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CLEAR
U.S. DISTRICT COURT
NORTHERN DISTRICT
TOLEDO, OHIO

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

Mary A. Dendinger, et al.,	)	Case No. C87-7117
	)	
Plaintiffs,	)	(Hon. Nicholas J. Walinski)
	)	
v.	)	
	)	DEFENDANTS' MOTION FOR AN
Chrysler Plastic Products	)	ORDER FOR VIDEOTAPE DEPOSITION
Corp, et al.,	)	<u>AND ISSUANCE OF A COMMISSION</u>
	)	
Defendants.	)	
	)	[Louis E. Tosi 0019756
	)	Robert A. Bunda 0019774
	)	Peggy Ann Whipple 0029589
	)	One SeaGate
	)	17th Floor
	)	P.O. Box 2088
	)	Toledo, Ohio 43603
	)	Telephone: (419) 247-2500
	)	Attorneys for Defendants
	)	The BFGoodrich Co.;
	)	The Goodyear Tire & Rubber Co.;
	)	Firestone Tire & Rubber Co.;
	)	Conoco, Inc.; Uniroyal, Inc.;
	)	Union Carbide Corp.; Maxus
	)	Energy Corp.; Tenneco, Inc.;
	)	Occidental Chemical Corp.]
	)	

UPL 06535

Defendants The Goodyear Tire & Rubber Company, The
BFGoodrich Company, Firestone Tire & Rubber Co., Conoco, Inc.,
Union Carbide Corporation, Uniroyal, Inc., Maxus Energy
Corporation, Tenneco, Inc. and Occidental Chemical Corporation
move the Court for an order, pursuant to Rule 30(b)(4), Federal

Rules of Civil Procedure, for an order that the deposition testimony of defendants' medical expert, Sir Richard Doll, be permitted to be taken by videotape on July 26, 1988.

Defendants also move, pursuant to Rule 28(b)(2), for issuance of commission to authorize the court reporter to issue the oath to the deponent.

Rule 30(b)(4), Federal Rules of Civil Procedure, reads as follows:

"(4) The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense. Any objections under subdivision (c), any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign, as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.

Defendants desire to obtain the testimony of an internationally-renowned expert epidemiologist, Sir Richard Doll, D.M., F.R.S., Emeritus Professor, Imperial Cancer Research Fund, Cancer Epidemiology and Clinical Trials Unit, The University of Oxford, England. A copy of Dr. Doll's curriculum vitae is

attached. Defendants would like to obtain the videotape deposition testimony of Dr. Doll for use in trial of this action. Time for the deposition has been scheduled with Dr. Doll for July 26, 1988. The videotape deposition will be taken before Anglo-American Court Reporters, Tennyson and Company, as the court reporter, in association with Deposition Electro-Video Production Services, as the video-taping service. The videotape deposition will take place at the offices of the Imperial Cancer Research Fund, Cancer Epidemiology and Clinical Trials Unit, University of Oxford, Gibson Building, The Radcliffe Infirmary, Oxford OX26HE, United Kingdom. The manner of recording, preserving and filing the deposition shall be in accordance with general order No. 88-1 of this Court, filed on May 10, 1988. A stenographic transcript will be made along with the videotaped testimony.

This order is required because, although counsel for plaintiffs originally agreed to stipulate to such a deposition (Exhibit A), he thereafter withdrew such consent (Exhibit B).

Defendants also request the issuance of a commission authorizing the court reporter to issue the oath to the witness.

Rule 28(b), Federal Rules of Civil Procedure, reads as follows:

Rule 28. Persons Before Whom Depositions May Be Taken.

(b) In Foreign Countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

Unlike in the United States, English court reporters are not required to be notaries. Accordingly, under United States law they are not automatically authorized to administer oaths.

As indicated above, a commission is required because plaintiffs will not stipulate to any aspect of this deposition.

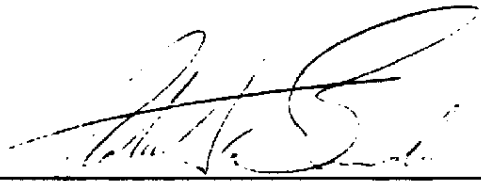
For these reasons, defendants request that the Court issue a commission authorizing the court reporter to administer

the oath and take testimony in this case a proposed commission is attached to this motion), and defendants furthermore move for an order authorizing the videotape deposition of Dr. Doll on July 26, in England.

Of Counsel for

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Toledo, Ohio 43603

The BF Goodrich Co.; The
Goodyear Tire & Rubber Co.;
Firestone Tire & Rubber Co.;
Conoco, Inc., Uniroyal, Inc.;
Union Carbide Corp.; Maxus
Energy Corp., Tenneco, Inc.;
and Occidental Chemical
Occidental Chemical Corp.

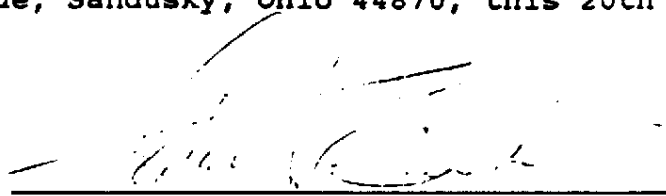


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Rubber Co.; Conoco, Inc.; Uniroyal,
Inc.; Union Carbide Corp.; Maxus
Energy Corp.; Tenneco, Inc.; Corp.

JRL 06539

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for an Order for Videotape Deposition 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, this 20th day of June, 1988.



An Attorney for Defendants

URL 06540

247-2521

May 26, 1988

Kirk J. Delli Bovi, Esq.
Murray & Murray Co., L.P.A.
300 Central Avenue
Sandusky, Ohio 44870

Re: Dendinger and Wallace, et al. v.
Chrysler, et al.

Dear Kirk:

I am enclosing a copy of a report which has been prepared by Sir Richard Doll regarding the epidemiology as to vinyl chloride and claims of cancer.

As we discussed by telephone, you have agreed to stipulate to the videotape deposition of Dr. Doll on July 26 in Oxford, England. We have also agreed to the discovery deposition of Dr. Doll by you, beginning 10:00 a.m. on July 25.

Dr. Doll's office is located at the Imperial Cancer Research Fund, Cancer Epidemiology and Clinical Trials Unit, University of Oxford, The Gibson Building, The Radcliffe Infirmary, Oxford, England. I will arrange for Dr. Doll to set aside an office for the location of the depositions, and will inform you of that location after final arrangements have been made.

Sincerely,

Robert A. Bunda

RAB/lmb
Enclosures
3861-1
cc: Larry P. Meyer, Esq., w/encl.

UJRL 06541

DENNIS E. MURRAY, SR.*
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NEIL H. SANDERS II
HARRY M. COCHRAN, JR.

EMMETT MURRAY 1983-1990
THOMAS MURRAY 1991-1994

* ATTORNEY AND CERTIFIED PUBLIC ACCOUNTANT
* BOARD CERTIFICATION CIVIL TRIAL ADVOCATE

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June 1, 1988

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In Re: Dendinger & Wallace, et al. v. Chrysler, et al.

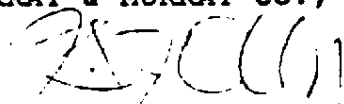
Dear Bob:

This letter is in response to your communication of May 26, 1988. In light of the motion and memorandum which I filed on May 25, 1988, the day before you mailed your letter, it should be clear that we have no agreement with regard to Dr. Doll's deposition or trial testimony. I am aware of no court rule or decision that permits any party to force another out of the forum or out of the country for the purpose of eliciting trial testimony from an expert witness. Such witness, at the election of opposing counsel, must be made available in the forum.

Very truly yours,

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

By


Kirk J. Delli Bovi

KJDB:sg

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