

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

FILED  
MAY 29 2009  
MOLLY LIVINGSTON  
CLERK OF CIRCUIT COURT

WILLIAM KEMPER, et al., )  
)  
Plaintiffs, )  
)  
v. )  
)  
PRIME TANNING CORP., et al., )  
)  
Defendants. )

Case No. 09CN-CV00333

**ANSWER OF DEFENDANT PRIME TANNING CORP.**

Prime Tanning Corp. (sometimes referred to as "this defendant"), by and through its counsel, hereby denies each and every allegation of Plaintiffs' Petition for Damages not specifically admitted herein below:

**Parties**

1. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 1 of the Petition for Damages and therefore denies the same.

2. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 2 of the Petition for Damages and therefore denies the same.

3. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 3 of the Petition for Damages and therefore denies the same.

4. This defendant admits that Defendant Prime Tanning Corp. is a Missouri corporation, and that Prime Tanning Corp. is a wholly owned subsidiary of Prime Tanning Co.,

Inc. This defendant denies the remaining allegations contained in ¶ 4 of the Petition for Damages.

5. This defendant admits that Defendant Prime Tanning Co., Inc. is a Maine Corporation. This defendant denies the remaining allegations contained in ¶ 5 of the Petition for Damages.

6. This defendant admits the allegations contained in ¶ 6 of the Petition for Damages.

7. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 7 of the Petition for Damages and therefore denies the same.

#### Jurisdiction and Venue

8. This defendant denies the allegations contained in ¶ 8 of the Petition for Damages.

9. This defendant denies the allegations contained in ¶ 9 of the Petition for Damages.

#### Facts

10. This defendant admits that Prime Tanning Corp., a wholly owned subsidiary of Prime Tanning Co., Inc., formerly owned and operated a leather tanning facility at 205 Florence Road in St. Joseph, Missouri and denies the remaining allegations contained in ¶ 10 of the Petition for Damages.

11. This defendant denies the allegations contained in ¶ 11 of the Petition for Damages.

12. This defendant denies the allegations contained in ¶ 12 of the Petition for Damages.

13. This defendant denies the allegations contained in ¶ 13 of the Petition for Damages.

14. This defendant denies the allegations contained in ¶ 14 of the Petition for Damages.

15. This defendant denies the allegations contained in ¶ 15 of the Petition for Damages.

16. This defendant denies the allegations contained in ¶ 16 of the Petition for Damages.

17. This defendant denies the allegations contained in ¶ 17 of the Petition for Damages.

18. This defendant denies that decedent Karen Kemper was exposed to hexavalent chromium in the Prime sludge in the air due to her proximity to the application of such sludge on farms near her residence. This defendant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in ¶ 18 of the Petition for Damages and therefore denies the same.

19. This defendant denies the allegations contained in ¶ 19 of the Petition for Damages.

20. This defendant denies the allegations contained in ¶ 20 of the Petition for Damages.

21. This defendant denies that Janet Lasher was exposed to hexavalent chromium in the Prime sludge in the air due to her proximity to the application of such sludge on farms near her work place. This defendant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in ¶ 21 of the Petition for Damages and therefore denies the same.

22. This defendant denies the allegations contained in ¶ 22 of the Petition for Damages.

23. This defendant denies the allegations contained in ¶ 23 of the Petition for Damages.

**COUNT I**  
**(Negligence)**

24. This defendant repeats and realleges its answers to the allegations ¶¶ 1 through 23 of the Petition for Damages.

25. This defendant denies the allegations contained in ¶ 25 of the Petition for Damages.

26. This defendant denies the allegations contained in ¶ 26 of the Petition for Damages.

WHEREFORE, this defendant requests that the Petition for Damages be dismissed, that Plaintiffs take nothing thereby, and that this defendant be awarded its costs, attorneys fees and expenses, and such other further relief as may be just and equitable.

**COUNT II**  
**(Strict Liability)**

27. This defendant repeats and realleges its answers to the allegations ¶¶ 1 through 26 of the Petition for Damages.

28. This defendant denies the allegations contained in ¶ 28 of the Petition for Damages.

29. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 29 of the Petition for Damages and therefore denies the same.

30. This defendant denies the allegations contained in ¶ 30 of the Petition for Damages.

31. This defendant denies the allegations contained in ¶ 31 of the Petition for Damages.

32. This defendant denies the allegations contained in ¶ 32 of the Petition for Damages.

33. This defendant denies the allegations contained in ¶ 33 of the Petition for Damages.

WHEREFORE, this defendant requests that the Petition for Damages be dismissed, that Plaintiffs take nothing thereby, and that this defendant be awarded its costs, attorneys fees and expenses, and such other further relief as may be just and equitable.

#### Affirmative Defenses

1. Plaintiffs' Petition for Damages fails to state a claim upon which relief may be granted.

2. Plaintiffs' claims are barred by the applicable statute of limitations.

3. Plaintiffs' claims are barred by the doctrine of laches, waiver and estoppel.

4. Venue is improper in this Court.

5. Plaintiffs have failed to join all the parties necessary for a just adjudication of this matter in their Petition For Damages.

6. Plaintiffs' claims for damages are barred in whole or in part by their failure to mitigate their damages.

7. This defendant denies the existence, nature, extent, and duration of Plaintiffs' alleged damages.

8. Any injuries or damages sustained by Plaintiffs, which this defendant expressly denies, were directly and proximately caused or contributed to by the negligence or fault of other persons or entities over whom this defendant has no control and for whom he bears no legal responsibility.

9. Any injuries or damages sustained by Plaintiffs, which this defendant expressly denies, were not caused or contributed by any negligence or fault on the part of this defendant.

10. The negligence or fault of the parties to this case should be compared by the trier-of-fact, and any negligence or fault apportioned to Plaintiffs should act to bar any recovery or reduce any recovery in direct proportion to any such assessment of fault, all in accordance with the laws of the State of Missouri.

11. This defendant cannot be held jointly and severally liable for the amount of any judgment rendered against the defendants in this case unless this defendant is found to bear fifty-one percent (51%) or more of fault. If this defendant is found to bear less than fifty-one percent (51%) of fault, then this defendant shall only be responsible for the percentage of judgment for which this defendant is determined to be responsible by the trier-of-fact.

12. This defendant can only be severally liable for the percentage of punitive damages, if trier-of-fact attributes any, for which fault to this defendant.

13. This defendant is entitled to a set-off or credit for any judgment, settlement, or proceeds paid to Plaintiffs involving other defendants, other defendants' representatives, or third-parties.

14. This defendant expressly requests that Plaintiffs' claims be reduced pursuant to § 537.060 RSMo in the event Plaintiffs have previously settled or will settle any or their claims asserted in this lawsuit against any other defendant, any other party (person or entity), any other

joint tortfeasor (person or entity), or any other person or entity liable for Plaintiffs' damages, if any, arising out of the incident that is the subject of this litigation.

15. Plaintiffs' claims are barred so far as the alleged product complied with the state of the art at the time it was manufactured as defined by law.

16. The alleged product of which Plaintiffs complain was not defective.

17. If Plaintiffs were exposed to any alleged harmful product connected to this defendant, which is specifically denied, then such exposure was inconsequential or de minimis, thus barring any recovery by the Plaintiffs.

18. If Plaintiffs sustained the injuries alleged in the petition, which is denied, there was an intervening, superseding cause or causes leading to the alleged injuries, and therefore, any act or omission on the part of this defendant was not the proximate cause and/or competent producing cause of the alleged injuries.

19. Plaintiffs' claims are barred because the alleged dangerous nature of the alleged product was not known and could not reasonably be discovered at the time the product was placed in the stream of commerce.

20. Plaintiffs' purported claims are barred because, at all relevant times, this defendant did not create a dangerous or unsafe condition on farmland wherein fertilizer was spread.

21. This defendant states that to the extent the alleged harmful products were altered from their original condition after said alleged products left this defendant's control, said alteration bars or limits this defendant's liability.

22. Plaintiffs claims are barred or limited by any misuse of the alleged product.

23. This defendant was at all times in full compliance with all applicable industry standards regarding the manufacture, sale, or distribution of products to which Plaintiffs allegedly were exposed.

24. For other and further answer in defense to Plaintiffs' Petition for Damages, Plaintiffs' claims for punitive damages should be stricken and dismissed in that they violate both the Missouri Constitution and the United States Constitution as follows:

a. The standards for determining both the amount and/or the subsequent imposition of punitive damages are vague, supply no notice to this defendant of the potential repercussions of his alleged conduct and are subject to the unbridled discretion of the jury, thereby denying due process under the Missouri Constitution, Article 1, Section 10.

b. The standards for determining both the amount and/or the subsequent imposition of punitive damages are vague, supply no notice to this defendant of the repercussions of his alleged conduct and are subject to the unbridled discretion of the jury, thereby denying due process under the Fifth and Fourteenth Amendments of the United States Constitution.

c. Plaintiffs' claims for punitive damages are criminal in nature and the rights given this defendant in criminal proceedings under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution are applicable.

d. Plaintiffs' claims for punitive damages are criminal in nature and the rights given this defendant in criminal proceedings under the Missouri Constitution, Article 1, Sections 18A, 19, 21, and 22A are applicable.

e. Plaintiffs' claims for punitive damages constitute a request for and/or imposition of an excessive fine in violation of the Eighth Amendment of the United States Constitution.

f. Plaintiffs' claims for punitive damages constitute a request for and/or imposition of an excessive fine in violation of the Missouri Constitution, Article 1, Section 21.

g. Plaintiffs' claims for punitive damages constitute cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

h. Plaintiffs' claims for punitive damages constitute cruel and unusual punishment in violation of the Missouri Constitution, Article 1, Section 21.

i. Plaintiffs' claims for punitive damages discriminate against this defendant and constitute a denial of equal protection under the law in violation of the Fifth and Fourteenth Amendments of the United States Constitution in that defendant's wealth or net worth may be requested to be considered by the jury in determining the amounts of any such damage awards.

j. Plaintiffs' claims for punitive damages discriminate against this defendant and constitute a denial of equal protection under the law in violation of Article 1, Sections 2 and 10 of the Missouri Constitution.

k. Plaintiffs' claims for punitive damages constitute a subsequent imposition of punitive-type damages against this defendant and they cannot protect against multiple punishments for the same alleged conduct or wrong, thereby denying due process under Article 1, Sections 2 and 10 of the Missouri Constitution.

1. Missouri Law does not provide an adequate procedure for the determination of damages in the nature of aggravating circumstances or punitive damages in violation of the equal protection and substantive and procedural due process requirements of both the Missouri Constitution and the United States Constitution and in violation of the United States Supreme Court decisions in *Pacific Mutual Insurance Company vs. Haslip*; *BMW of North American, Inc. vs. Gore*; *State Farm v. Campbell*.

m. The granting of relief requested by Plaintiffs would be unconstitutional under the Missouri and the United States constitutions in that it would violate due process and equal protection guarantees, place an undue burden on interstate commerce, and violate constitutional proscriptions against excessive fines.

25. To the extent that any defense arising out of the Missouri Tort Reform Act accrues to the benefit of this defendant, this defendant hereby reserves the right to assert the same should the facts warrant.

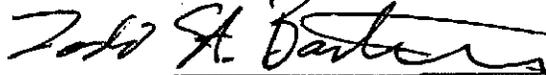
26. This defendant specifically reserves the right to plead additional affirmative defenses as they become known and available throughout pendency of this case.

WHEREFORE, having answered Plaintiffs' Petition for Damages, defendant Prime Tanning Corp. asks that judgment be entered against Plaintiffs, and in favor of this Defendant, for costs, attorneys fees and expenses, and for such other relief the Court deems just and appropriate.

Dated: May 29, 2009

Respectfully submitted,

**POLSINELLI SHUGHART PC**



R. Dan Boulware MO #24289

[DBoulware@polsinelli.com](mailto:DBoulware@polsinelli.com)

Todd H. Bartels MO #45677

[TBartels@polsinelli.com](mailto:TBartels@polsinelli.com)

Seth C. Wright MO #51830

[SCWright@polsinelli.com](mailto:SCWright@polsinelli.com)

3101 Frederick Avenue

St. Joseph, MO 64506

Phone: (816) 364-2117

Fax: (816) 279-3977

Dennis J. Dobbels MO #32378

[DDobbels@polsinelli.com](mailto:DDobbels@polsinelli.com)

Twelve Wyandotte Plaza

120 West 12<sup>th</sup> Street

Kansas City, MO 64105

Phone: (816) 421-3355

Fax: (816) 374-0509

Melissa A. Hewey

**DRUMMONDWOODSUM**

84 Marginal Way, Suite 600

Portland, ME 04101

Phone: (207) 772-1941

Fax: (207) 772-3627

[mhewey@dwmlaw.com](mailto:mhewey@dwmlaw.com)

**ATTORNEYS FOR DEFENDANT**

**PRIME TANNING CORP.**

**CERTIFICATE OF SERVICE**

I certify that on this 29<sup>th</sup> day of May, 2009, copies of the foregoing were transmitted via first class U.S. mail, postage prepaid, to:

Thomas P. Cartmell  
 Brian J. Madden  
 Thomas L. Wagstaff  
 WAGSTAFF & CARTMELL LLP  
 4740 Grand Avenue, Suite 300  
 Kansas City, MO 64112

Thomas V. Girardi  
 GIRARDI KEESE  
 1126 Wilshire Boulevard  
 Los Angeles, CA 90017-1904

Stephen Griffin  
 W. Mitchell Elliott  
 Troy Dietrich  
 GRIFFIN DIETRICH ELLIOTT  
 416 N. Walnut  
 Cameron, MO 64429

**ATTORNEYS FOR PLAINTIFFS**

William Crawford Blanton, Jr.  
 Stephen J. Torline  
 HUSCH BLACKWELL SANDERS LLP  
 4801 Main Street, Suite 1000  
 Kansas City, MO 64112

**ATTORNEYS FOR DEFENDANT  
 NATIONAL BEEF LEATHERS CO. LLC**

Scott R. Ast  
 Todd A. Scharnhorst  
 SCHARNHORST AST & KENNARD, P.C.  
 1000 Walnut, Suite 1550  
 Kansas City, MO 64106

**ATTORNEYS FOR DEFENDANT  
 RICK REAM**


Attorneys for Defendant Prime Tanning Corp.