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3861-1

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

MARY A. DENDINGER, et al.,	)	CASE NO.: C87-7117
and ETTA W. WALLACE, et al.,	)	Hon. Nicholas J. Walinski
Plaintiffs,	)	
vs.,	)	<u>MOTION TO COMPEL DISCOVERY</u>
CHRYSLER PLASTIC PRODUCTS	)	<u>AND TO BAR THE TAKING OF</u>
CORPORATION, et al.,	)	<u>TRIAL TESTIMONY OUTSIDE THE</u>
Defendants.	)	<u>FORUM AND PRIOR TO PLAINTIFFS'</u>
	)	<u>RECEIPT OF THE DEPOSITION</u>
	)	<u>TRANSCRIPT OF THE WITNESS</u>

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Plaintiffs move the Court for an order requiring defendants to submit each of their experts to a deposition by plaintiffs in the forum on or by September 1, 1988. Plaintiffs further move the Court for an order prohibiting defendants from taking the trial testimony of any witness outside of the forum and before plaintiffs have had an opportunity to depose and obtain the deposition transcript of such witness. Plaintiffs seek these orders for the reasons set forth below.

The first defense expert deposed by plaintiffs was Dr. Sidney Shindell, who was deposed in Milwaukee, Wisconsin, on May 23, 1988. Following the taking of Dr. Shindell's deposition by the plaintiffs, defense counsel (Robert Bunda) immediately thereafter, without any prior notice, elicited the direct trial

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testimony of Dr. Shindell. During cross-examination, Dr. Shindell advised that defense counsel had known for weeks that trial testimony would be elicited by him on May 23. Because of the complete lack of notice of this proceeding, plaintiffs prepared only for the deposition of Dr. Shindell and not for his cross-examination at trial. Plaintiffs would have conducted additional research and brought with them to Milwaukee, additional materials had disclosure been made to them that trial testimony would be elicited. Plaintiffs strenuously object to this defense tactic.

On May 23, plaintiff inquired as to what arrangements had been made to depose defendants' remaining experts. Plaintiffs were advised only that they could take the deposition of Richard Doll in London, England, on July 26, 1988 and that no other deposition arrangements had been made. The following day, defense counsel announced that he would seek a court order permitting him to take the trial testimony of Dr. Doll in London on July 26, 1988.

Plaintiffs vehemently object to these tactics. Defendants not only seek to force plaintiffs across the country but out of the country and to force plaintiffs to participate in trial testimony before they have had an opportunity to depose and receive a transcript of the deposition of the witness. If defendants are entitled to benefit from these tactics, this case will not be tried on a level field and plaintiffs will be immensely prejudiced.

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For these reasons, plaintiffs move the Court for an order requiring defendants to produce their experts in the forum for a deposition on or by September 1, 1988, and for an order restricting defendants from eliciting the trial testimony of any such witness unless it is elicited in the forum and only after plaintiffs have had an opportunity to depose the individual and to obtain a transcript of said deposition. In light of what has occurred to date and what is planned by defendants for the future, it is clear that the parties, without the intervention of the court, will be unable to reconcile their differences.

Respectfully submitted,



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Attorneys for Plaintiffs

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CERTIFICATION

This is to certify that a copy of the foregoing was served upon all counsel of record by mailing said copy, postage prepaid, addressed as follows:

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Attorneys for The Goodyear Tire & Rubber Company, The BF Goodrich Company, Firestone Tire & Rubber Company, Conoco, Inc., Uniroyal, Inc., Union Carbide Corporation, Maxus Energy Corporation, Tenneco, Inc. and Occidental Chemical Corp.

this 25th day of May, 1988.



Kirk J. Delli Bovi

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

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

MARY A. DENDINGER, etc.,
et al.,

Plaintiffs,

-vs-

CHRYSLER PLASTIC PRODUCTS
CORP., et al.,

Defendants.

No. C 87-7117

PRETRIAL ORDER

* * * *

4/21/88
JJS, PAW, LE T.
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This day this cause came on for pretrial conference pursuant to regular assignment, and the Court notes and approves the following actions taken at such conference:

JURY TRIAL scheduled MAY 10, 1988 VACATED; cause RESET FOR JURY TRIAL JANUARY 10, 1989 at 9:00 A.M. on issues of causation only as to both sets of plaintiffs. Cause to be continued to the same panel following causation issues decision.

Each side, plaintiffs and defendants collectively, are granted six peremptory challenges. Two alternates to be seated. JURY TO BE IMPANELED MONDAY, JANUARY 9, 1989 at 2:00 P.M.

All discovery undertaken thus far to be completed by November 1, 1988. All rebuttal experts, if any, must be noticed to the opposing party. Plaintiff granted to June 1, 1988 to reply to Schulman, Inc.'s motion for summary judgment.

Richard W. Wolinski
UNITED STATES DISTRICT JUDGE

Toledo, Ohio.
April 18, 1988

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