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Family of press operator invokes discovery rule, files suit for benzene exposure

4/22/2008 11:40 AM By Michelle Massey, East Texas Bureau



MARSHALL -- After a 45-year career as a press operator for multiple newspapers and print shops in Baltimore, Md., Neil Kelly was diagnosed with acute myelogenous leukemia in April 2005 and died only seven months later on Nov. 16, 2006.

Neil's wife, Carolyn Kelly, and their children Susanne Marie Kelly and Neil Patrick Kelly filed suit against Safety-Kleen Systems Inc., C & W Pressroom Products Inc., Chevron USA Inc., Flint Ink Corporation, Handschy Industries Inc., Sun Chemical Corporation, Unocal Corporation, and US Ink Corporation on April 18 in the Marshall Division of the Eastern District of Texas.

His family is invoking the "discovery rule" and alleges that they only learned the cause of Kelly's injuries within the last two years. In Texas, the statute of limitations places a two-year time limit on pursuing a legal action in relation to wrongful conduct.

After the statutory period, unless a legal exception applies, the injured person loses the right to file a lawsuit. However, the "discovery rule" provides an additional period after the injury is discovered, or reasonably should have been discovered, to file the lawsuit.

The suit alleges the Kelly was exposed to "toxins and carcinogens, including but not limited to solvents, naphtha, toluene, benzene, benzene-containing products, press washes, inks, roller washes, blanket washes, type washes and/or other carcinogens supplied and/or manufactured by defendants."

The family believes this alleged exposure caused Kelly to develop blood disorders and diseases including acute myelogenous leukemia.

Acute myelogenous leukemia (AML) risk factors include types of chemotherapy, radiation therapy, tobacco smoke and exposure to large amounts of benzene. The Leukemia and Lymphoma Society states, "most people who have these risk factors do not get AML - and most people with AML do not have these risk factors."

Benzene is a colorless, flammable liquid that ranks among the top 20 chemicals produced in the United States and is considered a human carcinogen. Widely used, benzene can be found in cigarette smoke, gasoline additives or solvents.

The suit claims the following products contained benzene:

Safety-Kleen Systems Inc.'s parts washer machine and 105 solvent for the parts washer;
C & W Pressroom Products Inc.'s Publishers roller/blanket and Dynamic blanket wash;
Unocal and Chevron USA's AMSCO Solvent 1101, 460 Solvent and AMSCO Solvent 1103;
Flint Ink's Arrow Lith;
Handschy Industries' Benzol, Special Type Washes and Hancolite Glaze Cleaner;
US Ink Corporation and Sun Chemical Corporation's Standard, Low Rub, Ad-Litho and Special Process Inks.

The complaint alleges the defendants manufactured or sold "unreasonably dangerous" products and owed a duty to users of its products, breached that duty, and were negligent and failed to use ordinary care by failing to eliminate benzene from the products.

Causes of action filed against the defendants include negligence, strict liability and warning, negligent failure to warn, defective design, manufacture strict liability, gross negligence, and malice.

Further, the plaintiffs allege that defendants' actions constitute "conscience indifference to the rights, safety, and welfare of Neil Kelly by failing to act to minimize or eliminate these risks" and are therefore seeking punitive and exemplary damages.

The plaintiffs are also seeking damages for past and future medical expenses, pain and suffering, loss of society, consortium, companionship, love, affection, support, pre and post judgment interests, and costs of suit.

The plaintiffs are represented by Longview attorneys Scott Stevens and Kyle Nelson of the Stevens Law Firm, Houston attorneys Lance H. Lubel and J. Robert Black of the Heard, Robins, Cloud and Lubel LLP and Longview attorney Gregory P. Love of Love and Goolsby LLP.

U.S. District Judge T. John Ward is assigned to the litigation.

Case No.: 2:08cv00164

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