in compliance with all federal, state and local regulations, codes and statutes regarding the manufacture, sale and use of PVC at all times pertinent hereto, and all PVC products manufactured, sold or distributed by these defendants were manufactured, formulated, designed, packaged, marketed, sold and distributed pursuant to all applicable recognized prevailing standards in existence at all times pertinent hereto.

FIFTEENTH DEFENSE

62. The admissions, denials and averments of paragraphs 1 through 61 hereinabove are adopted by reference.

63. The doctrine of joint and several liability has been statutorily abolished in Ohio in a case such as this, and, should plaintiffs prevail against these defendants, their liability is several and is limited to their own actionable segment of fault, if any.

WHEREFORE, these defendants, having fully answered the amended complaint herein but reserving the right to amend this answer and add further affirmative defenses if grounds supporting such defenses subsequently appear, demand that plaintiffs' amended complaint be dismissed as to them with prejudice and that they be permitted to go hence without day and recover their costs herein expended.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of
Various Defendants to Plaintiffs' Amended Complaint was mailed by
United States mail, postage prepaid, to Kirk J. Delli Bovi, Esq.,
attorney for plaintiff, 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 18th day of February, 1987.

Robert A. Bunda
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