

2/11/87

COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

Mary A. Dendinger, et al.,	)	Case No. 46027
	)	
Plaintiffs,	)	[Hon. Ann B. Maschari]
	)	
v.	)	NOTICE OF FILING PETITION
	)	<u>AND BOND FOR REMOVAL</u>
Chrysler Plastic Products	)	
Corp., et al.,	)	[Louis E. Tosi
	)	Robert A. Bunda
Defendants-	)	Peggy Ann Whipple
Petitioners.	)	1200 Edison Plaza
	)	300 Madison Avenue
	)	P.O. Box 2088
	)	Toledo, Ohio 43603
	)	Telephone: (419) 255-8220
	)	Attorneys for Various
	)	Defendants-Petitioners]

URL 06668

TO: ALL COUNSEL OF RECORD AND/OR PARTIES OF RECORD

Please take notice that on the 11th day of February, 1987, defendants, The B.F. Goodrich Co., The Goodyear Tire & Rubber Co., Firestone Tire & Rubber Co., Conoco, Inc., Uniroyal, Inc., Union Carbide Corp., Diamond Shamrock Corp., Tenneco, Inc., and Occidental Chemical Corp., filed in the United States District Court for the Northern District of Ohio, Western Division, their cash bond and verified petition for removal of

3861-2

the above entitled action. A copy of the verified petition for removal is attached.

Also please take notice that a copy of the verified petition for removal will be filed with the Clerk of the Court of Common Pleas of Erie County, Ohio forthwith.

Of Counsel for Various
Defendants-Petitioners:

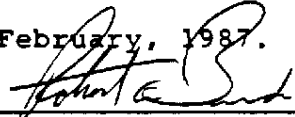
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Trial Counsel for Various
Defendants-Petitioners

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Notice of Filing Petition and Bond for Removal was served upon Kirk J. Delli Bovi, Esq., counsel for plaintiffs, Murray & Murray Co., L.P.A., 300 Central Avenue, Sandusky, Ohio 44870, by ordinary mail, postage prepaid, this 11th day of February, 1987.



An Attorney for Various
Defendants-Petitioners

LRL 06687

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

Mary A. Dendinger, et al.,	)	Case No.
	)	
Plaintiffs,	)	[Hon. Nicholas J. Walinski]
	)	
v.	)	<u>VERIFIED PETITION FOR REMOVAL</u>
	)	
Chrysler Plastic Products,	)	[Louis E. Tosi
Corp., et al.	)	Robert A. Bunda
	)	Peggy Ann Whipple
Defendants-	)	1200 Edison Plaza
Petitioners.	)	300 Madison Avenue
	)	P.O. Box 2088
	)	Toledo, Ohio 43603
	)	Telephone: (419) 255-8220
	)	Attorneys for Various
	)	Defendants-Petitioners]

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

Petitioners The B.F. Goodrich Co., The Goodyear Tire &
Rubber Co., Firestone Tire & Rubber Co., Conoco, Inc., Uniroyal,
Inc., Union Carbide Corp., Diamond Shamrock Corp., Tenneco, Inc.,
and Occidental Chemical Corp. to support their petition for
removal, say:

1. On January 22, 1987 and January 21, 1987, two
civil actions, Etta Wallace v. Chrysler Plastic Products Corp.,
et al., Case No. C84-7864, and Herman A. Dendinger, et al. v.
Chrysler Plastic Products Corp., et al., Case No. C84-7854, these
being case numbers designated on this Court's docket, were
remanded by Judge Walinski to the Erie County Court of Common
Pleas for lack of diversity jurisdiction.

UPL 06688

2. On or about February 4, 1987, the Erie County Court of Common Pleas entered an order granting plaintiffs' motion to consolidate and for leave to amend the complaint.

3. That the matter in controversy in said action exceeds the sum or value of Ten Thousand Dollars (\$10,000.00), exclusive of interest and costs.

4. That there is now diversity of citizenship between the plaintiff Wallace in said action and all defendants, in that upon information and belief plaintiff Wallace is a citizen and resident of the State of Florida and defendants are all corporations organized by and under the laws of states other than Florida. Plaintiff Dendinger is an Ohio resident.

5. That the amendment of the complaint by plaintiffs permitting removal pursuant to 28 U.S.C. §1441(c) occurred within thirty (30) days before filing this petition.

6. That in the state action plaintiffs seek to recover for damages for negligence, strict liability in tort, and wrongful death to their respective deceased spouses. The claims of the two plaintiffs are separate and independent in nature, having been filed in separate actions originally and having been prosecuted as separate actions in this Court prior to remand. Both seek recovery from defendants for \$10,000,000.00 compensatory damages and \$10,000,000.00 punitive damages. These

UPL 06689

claims are therefore within this Court's original jurisdiction pursuant to 28 U.S.C. §1332, and may be removed to this Court pursuant to 28 U.S.C. §1441(c):

(c) Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

Because plaintiff Wallace's cause of action is properly removable due to the complete diversity existing between the parties, this Court should remove the entire action pursuant to §1441(c).

7. This removal petition is permissible even after this action has been previously remanded because the grounds for removal have changed due to the consolidation of plaintiffs' actions, thus permitting the application of 28 U.S.C. §1441(c), see Fritzler v. Boatmen's Bank, 212 U.S. 364 (1909).

8. All defendants have consented to removal of this action to this Court.

9. These defendants present and file hereunder their cash bond in the sum of Two Hundred Fifty Dollars (\$250.00) on condition that they will pay all costs and disbursements incurred by reason of the removal proceedings herein sought should it be determined that the state suit is not removable or that it was improperly removed.

10. Copies of the state court pleadings and federal court pleadings returned to the state court upon remand are not included herein because they are too voluminous. This Court can obtain said pleadings through its power to issue a writ of certiorari to the state court.

11. A copy of the Petition for Removal will be mailed for filing with the Clerk of the Erie County Court of Common Pleas this date; attached hereto as Exhibit A is a copy of the notice of such filing which will be served upon plaintiffs' attorney and counsel for all defendants.

WHEREFORE, petitioners demand that the state suit be removed to this Court, that this Court accept the cash bond presented herewith, and that this Court enter this cause of action in its docket and entertain such further proceedings herein as may be proper and authorized by law.

Of Counsel for
The B.F. Goodrich Co.,
The Goodyear Tire & Rubber
Co., Firestone Tire & Rubber
Co., Conoco, Inc., Uniroyal,
Inc., Union Carbide Corp.,
Diamond Shamrock Corp.,
Tenneco, Inc. and Occidental
Chemical Corp.:

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P.O. Box 2088
Toledo, Ohio 43603
Telephone: (419) 255-8220
Trial Counsel for The B.F.
Goodrich Co., The Goodyear
Tire & Rubber Co., Firestone
Tire & Rubber Co., Conoco,
Inc., Uniroyal, Inc., Union
Carbide Corp., Diamond
Shamrock Corp., Tenneco,
Inc., and Occidental Chemical
Corp.

AFFIDAVIT

I, Robert A. Bunda, being first duly sworn, state that I am one of the attorneys for petitioners in the foregoing action; and I am duly authorized to verify the foregoing petition for removal; that all defendants have consented to removal of this action to federal court; that I have prepared and read the foregoing petition for removal; and that the matters contained herein are true and correct to the best of my knowledge and belief.



Robert A. Bunda

Sworn to before me and subscribed in my presence this
11th day of February, 1987.



Notary Public

URL 06692

COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

Mary A. Dendinger, et al.,	)	Case No. 46027
	)	
Plaintiffs,	)	[Hon. Ann B. Maschari]
	)	
v.	)	NOTICE OF FILING PETITION
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Corp., et al.,	)	[Louis E. Tosi
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Defendants-	)	Peggy Ann Whipple
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	)	Toledo, Ohio 43603
	)	Telephone: (419) 255-8220
	)	Attorneys for Various
	)	Defendants-Petitioners]

URL 06693

TO: ALL COUNSEL OF RECORD AND/OR PARTIES OF RECORD

Please take notice that on the 11th day of February, 1987, defendants, The B.F. Goodrich Co., The Goodyear Tire & Rubber Co., Firestone Tire & Rubber Co., Conoco, Inc., Uniroyal, Inc., Union Carbide Corp., Diamond Shamrock Corp., Tenneco, Inc., and Occidental Chemical Corp., filed in the United States District Court for the Northern District of Ohio, Western Division, their cash bond and verified petition for removal of

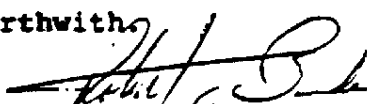
Exhibit A
Page 1 of 2

the above entitled action. A copy of the verified petition for removal is attached.

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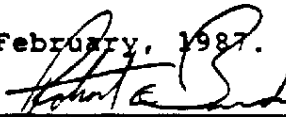
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An Attorney for Various
Defendants-Petitioners

UPL 06694