IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

EDMOND ASHER, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 1:20–cv–00238
	)	
RAYTHEON TECHNOLOGIES CORPORATION f/k/a United Technologies Corporation, LEAR CORPORATION EEDS AND INTERIORS, LLC as successor to United Technologies Automotive, Inc., ANDREWS DAIRY STORE, INC., L.D. WILLIAMS, INC., CP PRODUCT, LLC, as successor to Preferred Technical Group, Inc., and LDW Development, LLC	)	
	)	
Defendants.	)	

PLAINTIFFS' EMERGENCY MOTION TO REMAND

Plaintiffs, by counsel, and pursuant to 28 U.S.C. § 1447, for their Emergency Motion to Remand, state as follows:

1. On June 19, 2020, Plaintiffs—77 individuals and the Town of Andrews, Indiana (the "Town"), filed a complaint against six defendant in the Huntington County Superior Court, Cause No. 35D-01-2006-CT-000338. A true and accurate copy of the Complaint is attached hereto as Exhibit #1.

2. Plaintiffs' Complaint brings six state-law causes of action: trespass, nuisance, negligence, negligent infliction of emotional distress, negligent failure to warn, and a statutory claim for Environmental Legal Action, Ind. Code § 13–30–9–2. (Ex. #1, ¶¶ 187–217.)

3. The Complaint is based upon personal injuries and damages stemming from two

separate but commingled sources of contamination: (1) contamination from the former United Technologies Automotive site in Andrews, Indiana (the "UTA Facility")—which was owned and/or operated by Defendants Raytheon Technologies Corp. ("Raytheon"), Lear Corp. Eeds and Interiors, LLC, and CP Product, LLC—collectively, the "Raytheon Defendants"; and (2) a gas station formerly owned by Defendant Andrews Dairy Store, Inc. and now owned and operated by Defendants L.D. Williams, Inc., and LDW Development, LLC. (*See* Ex. #1, ¶¶ 1, 3–4, 145–186.)

4. On the same day the Complaint was filed, the Town filed a Verified Emergency Motion for Preliminary Injunction ("Motion"), seeking preliminary injunctive relief to address the contamination that has pervaded the Town's municipal water supply. A true and accurate copy of the Town's Motion is attached hereto as Exhibit #2, and a true and accurate copy of the Town's brief in support, including all attached exhibits, is attached hereto as Exhibit #3. These documents are expressly incorporated herein.

5. The Town's Motion explains that contamination from the UTA Facility has infiltrated the Town's water supply, which is drawn from three municipal wells, MW-1, MW-2, and MW-3 (also called WH-1, WH-2, and WH-3). (*See* Ex. #2, Ex. #3.)

6. In 1994, Raytheon was required to install an air stripper at the Town's water supply, which was intended to remove the contamination from chlorinated solvents that had reached the Town's wells. (Ex. #4, Aff. of James T. Wells, Ph.D., at ¶ 6.)

7. The air stripper has, throughout its lifespan, experienced numerous breakdowns and interruptions, and even when it is online, some chlorinated contamination can and does get past the air stripper. (*Id.* at ¶¶ 6, 8.)

8. From 2012 until May 2020, the Town ceased pumping from MW-1, the most contaminated of the three wells. But since May 7, 2020, a lack of water production from MW-2

and MW-3 has forced the Town to re-open MW-1. (Ex. #5, Aff. of John Harshbarger, at ¶¶ 12–16.)

9. A significant increase in the level of vinyl chloride in MW-1, combined with interruptions in the air stripper's operation, has created an emergency situation for the Town. Testing of MW-1 two days ago revealed 30 µg/L (micrograms per liter) of vinyl chloride—15 times the United States Environmental Protection Agency's Maximum Contaminant Level ("MCL") of just 2 µg/L. (Ex. #4, at ¶ 7.) The Town has again turned off WH-1, at the instruction of the Indiana Department of Environmental Management, for fear that this vinyl chloride will reach Town residents. (Ex. #5, at ¶¶ 25–26.) Indeed, a tap water sample taken at the Town's wastewater treatment plant on June 23 contained 2 µg/L of vinyl chloride. (Ex. #4, at ¶ 8.) The contaminated wells and the state of the air stripper constitute a public emergency. (*Id.* at ¶ 10.)

10. Apart from the Town not being able to provide clean water to its residents, this situation is also causing an emergency with respect to the Town's volunteer fire department, which is presently unable to adequately respond to fires due to the Town's inability to provide an adequate water supply from MW-2 and MW-3 alone. (*See* Ex. #6, Aff. of Thomas Wuensch, at ¶¶ 3–9; *see also* Ex. #5, at ¶ 27.)

11. On June 22, 2020, the Honorable Jennifer Newton of the Huntington Superior Court set the Town's Emergency Motion for a hearing on Thursday, June 25, 2020, at 10 a.m. A copy of the Order is attached hereto as Exhibit #7.

12. At the request of the Raytheon Defendants' counsel, an attorneys' conference was held at 1:00 p.m. yesterday, June 24, 2020, to discuss the emergency hearing scheduled for this morning. Plaintiffs' counsel advised Defendants' counsel that Dr. Wells would testify. Raytheon Defendants' counsel made no mention of removal.

13. At approximately 4:20 p.m. on Wednesday, June 24, 2020, Plaintiffs' counsel received a voicemail from counsel for Raytheon indicating that the case was being removed to federal court. Raytheon subsequently filed its removal papers in this Court and in the Huntington Superior Court later that evening.

14. The Raytheon Defendants' Notice of Removal is frivolous and wholly without merit, and serves only to delay the hearing on the Town's Emergency Motion for Preliminary Injunction.

15. The Raytheon Defendants' removal is based upon the supposed existence of a federal question under 28 U.S.C. § 1331.

16. Citing *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005), the Raytheon Defendants quote a single line from the introduction of Plaintiffs' Complaint and contend that Plaintiffs' state-law causes of action hinge on the citizens' suit provision of RCRA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B). (*See* Notice of Removal, at ¶¶ 7, 13–16.)

17. As discussed in Plaintiffs' brief in support of this Emergency Motion to Remand, being filed contemporaneously, Plaintiffs' Complaint does not involve, in any manner, a federal question. Plaintiffs have not artfully pled a federal claim disguised as a state-law claim. Nor does Plaintiffs' Complaint hinge on an "actually disputed and substantial" issue of federal law, as *Grable* contemplates. *See Grable*, 545 U.S. at 314.

18. The Raytheon Defendants' Notice of Removal is a shameful and reckless attempt to delay the Town from receiving a timely hearing on its Emergency Motion for Preliminary Injunction, the effect of which is to prolong the period in which the nearly 1,200 residents of the Town are stuck without an adequate supply of clean water. (Ex. #5, at ¶¶ 9–10.)

19. The Raytheon Defendants' Notice of Removal has also placed lives and property at risk because the Town does not presently have sufficient water to fight fires. (Ex. #5, at ¶ 27; Ex. #6, at ¶¶ 3–19.)

20. Because Plaintiffs' Complaint does not involve a federal question, this Court is without subject matter jurisdiction, and this Court should remand the case to the Huntington County Superior Court forthwith.

21. Further, because the Raytheon Defendants "lacked an objectively reasonable basis for seeking removal," and because their removal was an act of gamesmanship motivated by a desire to derail the emergency hearing on the Town's Motion, this Court should award attorneys' fees pursuant to 28 U.S.C. § 1447(c).

22. Plaintiffs therefore respectfully request this Court enter an order remanding this case, on an expedited basis, and permit the application of Plaintiffs' attorneys' fees in remanding this case to its proper forum.

WHEREFORE, Plaintiffs, by counsel, respectfully request this Court enter an Order remanding this case to the Huntington County Superior Court, grant Plaintiffs an award of attorneys' fees for pursuing remand, and for all other just and proper relief.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.