

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

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.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants Uniroyal, Inc., Union Carbide Corporation, Tenneco Resins, Inc., Allied Chemical Corporation, Occidental Chemical Corporation, and The Firestone Tire & Rubber Company, by their attorneys, Dykema, Gossett, Spencer, Goodnow & Trigg, move the Court for summary judgment pursuant to GCR 117.2(3), as undisputed facts establish that plaintiff's claims against these defendants are barred by the statute of limitations, as follows:

1. This is a wrongful death, product liability action filed on August 15, 1983, in which plaintiff seeks

damages for decedent's August 16, 1980 death from breast cancer diagnosed by 1975, and alleged to have been caused by exposure to PVC-products supplied by the moving defendants to the Ford Motor Company Mt. Clemens Vinyl Plant adjacent to decedent's residence no later than 1976.

2. The Michigan Court of Appeals in Larson v Johns Manville Sales Corporation, et al, ___ Mich App ___ (Slip op. 64286 decided January 17, 1985 -- copy attached), held that the 3 year statute of limitations in a wrongful death product liability claim alleging death from cancer due to chemical exposure runs from the date of the defendants' alleged wrongful act; there is no "discovery" rule to extend the limitations period until the alleged wrongful act is discovered.

3. Here, the wrongful act, as alleged, occurred no later than 1976, by which time the decedent's cancer had been discovered, so the claim first filed in 1983 is time-barred.

This motion is supported by a Brief, by plaintiff's deposition, by the affidavits served with medical records subpoenaed in this case, and by an affidavit of counsel. Concurrence in the relief requested was sought from plaintiff's counsel but could not be obtained; hence it is necessary to present this Motion to the Court.

DYKEMA, GOSSETT, SPENCER, GOODNOW & TRIGG

By:

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