

IN THE CIRCUIT COURT OF DEKALB COUNTY, MISSOURI

RUTH NICHOLSON
2700 NE Gospel Road
Maysville, MO 64469

ALICE McVICKER
1410 Safari Dr.
Saint Joseph, MO 64506-2549

ROBERT AND JUDY HALL
5950 SE Cannon Ball Rd.
Holt MO 64048-9293

Plaintiffs

v.

PRIME TANNING CORP.

Serve: CSC Lawyers Svc. Co.
221 Bolivar Street
Jefferson City MO 65101

and

PRIME TANNING CO., INC.

Serve: Benjamin E. Marcus
84 Marginal Way, Suite 600
PORTLAND, ME 04101-2480

and

NATIONAL BEEF LEATHERS CO., LLC

Serve: CT Corporation System
120 South Central Ave.
Clayton MO 63105

and

RICK BEAM

Serve: Rick Beam
4914 Briarwood Lane
St. Joseph MO 64506

FILED

APR 24 2009

JULIE WHITSELL
Circuit Clerk & Ex-Officio Recorder
DE KALB COUNTY, MO

Case No. 09DK-CG00052

Jury Trial Requested

Defendants

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CLASS ACTION PETITION

COME NOW Plaintiffs, on behalf of themselves and all others similarly situated (collectively "Plaintiffs"), by and through counsel, and upon personal knowledge and belief as to all other matters, allege the following against Defendants.

NATURE OF THE CASE

1. Plaintiffs bring this class action lawsuit pursuant to MO. R. CIV. P. 52.08. Plaintiffs seek certification of a medical monitoring class.
2. Plaintiffs bring this action on behalf of themselves and others similarly situated for exposure to hexavalent chromium ("CR(VI) compounds") as a result of Defendants' actions.

THE PARTIES

3. Plaintiff Ruth Nicholson lives in Maysville, DeKalb County Missouri.
4. Plaintiff Alice McVicker lives in St. Joseph, Buchanan County, Missouri.
5. Plaintiffs Robert and Judy Hall live in Holt, Clinton County, Missouri.
6. Defendant Prime Tanning Corp., f/k/a The Blueside Co., Inc. 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.
7. Defendant Prime Tanning Co., Inc. is a Maine corporation with its principal place of business in Hartland, Maine.
8. Defendant National Beef Leathers, LLC is a Delaware LLC with its principal place of business in St. Joseph, Missouri.

9. Defendant Rick Beam is a resident of St. Joseph, Buchanan County, Missouri.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over the claims set forth herein because Plaintiffs' damages were sustained in the State of Missouri. Pursuant to MO. REV. STAT. §478.070, the Court has personal jurisdiction over Defendants because they conduct business and/or own property within the State of Missouri.

11. Venue is appropriate in this Court pursuant to MO. REV. STAT. §508.010 because Plaintiffs were exposed to hazardous chemicals by Defendants in Andrew, Buchanan, Clinton, and DeKalb Counties, Missouri.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

12. Prime Tanning Corp., is a wholly-owned subsidiary of Prime Tanning Co., Inc. 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. At that time, 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. Rick Beam is or was the agent or an employee of Prime Tanning Corp.

Defendants' Actions Created a Public Health Hazard for Which They Should Be Held Accountable

15. CR(VI) compounds are a group of toxic chemicals and are classified as known human cancer-causing agents.

16. From approximately 1983 through early 2009, Prime utilized CR(VI) compounds to remove hair from its cowhides in the tanning process at its facility in St. Joseph, Missouri. The waste water from this process was collected as "sludge" that contained CR(VI) compounds.

17. From early 2009 to the present, National Beef has continued the process of utilizing CR(VI) compounds to remove hair from the cowhides in the tanning process at the St. Joseph, Missouri facility. The waste product from this process is collected as "sludge," which contains CR(VI) compounds.

18. Rick Beam was an agent or employee of Prime who oversaw the land application activities of Prime wherein sludge containing CR(VI) compounds was transported from Prime's facility in St. Joseph, Missouri and was spread upon Missouri farms. Prime represented to the State of Missouri that the Prime sludge did not contain CR(VI) compounds when, in fact, such sludge did contain CR(VI) compounds.

19. From at least 1983 through early 2009, Prime hauled thousands of tons of sludge containing CR(VI) compounds to Missouri farms, including farms in Andrew, Buchanan, Clinton and DeKalb Counties, and land-applied that sludge containing CR(VI) compounds on such farms with a spreader. The sludge was applied free of charge as fertilizer for farmers' land so that Prime could avoid the costs of land-filling the toxic sludge.

20. As a direct and proximate cause of Defendants' negligence and strict liability, Plaintiffs have suffered damages.

21. Defendants' actions in applying sludge containing CR(VI) compounds to Missouri farm fields constitutes complete indifference to or conscious disregard for the safety of Plaintiffs.

CLASS ACTION ALLEGATIONS

22. Plaintiffs incorporate by reference the above-paragraphs as if fully set forth herein.

23. Plaintiffs bring this action as a Class Action pursuant to Mo. R. Civ. P. 52.08.

24. The Class is so numerous that joinder of all members is impracticable.

25. There are questions of law or fact common to all Class members. These common questions include, but are not limited to, the following:

- (a) Whether Defendants proximately caused hazardous waste containing CR(VI) compounds to be released into the environment, where the Plaintiffs and members of the Class have been significantly exposed to the chemical;
- (b) Whether the Plaintiffs and Class members have been significantly exposed to CR(VI) compounds;
- (c) Whether exposure to the CR(VI) compounds has increased Class members' risk of contracting serious diseases, including, but not limited to, brain tumors and lung cancer as well as dermal irritation, skin ulceration, allergic contact dermatitis, occupational asthma, nasal irritation and ulceration, perforated nasal septa, rhinitis, nosebleed, respiratory irritation, nasal cancer, sinus cancer, eye irritation and damage, perforated eardrums, kidney damage, liver damage, pulmonary congestion and edema, epigastric pain, and erosion and discoloration of the teeth;
- (d) Whether CR(VI) compounds pose significant risks to the Plaintiffs and members of the Class;

- (e) Whether the increased risk makes periodic medical examinations and testing of the Class reasonably necessary; and
- (f) Whether monitoring and testing procedures exist that can make early detection and treatment of serious latent diseases possible and beneficial.

26. Each Plaintiff is a member of the Class that he or she seeks to represent. The claims alleged by each Class representative are typical of the Class that he or she seeks to represent because each Plaintiff has suffered the same exposure as the members of the Class and they assert the same legal theories as would be asserted by members of each Class. Plaintiffs' claims and the claims of the members of the Class arise out of the same course of conduct by Defendants.

27. Plaintiffs will fairly and adequately assert and protect the interests of the Class.

28. Certification of the Class is appropriate under Mo. R. Civ. P. 52.08. Defendants have acted or refused to act on grounds generally applicable to the members of the Class, thereby making appropriate final declaratory and injunctive relief to this Class as a whole appropriate.

29. In addition, the prosecution of separate actions by individual members of the Class would create a risk of either: (1) inconsistent or varying adjudications which respect to individual Members of the Class which would establish incompatible standards of conduct, or (2) adjudication with respect to individual Members of the Class which would be as a practical matter be dispositive of the interest of the other Members not parties to the adjudication or substantially impair or impede their ability to protect their interest. Mo. R. Civ. P. 52.08(b)(1).

30. Additionally, a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Mo. R. Civ. P. 52.08(b)(3). The Class numbers in the hundreds, if not thousands, of individuals, making the efficiencies to be gained from a single

adjudication of the many claims against Defendant obvious because the need for duplicative discovery and a multiplicity of trials will be avoided. On the other hand, the amounts that may be recovered by individual Class members may be inadequate in relation to the expense and effort of administering the class action so as to justify the prosecution of individual suits by aggrieved Class members. While the Class is sufficiently large as to make joinder of its members in one action impracticable, the Class is easily ascertainable through objective criteria.

31. Also, all Class members' claims arise solely under the laws of the State of Missouri, and, therefore, only one jurisdiction's law will apply to the claims of each Class member.

COUNT ONE

Medical Monitoring: *Meyer ex rel. Coplin v. Fluor Corp.*, 220 S.W. 3d 712 (MO 2007).

32. "A medical monitoring claim seeks to recover the costs of future reasonably necessary diagnostic testing to detect latent injuries or diseases that may develop as a result of exposure to toxic substances." *Meyer ex rel. Coplin v. Fluor Corp.*, 220 S.W. 3d 712, 716 (MO 2007), citing *Ayers v. Jackson Township*, 106 N.J. 557 (1987). Further, " 'well-accepted' principles of Missouri law provide that a plaintiff is entitled to recover for the prospective consequences of the defendant's tortious conduct if the injury is reasonably certain to occur." *Meyer* at 717.

33. In *Meyer*, the Missouri Supreme Court detailed the two-tiered threshold whereupon a Plaintiff can obtain damages for medical monitoring. First, Plaintiff must show "...that the Plaintiff has a significantly increased risk of contracting a particular disease relative to what would be the case in the absence of exposure." *Meyer* citing *Bower v. Westinghouse Electric Corp.*, 206 W. Va. 133, 522 S.E. 2d 424, 433 (1999). Second, the Plaintiff must show

that "... medical monitoring is, to a reasonable degree of medical certainty, necessary in order to diagnose properly the warning signs of disease." *Meyer* at 718.

34. Medical Monitoring Class Area: The Class Area for this action is defined as all residents living within Andrew, Buchanan, Clinton and DeKalb counties.

35. The Medical Monitoring Class: The Class for this action is defined as: All individuals who reside in the Class area, who have been exposed to CR(VI) compounds as a result of Defendants' actions; and who, as a result, face the possible onset of exposure-related illness, including, but not limited to, cancer.

36. The proposed representatives of the Medical Monitoring Class are Plaintiffs Ruth Nicholson, Alice McVicker, Robert Hall and Judy Hall ("Medical Monitoring Plaintiffs").

37. Plaintiffs have a significantly increased risk of contracting illnesses, including, but not limited to, cancer and brain tumors, as a direct result of residing in proximity to properties where Defendants' land applied sludge.

COUNT TWO - AGAINST ALL DEFENDANTS:
CIVIL CONSPIRACY

38. Plaintiffs incorporate by reference the above-paragraphs as if fully set forth herein.

39. In Missouri, courts have defined "civil conspiracy" as:

A civil conspiracy is proved by evidence that two or more persons have an agreement or understanding to do an unlawful act, and that, in pursuance of this agreement or understanding, they proceed to carry out their unlawful purpose to the damage of the plaintiff. *Property Tax Representatives, Inc. v. Chatam*, 891 S.W.2d 153, 159 (Mo.App.1995). The conspiracy itself is not actionable; the unlawful act done in pursuance thereof is actionable, and the conspiracy has to do only with the joint and several liability of the co-conspirators. *Id.* at 159-60; *Blaine v. J.E. Jones Constr. Co.*, 841 S.W.2d 703 (Mo.App.1992).

The court in *Chmielecki v. City Prods. Corp.*, 660 S.W.2d 275 (Mo.App.1983), explained what is required of a claim of civil conspiracy in order for it to be actionable:

To establish a claim for civil conspiracy, the proof must be such as to warrant a jury in finding that the conspirators had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement. *American Tobacco Co. v. United States*, 328 U.S. 781, 810, 66 S.Ct. 1125, 1139, 90 L.Ed. 1575 (1946). There must be clear and convincing proof that the alleged conspirator 'knowingly performed any act or took any action to further or carry out the unlawful purposes of the conspiracy.' *Contour Chair Lounge Co. v. Aljean Furniture Mfg. Co.*, 403 S.W.2d 922, 930 (Mo.App.1966). In addition and by its nature, a conspiracy has as its object or purpose the obtaining of a benefit for the conspirator. *Rosen v. Alside, Inc.*, 248 S.W.2d 638, 643 (Mo.1952).

Preferred Physicians Mut. Management Group v. Preferred Physicians Mut. Risk Retention, 918 S.W.2d 805, 815 (Mo.App. W.D. 1996).

40. It is Plaintiffs' belief that Defendants repeatedly and knowingly disposed of the sludge containing high levels of CR(VI) compounds by land applying the sludge to Missouri farm fields.

41. Defendants failed to report to the Missouri Department of Natural Resources the test results indicating high levels of CR(VI) compounds in sludge applied to Missouri farm fields.

42. Further, Defendants failed to adequately test the sludge applied to Missouri farm fields for high levels of CR(VI) compounds.

43. Defendants knowingly and willfully exposed Plaintiffs and members of the Class to potential life-threatening disease, including, but not limited to, brain tumors and lung cancer as well as dermal irritation, skin ulceration, allergic contact dermatitis, occupational asthma, nasal irritation and ulceration, perforated nasal septa, rhinitis, nosebleed, respiratory irritation,

nasal cancer, sinus cancer, eye irritation and damage, perforated eardrums, kidney damage, liver damage, pulmonary congestion and edema, epigastric pain, and erosion and discoloration of the teeth by concealing the presence of CR(VI) compounds in the sludge that Defendants spread on land within the Medical Monitoring Class Area.

44. Defendants' conduct described above was outrageous because of their conscious disregard to the rights, health and safety of Plaintiffs and the Class thereby justifying an award of punitive damages against Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief against Defendants, both jointly and severally:

Medical Monitoring

- An Order certifying the Medical Monitoring Class and appointing the Medical Monitoring Plaintiffs as representatives of the Class; and appointing Plaintiffs' counsel as counsel to represent the Class;
- On behalf of the Medical Monitoring Class, an Order creating and implementing an independently-supervised Medical Monitoring Program, under the continuing jurisdiction of the Court, for the benefit of all Class members, that includes at least the following components:
 - Appropriate medical screening programs necessary to ensure the early detection and prevention of cancer and, more specifically, brain tumors;
 - Maintenance and operation of a Class-wide medical registry that includes all relevant health data;

- Accumulation and appropriate dissemination of medical data to promote important medical research and science to advance new treatments for cancer and brain tumors;
 - Medical research and dissemination of information to health care providers pertaining to the prevention, early detection, and treatments for brain tumors and cancer;
 - Long-term epidemiological study; and
 - Health risk assessment and study.
- An award to Plaintiffs and members of the Class their costs and attorneys' fees, including, but not limited to, the costs of Class notice and administration of the medical monitoring program;

Conspiracy

- An award of actual damages in a fair and reasonable sum in an amount to be determined at trial sufficient to compensate Plaintiffs for the Defendants knowing and willful exposure of persons residing in the class-wide area to potentially life threatening disease and the concealment thereof; and, for punitive damages to be determined at trial in an amount set by law or the trier of fact sufficient to punish Defendants, jointly and severally, for the above-described conduct and to deter others from like conduct;
- An award of punitive damages to Plaintiffs and members of the Class to be determined at trial sufficient to punish Defendants for the above-described conspiracy and to deter others from like conduct; and

Any other relief that this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Date: April 24, 2009

Respectfully submitted,

SPEER LAW FIRM, P.A.

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