

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

FILED  
SEP 22 2010

MOLLY LIVINGSTON  
Clerk of Clinton Co. Circuit Court

SHAWN AND JANET MANHEIM )  
5937 N. Kansas Ave. )  
Gladstone, Mo. 64119 )

Plaintiffs )

v. )

Case No. 10 CN-CU 00900

PRIME TANNING CORP. )  
Serve: CSC Lawyers Inc. 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 )

and )

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

and )

ELEMENTIS LTP, INC. )  
Serve: CT Corporatoin System )  
8480 Excelsion Dr., Ste 200 )  
Madison WI 53717 )

and )

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

Defendants. )

## **PETITION FOR DAMAGES**

Plaintiffs Shawn and Janet Manheim, for their Petition for Damages against Defendants, state as follows:

1. Plaintiffs Shawn and Janet Manheim, husband and wife, are residents of 5937 N. Kansas Ave. Gladstone, Mo. 64119, Clay County, Missouri.

2. 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.

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

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

5. Defendant Elementis LTP Inc. ("Elementis") is a Delaware Corporation with its principal place of business at 546 S. Water Street in Milwaukee, Wisconsin.

6. 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**

7. Venue in this Court is proper pursuant to Mo. Rev. Stat. §508.010 because plaintiff Shawn Manheim was first exposed to Prime fertilizer containing hexavalent chromium and other harmful chemicals in Clinton County, Missouri, as a direct and proximate result of defendants' tortious conduct. Missouri law provides that venue shall be in the county where the plaintiff is first injured by the wrongful acts or negligent conduct alleged. A person is deemed

to be first injured where such person is first exposed to the harmful conduct. Clinton County is the proper venue because the first exposure to plaintiff Shawn Manheim in this action to the Prime fertilizer occurred in Clinton County in 1992.

8. Jurisdiction is proper in this Court pursuant to Mo. Rev. Stat. § 478.070.

### **Facts**

9. 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.

10. From the early 1970's through early 2009, Prime utilized chromium in the tanning process at the St. Joseph, Missouri, facility. From the early 1970's until approximately 1983, Prime used and emitted chromium, including hexavalent chromium, from its St. Joseph, Missouri facility, thereby exposing residents of Buchanan County, Missouri, to airborne hexavalent chromium. From 1983 through early 2009, Prime continued to use and emit chromium, including hexavalent chromium, from its St. Joseph, Missouri facility, thereby exposing residents of Buchanan County, Missouri, to airborne hexavalent chromium. From 1983 through early 2009, the residual product from Prime's tanning process was collected and distributed as a useful product -- land-applied fertilizer. The fertilizer was distributed in Buchanan, Andrew, Dekalb and Clinton counties in Missouri. The fertilizer contained hexavalent chromium, and residents of Buchanan, Andrew, Dekalb and Clinton counties were exposed to airborne hexavalent chromium in the land-applied fertilizer when it was spread.

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

12. Wismo purchased hexavalent chromium from Elementis and Prime personnel attempted to convert the hexavalent chromium to trivalent chromium at Prime's tannery.

13. There was no mark-up of cost from Elementis to Wismo for the purchase of hexavalent chromium resold to Prime.

14. Prime and Elementis each held fifty percent (50%) ownership of Wismo.

15. Adel Hanna was the president of both Elementis and Wismo, and each of these defendants shared the same corporate office.

16. 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 and advised Prime Tanning regarding the handling and land application of the fertilizer.

18. Prime and Burns & McDonnell 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 contained hazardous levels of hexavalent chromium that is above acceptable limits of human exposure. Portions of the fertilizer, including hexavalent chromium, become airborne in the application process.

21. In November of 2009, Shawn Manheim was diagnosed with lung cancer. The cancer has now spread to his brain and bones.

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.

23. As a direct and proximate result of defendants' negligence and strict liability, Shawn Manheim was injured and damaged in that he has and will incur wage loss, medical bills, pain and suffering, permanent disability and mental anguish.

24. As a direct and proximate result of defendants' negligence and strict liability, Janet Manheim has and will suffer loss of marital consortium.

25. Upon information and belief, at all times mentioned herein, Wismo was owned, controlled and operated by Prime and Elementis. The unity of interest in ownership among these defendants caused any individuality and separateness among these defendants to cease so that Wismo became the alter ego of Prime and Elementis. Adherence to the fiction of these defendants as distinct and separate entities would permit an abuse of the corporate privilege and would sanction and promote injustice.

26. As a result of the unity of interest in ownership and the relationship among Wismo, Prime and Elementis, and due to the alter ego status of Wismo, any judgment rendered against Wismo should likewise be rendered against Prime and Elementis.

27. Defendants' manufacture, distribution, handling and disposal of hexavalent chromium constitutes an abnormally dangerous activity, and demonstrates conscious disregard for the safety of others, and therefore punitive damages are warranted.

**COUNT I**  
**(Negligence of Prime)**

28. Plaintiffs incorporate by reference the foregoing allegations.

29. The Prime defendants, acting by and through their agents and employees, were negligent in the following respects:

- a. In loading and spreading fertilizer containing hexavalent chromium and other metals such that 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;
- 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; and
- i. In failing to take steps to prevent the regeneration of hexavalent chromium in the Prime fertilizer.

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

WHEREFORE, plaintiffs 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)**

31. Plaintiffs incorporate by reference the foregoing allegations.

32. 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; and
- e. In failing to take steps to prevent the regeneration of hexavalent chromium.

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

WHEREFORE, plaintiffs 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)**

34. Plaintiffs incorporate by reference the foregoing allegations.

35. 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.
- d. In advising Prime to land apply the fertilizer; and
- e. In failing to take steps to prevent the regeneration of hexavalent chromium in the Prime fertilizer.

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

WHEREFORE, plaintiffs 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 Products Liability Against Prime)**

37. Plaintiffs incorporate by reference the foregoing allegations.

38. 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.

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

40. 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 ultra hazardous because it contained hexavalent chromium; and
- d. Defendants failed to manufacture or design their fertilizer for delivery to farmers without hexavalent chromium.

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

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

WHEREFORE, plaintiffs 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.

#### **COUNT V**

#### **(Strict Liability of All Defendants Due to Abnormally Dangerous Activity)**

43. Plaintiffs incorporate by reference the foregoing allegations.

44. Defendants' creation and distribution of fertilizer containing hexavalent chromium and other metals on farm land inherently involved an abnormally dangerous activity

that created a high degree of risk of harm to plaintiff Shawn Manheim and the surrounding population.

45. Defendants' exposure of Shawn Manheim and the surrounding population to the fertilizer containing hexavalent chromium carried with it a likelihood that the resulting harm would be significant in causing severe injuries.

46. The risk to Shawn Manheim and the surrounding population could not be eliminated once the fertilizer containing hexavalent chromium was loaded and applied to Missouri farmland.

47. The harm done to Shawn Manheim and the surrounding population from exposure to the dangerous attributes of fertilizer containing hexavalent chromium far outweighed the benefits of land application of the fertilizer.

48. As a direct and proximate result of defendant's engagement in such abnormally dangerous activity, plaintiffs were injured and damaged.

WHEREFORE, plaintiffs pray judgment against defendants for 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.

Respectfully submitted,

WAGSTAFF & CARTMELL LLP



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