

914 So.2d 527, 30 Fla. L. Weekly D2646
(Cite as: 914 So.2d 527)

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District Court of Appeal of Florida,
Fourth District.

Jack D. PHILLIPS, Appellant,

v.

AMERICAN OPTICAL CORPORATION, et al.,
Appellees.

No. 4D04-3493.


Nov. 23, 2005.

Background: Individual brought asbestos-exposure case against various defendants, including chemical company. The Circuit Court, Seventeenth Judicial Circuit, Broward County, [Thomas M. Lynch IV, J.](#), granted chemical company's motion to dismiss based on forum non conveniens and, subsequently, dismissed the case with prejudice. Individual appealed.

Holding: The District Court of Appeal held that trial court was required to deny chemical company's motion to dismiss based on forum non conveniens.

Reversed.

West Headnotes

[1] Courts 106  **28**

106 Courts

[106I](#) Nature, Extent, and Exercise of Jurisdiction in General

[106k28](#) k. Discretion as to Exercise; Forum Non Conveniens. [Most Cited Cases](#)
(Formerly 307Ak673)

Where a motion to dismiss based on forum non conveniens is untimely under procedural rule governing such motions, the motion should be denied. [West's F.S.A. RCP Rule 1.061\(g\)](#).

[2] Courts 106  **28**

106 Courts

[106I](#) Nature, Extent, and Exercise of Jurisdiction in General

[106k28](#) k. Discretion as to Exercise; Forum Non Conveniens. [Most Cited Cases](#)
(Formerly 307Ak673)

Trial court in individual's asbestos-exposure action against, among others, chemical company, was required to deny chemical company's motion to dismiss based on forum non conveniens, where motion was filed more than 60 days after service of the complaint on chemical company. [West's F.S.A. RCP Rule 1.061\(g\)](#).

*[527](#) [David A. Jagolinzer](#) and [James L. Ferraro](#) of Ferraro & Associates, P.A., Miami, for appellant.

[Nathan M. Thompson](#) and [Evelyn M. Fletcher](#) of Hawkins & Parnell, LLP, Atlanta, GA, for appellees Union Carbide Corp., et al.

PER CURIAM.

Union Carbide Corporation filed a motion to dismiss Jack Phillips's asbestos case based on forum non conveniens. The trial court granted the motion and dismissed the case with prejudice. Phillips raises four issues on appeal. We address only the issue of the timeliness of the motion and reverse.

On July 16, 2003, Jack Phillips filed suit against fifty-three corporations, including Union Carbide Corporation, on asbestos-[*528](#) related claims. The complaint was served on Union Carbide on December 4, 2003.

Union Carbide filed a motion to dismiss based on forum non conveniens on May 21, 2004. The trial court granted the motion to dismiss. The trial court subsequently entered an order dismissing the case with prejudice.

[\[1\] Florida Rule of Civil Procedure 1.061\(g\)](#) provides: "A motion to dismiss based on forum non conveniens shall be served not later than 60 days after service of process on the moving party."

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Where a motion is untimely under this rule, the motion should be denied. See *Wedge Hotel Mgmt., (Bahamas), Ltd. v. Meier*, 868 So.2d 552, 552 (Fla. 3d DCA 2004).

[2] In the case at bar, Union Carbide was served with the complaint on December 4, 2003. The motion to dismiss for forum non conveniens was not served until May 21, 2004, well outside the sixty-day window for filing such a motion. As a result, the trial court erred by not denying the motion to dismiss.

Therefore, as in *Fox v. Union Carbide Corp.*, 910 So.2d 422 (Fla. 4th DCA 2005), a Fifteenth Judicial Circuit case in which the motion to dismiss based on forum non conveniens suffered from the same timing deficiency, we reverse and remand for further proceedings consistent with this opinion.

Reversed.

GUNTHER, FARMER and TAYLOR, JJ., concur.

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