

IN THE CIRCUIT COURT FOR THE 29TH JUDICIAL CIRCUIT
OF JASPER COUNTY, MISSOURI

LONNIE BOYD)
221 East 10th Street)
Baxter Springs, KS 66713)

Bill Anderson)
424 East 23rd Street)
Galena, KS 66739)

Carol Clark)
1513 Grand Street)
Joplin, MO 64804)

Mark Cravener)
4326 West Dearmeadow Lane)
Joplin, MO 64801)

Scott Gordon)
1803 Chouteau)
Baxter Springs, KS 66713)

Tracy Milton)
1227 Baker)
Galena, KS 66739)

Scott Whittington)
523 Maple Street)
Neosho, MO 64850)

Buddy Zimmerman)
1836 Cherokee)
Baxter Springs, KS 66713)

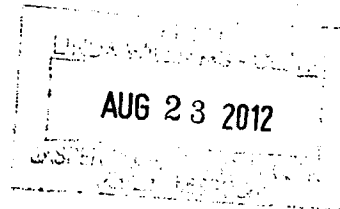
Plaintiffs,)

v.)

J.C. EHRLICH CO., INC.)
500 Spring Ridge Drive)
Wyomissing, PA 19610)
d/b/a PRESTO-X)

Serve: Registered Agent:)

Case No.: 12AD-CC00301



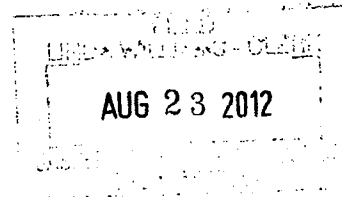
C T Corporation System)
120 South Central Avenue)
Clayton, MO 63105)
))
and)
))
MARS PETCARE US, INC.)
1983 State Line Road)
Joplin, MO 64804)
))
Serve: Registered Agent)
C T Corporation System)
120 South Central Avenue)
Clayton, MO 63105)
))
and)
))
Frank Vasquez)
2002 West 25th Street)
Joplin, MO 64804)
))
Defendants.)

PETITION FOR DAMAGES

FACTS APPLICABLE TO ALL COUNTS

COMES NOW, plaintiffs, by and through counsel of record, and for their Petition for Damages, states and alleges as follows:

1. Plaintiff, Lonnie Boyd, ("Boyd") is a citizen and resident of the state of Kansas, residing at 221 East 10th Street, Baxter Springs, Kansas, 66713.
2. Plaintiff, Bill Anderson, ("Anderson") is a citizen and resident of the state of Kansas, residing at 424 East 23rd Street, Galena, Kansas, 66739.
3. Plaintiff, Carol Clark ("Clark") is a citizen and resident of the state of Missouri, residing at 1513 Grand Street, Joplin, Missouri, 64804.



4. Plaintiff, Mark Cravener (“Cravener”) is a citizen and resident of the state of Missouri, residing at 4326 West Dearmeadow Lane, Joplin, Missouri, 64801.
5. Plaintiff, Scott Gordon, (“Gordon”) is a citizen and resident of the state of Kansas , residing at 1803 Chouteau, Baxter Springs, Kansas, 66713
6. Plaintiff, Tracy Milton, (“Milton”) is a citizen and resident of the state of Kansas , residing at 1227 Baker, Galena, Kansas, 66739.
7. Plaintiff, Scott Whittington, (“Whittington”) is a citizen and resident of the state of Missouri, residing at 523 Maple Street, Neosho, Missouri, 64850.
8. Plaintiff, Buddy Zimmerman, (“Zimmerman”) is a citizen and resident of the state of Kansas, residing at 1836 Cherokee, Baxter Springs, Kansas, 66713.
9. Defendant J.C. Ehrlich Company, Inc.(“Ehrlich”) is a foreign corporation authorized to do business and doing business in the state of Missouri as Presto-X (“Presto-X”).
10. Defendant Mars Petcare US, Inc. (“Mars”) is a foreign corporation authorized to do business in the state of Missouri, with offices in Joplin, Missouri, at 1983 State Line Road, Joplin, Missouri, 64804, and further is the owner of the property where plaintiffs were injured.
11. All of the tortious activity occurred in Joplin, Missouri, therefore making venue proper in Joplin, Jasper County, Missouri.
12. During 2012 and for a substantial time before that, Defendant Mars owned a petfood manufacturing plant located at 1983 State Line Road in Joplin, Jasper County, Missouri.
13. Defendant Frank Vasquez (“Vasquez”) is a citizen and resident of Missouri, residing at 2002 West 25th Street, Joplin, Missouri, 64804.
14. Defendant Vasquez was the safety coordinator for Defendant Mars.

15. Pursuant to 28 U.S.C., Section 1441 (b)(2), this action is not removable to federal court because Defendant Frank Vasquez has been properly joined and served as a defendant, and he is a citizen of Missouri.
16. Plaintiffs were employees of Mars working in various parts of the plant in Joplin, Jasper County, Missouri.
17. Defendant Presto-X provided fumigation for various railroad cars that provided organic products to the Mars petfood plant. This fumigation was to rid the raw material for the pet food of pests found in the material.

COUNT I - DANGEROUS CONDITION ON MARS' PROPERTY

18. At all times pertinent hereto, plaintiffs generally worked in areas of the Mars petfood plant where grain, bonemeal, and other organic materials were delivered and unloaded into the plant.
19. The railcars were not properly cleared of the dangerous fumigants containing Phosphine (PH₃) gas before turning those railcars over to Mars. Those dangerous gases were allowed to accumulate and disburse into the Mars plant at unsafe levels.
20. These accumulations were a known and foreseeable hazard in the Mars plant.
21. All plaintiffs have been employed by Defendant Mars at all times relevant hereto, and have been stricken with occupational diseases, particularly the injuries caused by Phosphine (PH₃) gas to their eyes, lungs, respiratory system, and internal organs.
22. Under recent law, plaintiffs' remedies for occupational diseases may be made directly through this civil lawsuit.
23. Defendant Mars knew or should have known by the use of ordinary care of the dangerous

condition of Phosphine (PH₃) gas levels, but failed to warn of that condition and/or remove the dangerous condition.

24. As a direct and proximate result of the negligence and carelessness as set out above, plaintiffs were damaged by injury to their eyes, lungs, respiratory system, and internal organs. They have been caused pain and suffering, and disabilities, they have incurred medical bills, and they have lost wages. Likewise, they will continue to suffer all of these damages in the future, as their injuries are ongoing and permanent in nature.
25. The conduct of Defendant Mars was reckless and therefore outrageous in allowing dangerous levels of Phosphine (PH₃) gas to be delivered into the plant within railcars therefore exposing plaintiffs and others to dangerous levels of toxic gas within the Mars plant in Joplin, Missouri, therefore giving rise to punitive damages.

WHEREFORE, plaintiffs, and each of them, move the Court to enter judgment in their favor and against Defendant Mars in a fair and reasonable amount of actual damages, for punitive damages, and for such other and further relief as the Court deems just and proper.

COUNT II - NEGLIGENCE OF MARS

COMES NOW, plaintiffs, by and through counsel of record, and for Count II of their Petition for Damages against Defendant Mars, state and allege as follows:

26. Plaintiffs incorporate by reference herein each and every statement and allegation previously made herein.
27. Defendant Mars had a duty to its employees to provide a safe working environment.
28. Defendant Mars was negligent in fulfilling that duty as set out below.
29. Defendant Mars was negligent and careless in allowing the conditions to exist which allowed

for the accumulation of the toxic levels of Phosphine (PH₃) gas in areas where various employees, including plaintiffs, were exposed to unsafe levels of Phosphine (PH₃) gas in the Mars plant.

30. Defendant Mars was negligent and careless in the following respects, to wit:
 - a. Failing to provide a safe workplace;
 - b. Failing to monitor Phosphine (PH₃) gas levels to insure that its employees were not exposed to injurious levels of Phosphine (PH₃) gas;
 - c. Failing to warn plaintiffs and others of the dangers of Phosphine (PH₃) gas;
 - d. Failing to maintain adequate ventilation and/or otherwise mitigate the ill effects of the dangerous levels of Phosphine (PH₃) gas;
 - e. Failing to equip plaintiffs and others with an appropriate respirator to avoid the effects of dangerous levels of Phosphine (PH₃) gas; and
 - f. Violating OSHA standards for safe levels of Phosphine (PH₃) gas.
31. As a direct and proximate result of the negligence and carelessness of Defendant Mars as set out above, plaintiffs were injured as set out in Count I.
32. The conduct of Defendant Mars was reckless and therefore outrageous in allowing dangerous levels of Phosphine (PH₃) gas to be delivered into the plant within railcars therefore exposing Plaintiffs and others to dangerous levels of toxic gas within the Mars plant in Joplin, Missouri, therefore giving rise to punitive damages.

WHEREFORE, plaintiffs, and each of them, move the Court to enter judgment in their favor and against Defendant Mars in a fair and reasonable amount for actual damages and punitive damages on Count II, and for such other and further relief as the Court deems just and proper.

COUNT III - LIABILITY OF FRANK VASQUEZ

COMES NOW, plaintiffs, by and through counsel of record, and for Count III of their

Petition for Damages against Defendant Frank Vasquez, state and allege as follows:

33. Plaintiffs incorporate by reference herein each and every statement and allegation previously made herein.
34. Defendant Vasquez, as the safety manager for Defendant Mars, failed to follow protocol in determining if there were unsafe levels of Phosphine (PH₃) gas in the plant where the grain, bonemeal, and other organic material was brought into the plant for processing, therefore causing Plaintiffs and others to be exposed to unsafe and injurious levels of Phosphine (PH₃) gas on a regular basis at the workplace.
35. As the onsite safety manager for the property owned by Mars, Defendant Vasquez was responsible for maintaining the property in a safe manner for the Mars employees who worked in areas where they might be susceptible to exposure to Phosphine (PH₃) gas.
36. Defendant Vasquez was negligent and careless in acting as a safety manager, specifically allowing the conditions to exist which allowed for the accumulation of the toxic levels of Phosphine (PH₃) gas in areas where various employees, including plaintiffs, were exposed to unsafe levels of Phosphine (PH₃) gas in the Mars plant.
37. Defendant Vasquez was negligent and careless in the following respects, to wit:
 - a. Failing to monitor the levels of Phosphine (PH₃) gas within the Mars plant so as to allow for safe working conditions;
 - b. After discovering Phosphine (PH₃) gas in the Mars plant, failing to timely remedy the situation, thereby exposing employees to dangerous levels of Phosphine (PH₃) gas, including plaintiffs;
 - c. Failing to promptly mitigate the Phosphine (PH₃) gas problem within the Mars plant;
 - d. Failing to maintain adequate ventilation to prevent the toxic Phosphine (PH₃) gas

from accumulating in dangerous levels within the Mars plant;

- e. Failing to provide personal protection equipment for the employees of Mars, including plaintiffs, to mitigate the inhalation exposure to the toxic Phosphine (PH₃) gas within the Mars plant;
 - f. Allowing plaintiffs and others to be exposed to Phosphine (PH₃) gas levels in violation of OSHA standards;
 - g. Failing to notify plaintiffs and others of the dangerous levels of Phosphine (PH₃) gas in the plant so that they might protect themselves;
 - h. Allowing Presto-X to turn over railcars with dangerous levels of Phosphine (PH₃) gas into the Mars plant; and
 - i. Failing to provide and implement a protocol for action to prevent injuries of Mars employees from Phosphine (PH₃) gas exposure in the plant.
38. As a direct and proximate result of the negligence and carelessness of Defendant Vasquez as set out above, plaintiffs were injured as set out in Count I.

WHEREFORE, plaintiffs, and each of them, move the Court to enter judgment in their favor and against Defendant Frank Vasquez in a fair and reasonable amount on Count III and for such other and further relief as the Court deems just and proper.

COUNT IV- LIABILITY OF PRESTO-X

COMES NOW, plaintiffs, by and through counsel of record, and for Count IV of their Petition for Damages against Defendant Presto-X, state and allege as follows:

- 39. Plaintiffs incorporate by reference herein each and every statement and allegation previously stated herein.
- 40. As the company charged with fumigating the railcars with organic material that were to be delivered to the Mars plant in Joplin, Missouri, Defendant Presto-X had a duty to provide

ventilation and cleanup so that the grain and other organic materials that were delivered to the Mars plant did not contain dangerous levels of Phosphine (PH₃) gas.

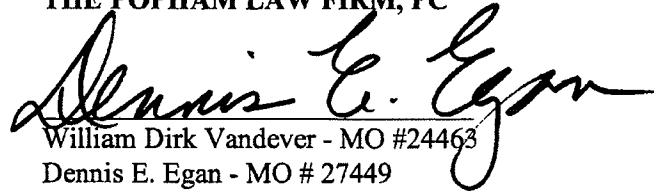
41. Defendant Presto-X knew or should have known of the dangers of Phosphine (PH₃) gas within the fumigants used to fumigate the railcars that were delivered to the Mars plant in Joplin, Missouri, yet Presto-X over the years regularly and repeatedly provided railcars to the Mars plant in Joplin, Missouri, with dangerous and toxic levels of Phosphine (PH₃) gas.
42. Defendant Presto-X was negligent and careless in the following respects, to wit:
 - a. Delivering organic material to the Mars plant in Joplin, Missouri, which contained toxic levels of Phosphine (PH₃) gas;
 - b. Failing to warn plaintiffs and others of the dangers of the high levels of Phosphine (PH₃) gas within the railcars delivered to the Mars plant in Joplin, Missouri;
 - c. Failing to properly test the levels of Phosphine (PH₃) gas in the railcars delivered to the Mars plant in Joplin, Missouri, prior to turning them over to Mars for processing;
 - d. Failing to appropriately use the placard warning system on the railcars delivered to the Mars plant in Joplin, Missouri, therefore allowing delivery of railcars which contained dangerous levels of Phosphine (PH₃) gas into the Mars plant;
 - e. Violating OSHA standards regarding the safe use and handling of Phosphine (PH₃) gas; and
 - f. Failing to have and implement a protocol to prevent the introduction of dangerous levels of Phosphine (PH₃) gas in the railcars that were delivered to the Mars plant in Joplin, Missouri.
43. As a direct and proximate result of the negligence and carelessness of Defendant Presto-X, as set out above, plaintiffs were injured as set out in Count I.
44. The conduct of Defendant Presto-X was reckless and therefore outrageous in allowing dangerous levels of Phosphine (PH₃) gas to be delivered within the railcars to the Mars plant in Joplin, Missouri, therefore giving rise to punitive damages.

WHEREFORE, plaintiffs, and each of them, move the Court to enter judgment in their favor and against Defendant Presto-X in a fair and reasonable amount for actual damages, for punitive damages, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

THE POPHAM LAW FIRM, PC

By:



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