

IN THE CIRCUIT COURT OF DEKALB COUNTY
43RD JUDICIAL CIRCUIT
STATE OF MISSOURI

MAYCEE GARDNER, a Minor,
By Her Mother and Next Friend,
CYNDEE GARDNER,
808 ROSEWOOD
Cameron, Missouri 64429

Plaintiff,

v.

- PRIME TANNING CORP.

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

And

- PRIME TANNING CO., INC.

Serve: Robert Moore, Jr., President
20 Sullivan Street
Berwick ME 03901

And

NATIONAL BEEF LEATHERS CO LLC

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

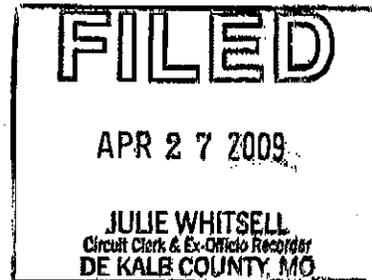
And

RICK REAM

Serve: Rick Ream
4914 Briarwood Lane
St. Joseph MO 640506

Defendants.

Cause No.: 09DK-CC00056



PETITION FOR DAMAGES

COMES NOW Plaintiff Cyndee Gardner, as Next Friend for Maycee Gardner, by and through her attorneys of record, and for her cause of action against Defendants alleges and states as follows:

THE PARTIES

1. Plaintiff Cyndee Gardner is and at all times relevant was a resident of Cameron, Dekalb County, Missouri. Plaintiff Maycee Gardner is the minor daughter of Cyndee Gardner.
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 National Beef Leathers, LLC is a Delaware LLC with its principal place of business in St. Joseph, Missouri.
5. Defendant Rick Ream is a resident of St. Joseph, Buchanan County, Missouri.

JURISDICTION AND VENUE

6. Jurisdiction and venue are proper in this Court. The acts and omissions complained of in this action occurred in this State by Defendants and employees and officers of the corporate Defendants, all acting within the course and scope of their agency and employment in this State and/or in conspiracy with each other and the companies they worked for. Due to

these acts and omissions the Plaintiff was exposed to hazardous chemicals in Dekalb County, Missouri. Venue is proper pursuant to §508.010 RSMo (1994).

GENERAL ALLEGATIONS

7. 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 ("the Prime Facility") 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.

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

9. Hexavalent chromium is a toxic chemical and is classified as a known human cancer causing agent.

10. From at least 1983 through early 2009, Prime utilized hexavalent chromium to remove hair from its hides in the tanning process. The waste product from this process was collected as "sludge" that contains hexavalent chromium.

11. From early 2009 to the present, National Beef has continued the process of utilizing hexavalent chromium to remove hair from its hides in the tanning process. The waste product from this process is collected as "sludge" that contains hexavalent chromium.

12. Rick Ream was an agent or employee of Prime who oversaw the land application activities of Prime wherein sludge containing hexavalent chromium was transported from Prime and spread upon Missouri farms. Prime represented to the State of Missouri that the Prime

sludge did not contain hexavalent chromium when in fact such sludge did contain hexavalent chromium.

13. From at least 1983 through early 2009, Prime hauled thousands of tons of sludge containing hexavalent chromium to Missouri farms, including farms in Andrew, Buchanan, Dekalb and Clinton counties, and applied thousands of tons sludge containing hexavalent chromium to such farms with a spreader. The sludge was applied free of charge to farmers as fertilizer so that Prime could avoid the costs of landfilling the sludge.

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

15. At all times, Defendants were acting by and through its partners, subsidiaries, agents, servants, and employees who were acting within the scope of their partnership, agency, or employment and in conspiracy with each other.

16. Maycee Gardner was exposed to hexavalent chromium in the Prime sludge in the air due to her proximity to the application of such sludge on farms near her residence.

17. As a direct and proximate result of Maycee Gardner's exposure to hexavalent chromium in the Prime sludge, Maycee developed two tumors in the right frontal lobe of her brain, among other injuries and illnesses.

18. As a direct and proximate result of Defendants' negligence and strict liability, Maycee Gardner has and will continue to suffer severe, permanent, and progressive injuries and damages.

COUNT I

(Negligence)

19. Plaintiff incorporates by reference all allegations in all preceding paragraphs of this Petition.

20. The Prime defendants, acting by and through their agents and employees including, but not limited to Rick Ream, and Rick Ream individually, were negligent in the following respects:

- a. In spreading hazardous waste containing hexavalent chromium on farm land wherein the surrounding population was exposed to hexavalent chromium;
- b. In failing to warn farmers and the public that high levels of hexavalent chromium were contained in sludge being applied to Missouri farm fields nearby;
- c. In misrepresenting to regulatory authorities for the State of Missouri that the sludge applied to Missouri farms was free of high levels of hexavalent chromium;
- d. In failing to abide by the terms of the land application permit that allowed Prime to spread sludge on the Missouri farm fields by applying sludge on snow-covered fields;
- e. In failing to report test results to the State of Missouri indicating high levels of hexavalent chromium in sludge applied to Missouri farm fields; and
- f. In failing to adequately test the sludge applied to Missouri farm fields for high levels of hexavalent chromium.

21. As the direct and proximate result of the above negligence and fault, for which Defendants are jointly and severally liable, Plaintiff Maycee Gardner suffers serious injuries and illnesses, including multiple brain tumors. Plaintiff has, and will in the future, incur medical expenses and experience pain, suffering and loss of enjoyment of life.

22. The actions of Defendants were outrageous due to Defendants' evil motive or reckless indifference to the rights of Plaintiff, entitling Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and/or severally, for fair and reasonable damages, punitive damages, for aggravating circumstances and prejudgment and postjudgment interest, in fair and reasonable sums in excess of the \$25,000.00 and for her costs herein incurred and for such other relief as is deemed appropriate by the Court.

COUNT II

(Absolute or Strict Liability)

23. Plaintiff incorporates by reference all allegations in all preceding paragraphs of this Petition.

24. The handling, processing, and distributing of hexavalent chromium and sludge containing hexavalent chromium by the Defendants, for which Defendants are jointly and severally liable constituted and continues to constitute an abnormally dangerous activity or ultra hazardous activity, because such activities create a high risk of significant harm.

25. Defendants distributed into the stream of commerce and environment sludge products that contained dangerously high levels of hexavalent chromium to which Maycee Gardner was exposed.

26. The sludge products were put into foreseeable reasonably anticipated and intended used by farmers who used the sludge on land near Maycee Gardner's residence.

27. The sludge products containing high levels of hexavalent chromium 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 no warnings or warnings were inadequate that the defendants' sludge could cause tumors, cancer, or other serious illness;
- b. There were inadequate instructions from defendants to farmers as to the safe use of the sludge;
- c. The sludge was inherently dangerous and ultrahazardous because it contained high levels of hexavalent chromium; and
- d. Defendants failed to manufacture or design their sludge for delivery to farmer without high levels of hexavalent chromium.

28. Maycee Gardner's development of brain tumors and other illnesses was a foreseeable result of exposure to Defendants' sludge that contained hexavalent chromium.

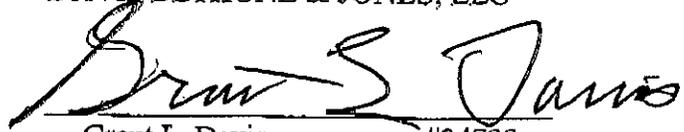
29. The Defendants are thus strictly liable to Plaintiff for all damages which have resulted or will result from the release of hexavalent chromium and sludge containing hexavalent chromium from the Prime Facility.

30. As a direct and proximate result of the above mentioned acts and omissions of the defendants, for which they are jointly and severally liable, Maycee Gardner suffers injuries and illnesses, including multiple brain tumors. Plaintiff has incurred, and will in the future incur, medical expenses and experience pain, suffering and loss of enjoyment of life.

31. The actions of Defendants were outrageous due to Defendants' evil motive or reckless indifference to the rights of Plaintiff, entitling Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and/or severally, for fair and reasonable damages, punitive damages, for aggravating circumstances and prejudgment and postjudgment interest, in fair and reasonable sums in excess of the \$25,000.00 and for her costs herein incurred and for such other relief as is deemed appropriate by the Court.

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