

COMMONWEALTH OF MASSACHUSETTS

9

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 82-2444

.....
ANNE ANDERSON, et al.,
Plaintiffs,
v.
CRYOVAC, INC., et al.,
Defendants.
.....

COPY OF PETITION FOR REMOVAL
FILED PURSUANT TO 28 U.S.C.
§1446(e)

FILED
IN THE OFFICE OF THE
CLERK OF THE COURTS
FOR THE COUNTY OF MIDDLESEX
JUN 16 1982
Edward J. Sullivan
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

I hereby attest and certify o
George F. McGrath, that th
foregoing document is a ful
true and correct copy of the
original on file in my office
and in my legal custody.

GEORGE F. McGRATH
CLERK, U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BY: George F. McGrath Deputy
CIVIL ACTION NO.

.....
ANNE ANDERSON, et al.,
Plaintiffs,
v.
CRYOVAC, INC., et al.,
Defendants.
.....

PETITION FOR REMOVAL

1. On or about May 18, 1982, an action was commenced against petitioners W. R. Grace & Co. and Beatrice Foods Co. in the Superior Court for The Commonwealth of Massachusetts in and for the County of Middlesex, entitled Anne Anderson, et al., plaintiffs, against Cryovac, Inc., et al., defendants, by the filing of a Complaint, a copy of which is annexed hereto. A copy of a Summons, a copy of which is annexed hereto, and of the Complaint were served upon petitioner W. R. Grace & Co. on or about May 19, 1982. A copy of a Summons, a copy of which is annexed hereto, and of the Complaint were served upon petitioner Beatrice Foods Co. on or about May 19, 1982. No further proceedings have been had therein, except that an answer on behalf of petitioner W. R. Grace & Co. was filed on or about June 8, 1982.

2. The above-entitled action is a civil action of which this Court has original jurisdiction under the provisions of 28 U.S.C. §1332, and is one which may be removed to this Court by the petitioners, defendants therein, pursuant to the provisions of 28 U.S.C. §1441, in that it is a civil action wherein the matter in controversy exceeds the sum or value of \$10,000.00 exclusive of interest and costs, and is between citizens of different states. The plaintiffs at the time this action was commenced were and still are citizens of The Commonwealth of Massachusetts; the defendant W. R. Grace & Co. at the time this action was commenced was, and it still is, a corporation duly organized and existing under the laws of the State of Connecticut with its principal place of business in the State of New York, and it was not and is not a citizen of The Commonwealth of Massachusetts wherein this action was brought; the defendant Beatrice Foods Co. at the time this action was commenced was, and it still is, a corporation duly organized and existing under the laws of the State of Delaware with its principal place of business in the State of Illinois, and it was not and is not a citizen of The Commonwealth of Massachusetts wherein this action was brought; the named defendant Cryovac, Inc. at the time this action was commenced was not, and it still is not, a corporation or other entity with any existence separate or apart from that of the petitioner W. R. Grace & Co., but was and is instead a division of W. R. Grace & Co. doing business under the trade name and style of Cryovac Division; the named defendant John J. Riley

Company, Inc., at the time this action was commenced was not, and it still is not, a corporation or other entity with any existence separate or apart from that of the petitioner Beatrice Foods Co., but was instead a division of Beatrice Foods Co. doing business under the trade name and style of John J. Riley Company; and the named defendants XYZ Company(ies) are fictitious parties which have not been specifically identified or served with process in this action, against whom no specific claims are alleged, and against whom no claim upon which relief can be granted is set forth.

3. Alternatively, your petitioners respectfully represent that plaintiffs have fraudulently and improperly caused the fictitious defendant(s) XYZ Company(ies) to be joined as defendant(s), in that no such fictitious company has been specifically identified or served with process in this action, no specific claims are alleged against any such fictitious company, no claim upon which relief can be granted against any such fictitious company is set forth, plaintiffs have no good ground to support any such claim and plaintiffs have no present intent to pursue any such claim against any such company. Petitioners say that said XYZ Company(ies) are sham defendant(s) joined for the sole purpose of avoiding and defeating the removal of this action to the United States District Court. Wherefore, the above-entitled action is a civil action of which this Court has original jurisdiction and which may be removed to this Court by petitioners on the grounds set forth in paragraph 2 hereof, the allegations of which are incorporated in this paragraph 3 by reference.

4. Alternatively, petitioners say that the plaintiffs allege against your petitioners one or more claims or causes of action which are separate from and independent of any claims or causes of action alleged against the fictitious defendant(s) XYZ Company(ies), in that each defendant is alleged to have contaminated different parts of the groundwater at issue in this case by wholly separate and independent conduct occurring at diverse times and places and involving different substances. If sued upon alone, said one or more separate and independent claims or causes of action against your petitioners would be claims of which this Court has original jurisdiction and which could be removed to this Court by petitioners on the grounds set forth in paragraph 2 hereof, the allegations of which are incorporated in this paragraph 4 by reference. By virtue of 28 U.S.C. §1441(c), this entire case, including any separate and independent claims against the fictitious defendant(s) XYZ Company(ies), is one which may be removed to this Court without regard to the citizenship of the XYZ Company(ies).


5. Petitioners file herewith pursuant to Local Rule 25(1) a bond with good and sufficient surety conditioned, as provided by 28 U.S.C. §1446(d), that they will pay all costs and disbursements incurred by reason of the removal proceedings hereby brought should it be determined that this action is not removable or is improperly removed.

WHEREFORE, petitioners pray that the above-entitled action, now pending against them in the Superior Court of The Commonwealth

of Massachusetts in and for the County of Middlesex, be removed therefrom to this Court.


W.R. GRACE & CO. and its
CRYOVAC DIVISION;
BEATRICE FOODS CO. and its
JOHN J. RILEY COMPANY DIVISION

By their attorneys,



William J. Cheeseman
Foley, Hoag & Eliot
One Post Office Square
Boston, Massachusetts 02109
(617) 482-1390


Attorney for petitioner
W. R. Grace & Co. and its
Cryovac Division



Neil Jacobs
Hale and Dorr
60 State Street
Boston, Massachusetts 02109
(617) 742-9100

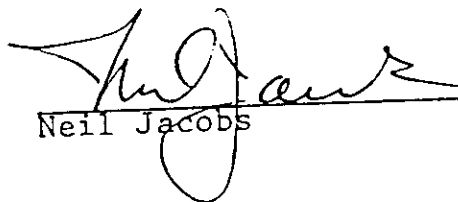
Attorney for petitioner Beatrice
Foods Co. and its John J.
Riley Company Division

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 15, 1982.



William J. Cheeseaman

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 15, 1982.



Neil Jacobs

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Anne Anderson et al.

DEFENDANTS

W.R. Grace & Co. and
Beatrice Foods Co.

COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Middlesex COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Jan Richard Schlichtmann
Reed and Mulligan
101 Tremont Street
Boston, MA 02108 426-1166

ATTORNEYS (IF KNOWN)
William J. Cheeseman
Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109 482-1390

(PLACE AN IN ONE BOX ONLY) BASIS OF JURISDICTION IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1332, 1441)
 1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 FEDERAL QUESTION (U.S. NOT A PARTY) 4 DIVERSITY

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
28 U.S.C. §§ 1332, 1441 - personal injury due to alleged contamination of water supply.

NATURE OF SUIT						
(PLACE AN <input checked="" type="checkbox"/> IN ONE BOX ONLY)						
CONTRACT	TORTS	ACTIONS UNDER STATUTES				
		CIVIL RIGHTS	FORFEITURE/PENALTY	PROPERTY RIGHTS		
<input type="checkbox"/> 110 INSURANCE <input type="checkbox"/> 120 MARINE <input type="checkbox"/> 130 MILLER ACT <input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT <input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGEMENT <input type="checkbox"/> 151 MEDICARE ACT	PERSONAL INJURY	<input type="checkbox"/> 441 VOTING	<input type="checkbox"/> 610 AGRICULTURE	<input type="checkbox"/> 820 COPYRIGHT	<input type="checkbox"/> 840 TRADEMARK	
	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 442 JOBS	<input type="checkbox"/> 620 FOOD & DRUG	<input type="checkbox"/> 830 PATENT		
	<input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY	<input type="checkbox"/> 443 ACCOMMODATIONS	<input type="checkbox"/> 630 LIQUOR LAWS	OTHER STATUTES		
	<input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER	<input type="checkbox"/> 444 WELFARE	<input type="checkbox"/> 640 R.R. & TRUCK	<input type="checkbox"/> 400 STATE REAPPORTIONMENT	TAX SUITS	
	<input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY	<input type="checkbox"/> 440 OTHER CIVIL	<input type="checkbox"/> 650 AIR LINE REGS.	<input type="checkbox"/> 410 ANTI-TRUST BANKRUPTCY	<input type="checkbox"/> 870 TAXES	<input type="checkbox"/> 871 IRS-THIRD PARTY
<input type="checkbox"/> 340 MARINE		<input type="checkbox"/> 660 OCCUPATIONAL	<input type="checkbox"/> 420 TRUSTEE	<input type="checkbox"/> 875 CUSTOMER		
<input type="checkbox"/> 345 MARINE PRODUCT						

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) _____

Anne Anderson et al. v. Cryovac, Inc. et al.

CATEGORY IN WHICH CASE BELONGS: (SEE LOCAL RULES 83, 8C)

- | | |
|---|--|
| <input type="checkbox"/> ADMIRALTY | <input type="checkbox"/> INTERSTATE FREIGHT DAMAGE |
| <input type="checkbox"/> ANTITRUST | <input type="checkbox"/> LABOR |
| <input type="checkbox"/> CIVIL RIGHTS | <input type="checkbox"/> LIBEL OF FORFEITURE |
| <input type="checkbox"/> CONTRACT | <input type="checkbox"/> OTHER |
| <input type="checkbox"/> COPYRIGHT, TRADEMARK,
UNFAIR COMPETITIONS | <input type="checkbox"/> PATENT |
| <input type="checkbox"/> GOVERNMENT NOTE | <input type="checkbox"/> TAX |
| <input type="checkbox"/> HABEAS CORPUS | <input checked="" type="checkbox"/> TORT (INCLUDING JONES ACT) |

TITLE AND NUMBER, IF ANY, OF RELATED CASES (SEE LOCAL RULE 8E)

None

HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? NO

DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS, AFFECTING THE PUBLIC INTEREST? NO
IF SO, IS THE UNITED STATES, OR AN OFFICER, AGENT OR EMPLOYEE OF THE UNITED STATES A PARTY? _____ (SEE 28 USC 2403, LOCAL RULE 25)

IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO RULE 28 USC 2284? NO

* * * * *

LOCAL RULES OF THE COURT HAVE BEEN AMENDED TO PROVIDE FOR COURT HEARINGS IN SPRINGFIELD OF CASES ARISING IN THE WESTERN SECTION OF THE DISTRICT OF MASSACHUSETTS, (SEE AMENDMENT TO LOCAL RULE 8D BY ORDER OF COURT DATED JANUARY 14, 1974 AND AMENDMENTS TO THE LOCAL RULES BY ORDER OF COURT DATED JANUARY 14, 1974 IN THIS CONNECTION, PLEASE