

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

cc: JAS

KENNETH PEERENBOOM, et al.,

PLAINTIFFS,

vs.

CIVIL ACTION NO. C-81-0698-L(A)

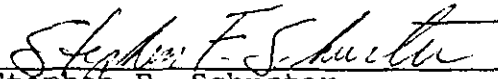
B.F. GOODRICH COMPANY,

DEFENDANT.

JAN 1 1984

MOTION FOR SUMMARY JUDGMENT ON
THE BASIS OF THE STATUTE OF LIMITATIONS

Defendant, B.F. Goodrich Company, by counsel, moves the Court to enter a Summary Judgment in its favor on the basis that the Complaint herein is barred by the applicable statute of limitations. A short memorandum is attached in support of this Motion.


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Counsel for B.F. Goodrich Company

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing was served by mail this 13th day of January, 1984 upon Fred R. Radolovich, RADOLOVICH, HARRINGTON & LEVY, P.S.C., 440 South Seventh St., Suite 200, Louisville, Kentucky, 40202.


Stephen F. Schuster
Counsel for Defendant

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
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vs.)

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B. F. GOODRICH COMPANY,)

DEFENDANT.)

SUMMARY JUDGMENT

Motion having been made, and the Court having considered the arguments of counsel and the pleadings herein, and the Court noting that the Plaintiffs' decedent, Clarence J. Peerenboom died on October 16, 1980, and that the within the action was not commenced until November 16, 1981, more than one year later, and that accordingly the Complaint is barred by the applicable statute of limitations;

IT IS HEREBY ORDERED that the Complaint herein be dismissed, with prejudice, at the cost of the Plaintiffs.

JUDGE United States District Court

DATED: _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

KENNETH PEERENBOOM, et al.,	)	
	)	
	)	
PLAINTIFFS,	)	
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vs.	)	CIVIL ACTION NO. C-81-0698-L(A)
	)	
	)	
B. F. GOODRICH COMPANY,	)	
	)	
	)	
DEFENDANT.	)	

MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

According to their Complaint, the Plaintiffs are the wife and sons of Clarence Peerenboom, a former employee of the Defendant, B. F. Goodrich Company (see Paragraph 1 of the Complaint). The Complaint also states that the Plaintiffs are the personal representatives of Clarence Peerenboom, but apparently this is incorrect. A copy of the Plaintiff's, Betty J. Peerenboom's, Petition to Dispense with Administration is attached hereto as Defendant's Exhibit A. Apparently there is no legal personal representative of the decedant, Clarence J. Peerenboom.

According to the Complaint, Paragraph 6, Clarence Peerenboom died on October 16, 1980. The date of his death is also confirmed by the Petition to Dispense with Administration, Defendant's Exhibit A attached hereto.

Of course the Court's own records will reflect that the Complaint herein was not filed until November 16, 1981, approximately 13 months

after the death of Clarence Peerenboom. In its Answer to the Complaint, Goodrich pled the statute of limitations as an affirmative defense (Answer, Third Defense).

According to the Complaint, it was brought pursuant to Kentucky's Wrongful Death Act, which is Chapter 411 of the Kentucky Revised Statutes (Complaint Paragraph 7). There are, however, some elements of a personal injury suit in the Complaint. Whether it is entirely a wrongful death action or partially a personal injury case, the applicable statute of limitations is still one year. To the extent that the Complaint might possibly be construed as a personal injury action, it would be barred by KRS 413.140. To the extent that it is truly a wrongful death action, the case is barred by the provisions of KRS 413.180, which also establishes a one year statute of limitations from the date of death. The statute has always been so construed. Faulkner's Administrator v. Louisville and Nashville Railroad Company, 184 Ky. 533, 212 SW 130 (1919).

The Complaint should be dismissed at this time and at the cost of the Plaintiffs.


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