



are found in Paragraph 22: "Upon information and belief, Shawn Manheim was first exposed to the Prime fertilizer in 1992 while residing in Clinton County, Missouri. He was also exposed to the Prime fertilizer in DeKalb County at various times from 1992-2005. As a direct and proximate result of Shawn Manheim's exposure to the Prime fertilizer, Shawn Manheim contracted cancer."

4. These allegations are insufficient. The Petition fails to include a single specific factual allegation about plaintiff Shawn Manheim, with the exception of his current county of residence, his county of residence in 1992, his presence in DeKalb County "at various times" over a thirteen year period, and the illness he has contracted. No specific allegations regarding plaintiff's residence or place of employment (other than counties of residence) and no information on residence and employment time frames are included in the Petition. No specific factual allegations regarding plaintiff's alleged exposures in DeKalb County "at various times" between 1992 and 2005 (including their timing or circumstances) are provided. Nor does the Petition indicate where and when the land application of Prime Tanning fertilizer, to which plaintiff was allegedly exposed, occurred.

5. Additionally, no facts have been pled regarding how the claimed exposure caused the claimed injury, other than the unsupported, conclusory statement that the injury was a "direct and proximate result of" the claimed exposure.

6. Fact-pleading is required in Missouri. *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 377, 380 (Mo. banc 1993) ("Where the federal courts now use *discovery* to identify the facts upon which the plaintiff's claim rests ... such has always been the role of *pleadings* in Missouri."). Specifically, Missouri Rule of Civil Procedure 55.05 requires that pleadings include "a short and plain statement of the facts showing that the

pleader is entitled to relief.” “Fact pleading identifies, narrows and defines the issues so that the trial court and the parties know what issues are to be tried, what discovery is necessary, and what evidence may be admitted at trial.” *State ex rel. Harvey v. Wells*, 955 S.W.2d 546, 547 (Mo. banc 1997). “Modern litigation is too expensive in time and money to be allowed to proceed upon mere speculation or bluff. Unnecessary expense should be eliminated by requiring parties, as early as possible, to abandon claims or defenses that have no basis in fact.” *Id.* at 548.

7. Under the fact-pleading standard, defendants are entitled to understand the fundamental basis for plaintiffs’ claims. The circumstances and location of Mr. Manheim’s alleged exposure and the manner in which he claims the alleged exposure caused injury are basic facts that will be at issue in this litigation. For example, it is necessary to understand where plaintiff was allegedly exposed to determine if land application of fertilizer occurred nearby, at what levels, and during what time frames and to determine whether plaintiff alleges some sort of transient, short-term exposure or long-term exposure. Because the Petition contains no specific allegations about plaintiff’s alleged exposure, this standard is not satisfied and a more definite statement is required.

8. Likewise, it is not sufficient under the fact-pleading standard to merely allege that a plaintiff became ill “as a direct and proximate result of” the plaintiff’s claimed exposure, without alleging facts in support of a causal connection between the claimed exposure and the claimed illness. *See Doyle v. Crane*, 200 S.W.3d 581, 590 (Mo. App. W.D. 2006) (petition must include “not only ultimate conclusions, but the facts supporting those conclusions for every element of the cause of action”); *see also ITT Commercial*, 854 S.W.2d at 380 (pleadings in Missouri must “identify the facts upon which the plaintiff’s claim rests”). Anyone who has been present in Clinton or DeKalb County and contracted an illness could make essentially the same

claim that plaintiffs make. The fact-pleading standard requires more; under the standard, plaintiffs must allege facts showing a connection or link between the alleged exposure and alleged injury.<sup>1</sup> Because it is devoid of any factual allegations relating to causation, plaintiffs' Petition is legally deficient under the fact-pleading standard.

9. Plaintiffs' failure to include in the Petition any "facts" regarding the circumstances and location of alleged exposure or regarding causation violates the fact-pleading standard, and defendants are unable to prepare appropriate and complete responses to plaintiffs' Petition as a result. "The proper remedy when a party fails to sufficiently plead the facts is a motion for more definite statement pursuant to Rule 55.27(d)." *Harvey*, 955 S.W.2d at 547; *see also Smith v. Lewis*, 669 S.W.2d 558, 562 (Mo. App. W.D. 1983) (motion for more definite statement is appropriate when "petition does not set out the particulars of evidence which will prove ultimate facts").

10. In a case involving the same defendants and a petition with allegations similarly devoid of specificity, Judge Patrick Robb ordered plaintiffs to amend their petition to (1) "plead facts regarding the circumstances and location of the plaintiffs' alleged exposure to the chemicals from the Prime Tanning facility that is the basis for the plaintiffs' lawsuit against the defendants" and (2) "plead facts stating how these chemicals caused injury to the plaintiffs." *See* August 9, 2010 Order, *Battershell, et al. v. Prime Tanning Corp., et al.*, Case No. 10BU-CV01131 (Circuit Court of Buchanan County, Missouri), attached as Exhibit A.

11. Judge Randall Jackson has entered a similar stipulated order in another case involving the Prime Tanning facility. *See* September 13, 2010 Stipulated Order on Defendants'

---

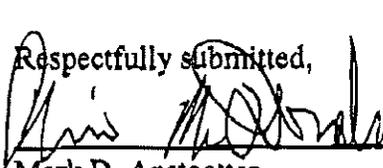
<sup>1</sup> Plaintiffs' allegations of exposure and injury, with no attempt to link the two, would not be sufficient even under the less stringent federal notice-pleading standard. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-55 (2007) (holding that the "formulaic recitation of the elements of a cause of action" does not meet federal pleading standard and that "more than labels and conclusions" are required).

Motion for More Definite Statement, *Adamek, et al. v. Prime Tanning Corp., et al.*, Case No. 10BU-CV02065 (Circuit Court of Buchanan County, Missouri), attached as Exhibit B.

12. Defendants request that this Court issue a similar order requiring plaintiffs to plead causation and the location and circumstances of alleged exposure and injury with more specificity.

WHEREFORE, for the reasons stated herein, defendants move the Court for an order compelling plaintiffs to make their Petition more definite and certain on the issues of alleged exposure, injury, and causation so that defendants may fully and appropriately respond.

Respectfully submitted,

  
 Mark D. Anstoetter Mo. Bar #47638  
 George E. Wolf Mo. Bar #35920  
 Christopher M. McDonald Mo. Bar #39559  
 Steven D. Soden Mo. Bar #41917  
 Shook, Hardy & Bacon L.L.P.  
 2555 Grand Blvd.  
 Kansas City, MO 64108  
 (816) 474-6550  
 (816) 421-5547 (fax)

ATTORNEYS FOR DEFENDANT BURNS &  
 MCDONNELL ENGINEERING COMPANY, INC.

*for*  
  
 William G. Beck Mo. Bar #26849  
 Douglas R. Dalglish Mo. Bar #35203  
 Robert G. Rooney Mo. Bar #43381  
 Lathrop & Gage LLP  
 2345 Grand Blvd., Suite 2200  
 Kansas City, MO 64108  
 (816) 292-2000  
 (816) 292-2001 (fax)

ATTORNEYS FOR DEFENDANT  
 ELEMENTIS LTP, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing were mailed, by U.S. Mail postage prepaid, this 12<sup>th</sup> day of November, 2010, to:

Thomas P. Carmell  
Brian J. Madden  
Thomas L. Wagstaff  
Diane K. Watkins  
Wagstaff & Carmell LLP  
4740 Grand Avenue, Suite 300  
Kansas City, MO 64112

Thomas V. Girardi  
Girardi Keese  
1126 Wilshire Blvd.  
Los Angeles, CA 90017-1904

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

**ATTORNEYS FOR PLAINTIFFS**

R. Dan Boulware  
Todd H. Bartels  
Seth C. Wright  
Polsinelli Shughart PC  
3101 Frederick Avenue  
St. Joseph, MO 64506

Dennis J. Dobbels  
Polsinelli Shughart PC  
Twelve Wyandotte Plaza  
120 West 12<sup>th</sup> Street  
Kansas City, MO 64105

**ATTORNEYS FOR DEFENDANTS  
PRIME TANNING CORP., PRIME  
TANNING CO., INC., AND WISMO  
CHEMICAL CORP.**

  
\_\_\_\_\_  
ATTORNEY FOR DEFENDANT  
BURNS & MCDONNELL  
ENGINEERING COMPANY, INC.