

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

WILLIAM KEMPER
1213 Aerie
Cameron, MO 64429

and

JANET LASHER,
21992 State Hwy. 13
Gallatin, MO 64640

Plaintiffs,

v.

PRIME TANNING CORP.
Serve: CSC Lawyers Inc. Svc. Co.
221 Bolivar Street
Jefferson City MO 65101

PRIME TANNING CO., INC.
Serve: Benjamin E. Marcus
84 Marginal Way, Suite 600
Portland ME 04101

NATIONAL BEEF LEATHERS CO., LLC
Serve: CT Corporation System
120 South Central Ave.
Clayton MO 63105

WISMO CHEMICAL CORP.
Serve: CT Corporation System
120 South Central Avenue
Clayton MO 63105

ELEMENTIS LTP L.P.
Serve: CT Corporation System
8480 Excelsior Dr. Ste., 200
Madison WI 53717

and

FILED
JAN 28 2011

MOLLY LIVINGSTON
Clerk of Clinton Co. Circuit Court

Case No. 09CN-CV00333

BURNS & MCDONNELL ENGINEERING)
COMPANY, INC.)
Serve: National Registered Agents, Inc.)
300-B East High Street)
Jefferson City MO 65101)
Defendants.)

FIRST AMENDED PETITION FOR DAMAGES

Plaintiffs William Kemper and Janet Lasher for their First Amended Petition for Damages against Defendants states as follows:

Parties

1. Plaintiff William Kemper is a resident of Cameron, Clinton County, Missouri.

At all times relevant hereto, William Kemper was married to decedent Karen Kemper.

2. Decedent Karen Kemper was a citizen and resident of Cameron, Clinton County, Missouri prior to 2008 when she died at age 44 due to complications from a brain tumor. Karen Kemper leaves as survivors her husband William Kemper and children Courtney and Carley Kemper.

3. Plaintiff Janet Lasher is a resident of Gallatin, Daviess County, Missouri.

4. Defendant Prime Tanning Corp. is a Missouri corporation with its principal place of business in St. Joseph, Buchanan County, Missouri. Prime Tanning Corp. is a wholly owned subsidiary of Prime Tanning Co., Inc.

5. Defendant Prime Tanning Co., Inc. is a Maine corporation with its principal place of business in Berwick, Maine.

6. Defendant National Beef Leathers, LLC is a Delaware LLC with its principal place of business in St. Joseph, Missouri.

7. Defendant Wismo Chemical Corp. (“Wismo”) is a Missouri corporation with its principal place of business at 546 S. Water Street in Milwaukee, Wisconsin.

8. Defendant Elementis LTP LP (“Elementis”) is a Delaware Limited Partnership with its principal place of business at 546 S. Water Street in Milwaukee, Wisconsin.

9. Defendant Burns & McDonnell Engineering Company, Inc. (Burns & McDonnell) is a Missouri corporation with its principal place of business in Kansas City, Missouri.

Jurisdiction and Venue

10. Venue in this Court is proper pursuant to Mo. Rev. Stat. Section 508.010 because plaintiffs suffered injurious exposures in Clinton County, Missouri as a direct and proximate result of defendants’ tortious conduct.

11. Jurisdiction is proper in this Court pursuant to Mo. Rev. Stat. Section 478.070.

Facts

12. Prime Tanning Corp., a wholly owned subsidiary of Prime Tanning Co., Inc., and Prime Tanning Co., Inc. (hereinafter referred to collectively as “Prime”) owned and operated a leather tanning facility at 205 Florence Road in St. Joseph, Missouri until the first quarter of 2009, when defendant National Beef Leathers LLC (National Beef) purchased assets (including the tanning facility in St. Joseph) and liabilities from Prime.

13. Upon information and belief, National Beef is a legal successor in interest to Prime with regard to the tanning operations in St. Joseph, Missouri.

14. From at least 1983 through early 2009, Prime utilized chromium in the tanning process at the St. Joseph, Missouri facility. The residual product from this tanning process was collected and distributed as a useful product -- land-applied fertilizer.

15. Hexavalent chromium is classified as a known human cancer causing agent.

16. Prime and Elementis formed a joint venture called Wismo. Prime, Elementis and Wismo engaged in the conversion of Elementis hexavalent chromium to trivalent chromium at Prime's leather tanning facility in St. Joseph, Missouri. The conversion process failed in that the chromium used at the tanning facility in St. Joseph, Missouri could and did suddenly and accidentally re-convert to hexavalent chromium in the tanning process and thereafter in the product that became land applied fertilizer.

17. Burns & McDonnell designed the chrome conversion and/or recovery systems at the Prime Tanning facility in St. Joseph, Missouri, designed the Prime fertilizer, and instructed Prime Tanning regarding the land application of the fertilizer.

18. Rick Ream was an agent or employee of Prime who oversaw the land application activities of Prime wherein fertilizer containing hexavalent chromium and other metals was transported from Prime and spread upon Missouri farms. Prime represented to the State of Missouri that the Prime fertilizer did not contain hexavalent chromium when in fact such fertilizer did contain hexavalent chromium.

19. From at least 1983 through early 2009, Prime hauled thousands of tons of fertilizer containing hexavalent chromium and other metals to Missouri farms, including farms in Andrew, Buchanan, DeKalb and Clinton counties, and applied thousands of tons of fertilizer containing hexavalent chromium and other metals to such farms with a spreader.

20. The fertilizer applied to fields in Missouri contains hazardous levels of hexavalent chromium that is above acceptable limits of human exposure. Portions of the fertilizer become airborne in the application process.

21. In May of 2008, decedent Karen Kemper died as a direct and proximate result of complications from a brain tumor.

22. As a direct and proximate result of Karen Kemper's exposure to the Prime fertilizer, Karen Kemper contracted a brain tumor.

23. As a direct and proximate result of defendants' negligence and strict liability, Karen Kemper suffered and died and her survivors were injured and damaged in that they have incurred funeral expenses and pecuniary damages and have lost the services, consortium, companionship, comfort, guidance, counsel, training and support of Karen Kemper.

24. In February of 2009, Janet Lasher was diagnosed with lung cancer that has spread to her brain.

25. As a direct and proximate result of Janet Lasher's exposure to the Prime fertilizer, Janet Lasher contracted lung cancer and brain cancer.

26. As a direct and proximate result of defendants' negligence and strict liability, Janet Lasher was injured and damaged in that she will incur wage loss, medical bills, pain and suffering, permanent disability and mental anguish.

27. Defendants fraudulently concealed the presence of hexavalent chromium in the Prime fertilizer until Spring of 2009, thus tolling the applicable statutes of limitation and/or plaintiffs' causes of action were not reasonably ascertainable until Spring of 2009 due to defendants' fraudulent concealment.

28. Defendants' actions in designing and applying fertilizer containing hexavalent chromium and other metals to Missouri farm fields constitute complete indifference to or conscious disregard for the safety of Karen Kemper, Janet Lasher and others, and punitive damages are therefore warranted.

COUNT I
(Negligence of Prime and National Beef)

29. Plaintiffs incorporate by reference the foregoing allegations.

30. The Prime defendants, acting by and through their agents and employees

including but not limited to Rick Ream, were negligent in the following respects:

- a. In spreading fertilizer containing hexavalent chromium and other metals on farm land wherein the surrounding population was exposed;
- b. In failing to warn farmers and the public that hexavalent chromium and other metals were contained in fertilizer being stored at Prime facilities and applied to Missouri farm fields nearby;
- c. In misrepresenting to regulatory authorities for the State of Missouri that the fertilizer applied to Missouri farms was free of hexavalent chromium;
- d. In failing to abide by the terms of the land application permit that allowed Prime to spread fertilizer on Missouri farm fields by applying fertilizer on snow-covered fields;
- e. In failing to report test results to the State of Missouri indicating hexavalent chromium in fertilizer applied to Missouri farm fields; and
- f. In failing to adequately test the fertilizer stored at Prime and applied to Missouri farm fields for hexavalent chromium.
- g. In failing to adequately design and manufacture a chrome recovery system that would prevent hexavalent chromium from entering the Prime fertilizer;
- h. In failing to convert hexavalent chromium to trivalent chromium such that hexavalent chromium is present in the Prime fertilizer.

31. As a direct and proximate result of defendants' negligence, plaintiffs were injured and damaged.

WHEREFORE, plaintiffs William Kemper and Janet Lasher pray judgment against defendants in an amount exceeding \$25,000, for punitive damages, for costs, prejudgment and post-judgment interest, and such further relief as the Court deems just and proper.

COUNT II
(Negligence of Wismo and Elementis)

32. Plaintiffs incorporate by reference the foregoing allegations.

33. Wismo and Elementis, acting by and through their agents and employees, were negligent in the following respects:

- a. In failing to adequately convert hexavalent chromium to trivalent chromium in the tanning process at Prime;
- b. In failing to adequately test the chromium used at Prime to ensure that it remained converted to trivalent chromium;
- c. In failing to adequately warn that the chromium used at Prime could and would suddenly and accidentally re-convert to hexavalent chromium;
- d. In failing to use trivalent chromium in the Prime tanning process while, instead, attempting to convert hexavalent chromium to trivalent chromium at the Prime facility.

34. As a direct and proximate result of defendants' negligence, plaintiffs were injured and damaged.

WHEREFORE, plaintiffs William Kemper and Janet Lasher pray judgment against defendants in an amount exceeding \$25,000, for punitive damages, for costs, prejudgment and post-judgment interest, and such further relief as the Court deems just and proper.

COUNT III
(Negligence of Burns & McDonnell)

35. Plaintiffs incorporate by reference the foregoing allegations.

36. Burns & McDonnell, acting by and through its agents and employees, was negligent in the following respects:

- a. In failing to adequately design and manufacture a chrome conversion and/or chrome recovery system that would prevent hexavalent chromium from entering the Prime fertilizer;

- b. In failing to warn that the chromium in the Prime fertilizer could re-convert to hexavalent chromium;
- c. In failing to adequately design the Prime fertilizer so that it would not contain dangerous chemicals such as hexavalent chromium.

37. As a direct and proximate result of defendants' negligence, plaintiffs were injured and damaged.

WHEREFORE, plaintiffs William Kemper and Janet Lasher pray judgment against defendants in an amount exceeding \$25,000, for punitive damages, for costs, prejudgment and post-judgment interest, and such further relief as the Court deems just and proper.

COUNT IV
(Strict Liability Against Prime and National Beef)

38. Plaintiffs incorporate by reference the foregoing allegations.

39. At all times relevant hereto, defendants distributed into the stream of commerce and environment fertilizer products that contained dangerously high levels of hexavalent chromium and other metals to which plaintiffs were exposed.

40. The fertilizer products were put to a foreseeable, reasonably anticipated, and intended use by farmers who used the fertilizer on land near plaintiffs.

41. The fertilizer products containing hexavalent chromium and other metals were in a defective condition and unreasonably dangerous when put to a reasonably anticipated use for reasons including but not limited to:

- a. There were either no warnings or inadequate warnings that defendants' fertilizer could cause cancer and/or tumors;
- b. There were inadequate instructions from defendants to farmers as to the safe use of the fertilizer;
- c. The fertilizer was inherently dangerous and ultrahazardous because it contained hexavalent chromium; and

d. Defendants failed to manufacture or design their fertilizer for delivery to farmers without hexavalent chromium.

42. Plaintiffs' development of cancers and tumors was a foreseeable result of exposure to defendants' fertilizer.

43. As a direct and proximate result of the foregoing defects in defendants' fertilizer products, plaintiffs were damaged.

WHEREFORE, plaintiffs William Kemper and Janet Lasher pray judgment against defendants in an amount exceeding \$25,000, for punitive damages and for costs, prejudgment and post-judgment interest, and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 28 day of January, 2010, copies of the foregoing were transmitted via first class U.S. mail, with proper postage affixed, to:

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