

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

FILED
US DISTRICT COURT CLERK
WESTERN DISTRICT OF KY
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EBONI COCHRAN, JOHN COCHRAN,)
TIMOTHY DICKENS, GEORGE EMBERS,)
SHANITTA FERMAN, DERRICK HOUCHINS,)
LORETTA HOUCHINS, TIFFANY JACKSON,)
MARY LOVE, TERRY MURPHY,)
RENEE MURPHY, JAMES NORTON,)
RHONDA NORTON,)
and all other similarly situated.)

Case No. 3:06cv-363-H

Jury Demand

Plaintiffs

vs.

ZEON BIOMUNE, INC., ZEON GP LLC, and
ZEON CHEMICALS LIMITED PARTNERSHIP
d/b/a ZEON CHEMICALS L.P.

Defendants

CLASS ACTION COMPLAINT AND JURY DEMAND

NOW COME the Plaintiffs, Eboni Cochran and John Cochran, on behalf of themselves, and all others named in this Complaint, and all others similarly situated, by and through their attorneys, Gray & White, Matthew L. White, and Macuga & Liddle, P.C., Peter W. Macuga, II (hereinafter "Plaintiffs"), and state in support of their Class Action Complaint against Defendants, Zeon Biomune, Inc., Zeon GP LLC, and Zeon Chemicals Limited Partnership d/b/a Zeon Chemicals LP, (hereinafter "Defendants"), as follows:

NATURE OF THE ACTION

1. This action is necessary to protect the property rights of Plaintiffs, and all others similarly situated, which have been unreasonably interfered with resulting from the physical invasion of Plaintiffs' person and property by noxious odors and contaminants, thereby causing material injury to Plaintiffs' person and property through negligence, gross negligence, nuisance, and trespass.

2. Plaintiffs bring this action on behalf of themselves and all others who have similarly suffered from noxious odors and air contaminants. The reason for not joining all potential class members as Plaintiffs is that, upon information and belief, there are hundreds of potential plaintiffs, thereby making it impractical to bring them before the Court. All Plaintiffs reside in neighborhoods which are immediately contiguous with Defendants' manufacturing facilities. The putative class comprises approximately 1,938 homes and 4,500 persons.

3. There are many persons who have been similarly affected and the question to be determined is one of common and general interest to many persons constituting the class to which Plaintiffs belong, and the group is so numerous as to make it impracticable to bring them all before the Court, for which reason Plaintiffs initiate this litigation for all persons similarly situated pursuant to Federal Rule of Civil Procedure (FRCP) 23.

4. Issues and questions of law and fact common to the members of the Class predominate over questions affecting individual members and the claims of Plaintiffs, Eboni Cochran and John Cochran, and all others similarly named and those similarly situated, are typical of the claims of the Class.

5. The maintenance of this litigation as a Class Action will be superior to other methods of adjudication in promoting the convenient administration of justice.

6. Plaintiffs, Eboni Cochran and John Cochran, and all others similarly named and those similarly situated, and the law firms of Gray & White and Macuga & Liddle, P.C. will fairly and adequately assert and protect the interests of the Class.

PARTIES

7. Defendant, Zeon Biomune Inc., is a foreign corporation doing business in the City of Louisville, at 4100 Bells Lane, in the County of Jefferson, Commonwealth of Kentucky.

8. Defendant, Zeon GP LLC, is a Kentucky limited liability company doing business in the City of Louisville via P.O. Box 34320, in the County of Jefferson, Commonwealth of Kentucky.

9. Defendant, Zeon Chemicals Limited Partnership, is a foreign limited partnership doing business as Zeon Chemicals LP in the City of Louisville via P.O. Box 34320, in the County of Jefferson, Commonwealth of Kentucky.

10. At all times relevant hereto, Plaintiffs, Eboni Cochran and John Cochran, have resided at 4304 Winnrose Drive, City of Louisville, County of Jefferson, Commonwealth of Kentucky.

11. At all times relevant hereto, Plaintiff, Timothy Dickens, has resided at 3315 Linwood Avenue, City of Louisville, County of Jefferson, Commonwealth of Kentucky.

12. At all times relevant hereto, Plaintiff, George Embers, has resided at 4303 Winnrose Drive, City of Louisville, County of Jefferson, Commonwealth of Kentucky.

13. At all times relevant hereto, Plaintiff, Shannita Ferman, has resided at 1906 Peony Drive, City of Louisville, County of Jefferson, Commonwealth of Kentucky.

14. At all times relevant hereto, Plaintiffs, Derrick and Loretta Houchins, have resided at 3608 Hudson Avenue, City of Louisville, County of Jefferson, Commonwealth of Kentucky.

15. At all times relevant hereto, Plaintiff, Tiffany Jackson, has resided at 3414 William C. Weathers Drive, City of Louisville, County of Jefferson, Commonwealth of Kentucky.

16. At all times relevant hereto, Plaintiff, Mary Love, has resided at 4210 Algonquin Parkway, City of Louisville, County of Jefferson, Commonwealth of Kentucky.

17. At all times relevant hereto, Plaintiffs, Terry and Renee Murphy, have resided at 3810 Algonquin Parkway, City of Louisville, County of Jefferson, Commonwealth of Kentucky.

18. At all times relevant hereto, Plaintiffs, James and Rhonda Norton, have resided at 4300 Winnrose, City of Louisville, County of Jefferson, Commonwealth of Kentucky.

JURISDICTION & VENUE

19. Jurisdiction of this Court is invoked pursuant to diversity in accordance with 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs. Venue is proper in this Court pursuant to U.S.C. § 1391(a)(2).

GENERAL ALLEGATIONS

20. On occasions too numerous to list, Plaintiffs' person and property including Plaintiffs' neighborhood, residences, and yards, were physically invaded by noxious odors and air contaminants.

21. The noxious odors and air contaminants which invaded Plaintiffs' person and property originated from Defendant's facility located at 4100 Bells Lane, Louisville, County of Jefferson, Commonwealth of Kentucky (hereinafter the "facility"). At its facility, the Defendant manufactures chemicals and chemical products.

22. The Defendant, as part of its normal business operations, utilizes including but not limited to, the following chemicals: 1, 3-butadiene, acrylonitrile, ammonia, butyl acrylate, copper compounds, cumene hydroperoxide, di(2-ethylhexyl) phthalate, ethyl acrylate, hydrochloric acid, sodium nitrate, styrene, sulfuric acid and zinc compounds.

23. The Defendant knew or should have known that some of the chemicals it utilizes in its normal business operations, including but not limited to, 1, 3-butadiene, acrylonitrile, ammonia, butyl acrylate, copper compounds, cumene hydroperoxide, di(2-ethylhexyl) phthalate, ethyl acrylate, hydrochloric acid, sodium nitrate, styrene, sulfuric acid and zinc compounds are extra hazardous and are known human carcinogens.

24. The Defendant as part of its normal business operations has admitted that it has discharged into the atmosphere chemicals including, but not limited to, 1, 3-butadiene, acrylonitrile, ammonia, hydrochloric acid, and styrene.

25. The Defendant is contiguous to Plaintiffs and Plaintiffs' properties and Defendants chemical discharges have invaded and caused substantial damage to, substantial loss of use of, and substantial interference with, Plaintiffs and Plaintiffs' properties.

26. The chemicals utilized by Defendant and discharged by Defendant are odiferous and noxious and have caused substantial damage to, substantial loss of use of, and substantial interference with, Plaintiffs and Plaintiffs properties.

27. The odor emitted by the Defendant's facility has been described by residents of the surrounding neighborhood as a very strong offensive chemical odor that makes them prisoners in their homes and has precluded them from full use and enjoyment of their properties.

28. The fallout type emitted by the Defendants' facility has been described by residents of the surrounding neighborhood as a white dust-powder that requires constant cleaning and that makes them prisoners in their homes and has precluded them from full use and enjoyment of their properties.

29. It is Plaintiffs' information and belief that Defendants either constructed or directed the construction of the facility and exercises exclusive control and/or ownership over the facility.

30. As a direct and proximate result of Defendants' negligence in constructing and/or engineering and/or designing and/or operation and/or maintenance of the facility, Plaintiffs' person and/or property have been invaded by noxious odors.

31. The invasion of Plaintiffs' person and property by noxious odors and air contaminants has caused Plaintiffs to suffer injuries.

32. The invasion of Plaintiffs' person and property by noxious odors and air contaminants has caused Plaintiffs to suffer and/or aggravated nausea, headaches and respiratory problems.

33. The invasion of Plaintiffs' property by noxious odors and air contaminants has or will cause diminution in the market value of Plaintiffs' property and has interfered with Plaintiffs' use and enjoyment of their property.

34. The invasion of Plaintiffs' person and property by noxious odors, dust, debris and air contaminants has caused Plaintiffs' to suffer injuries including, but not limited to exposure to horrific odors, noise, dust, debris and air contaminants. Defendants are vicariously liable for all damages suffered by Plaintiffs, caused by Defendants' employees, representatives and agents, who, during the course and scope of their employment, allowed or failed to correct the problem which caused noxious odors and air contaminants to physically invade Plaintiffs' person and property.

NUISANCE

35. The allegations contained in Paragraphs 1-34 are realleged and incorporated as if referenced herein.

36. In the operation of its facility, Defendants utilize chemicals and chemical compounds to create and manufacture goods for sale.

37. In the operation of its facility Defendants discharge chemicals and chemical substances which are odiferous, invasive, and noxious and some of which are extra hazardous.

38. Defendants by and through current technological processes and current engineering standards could and should preclude the discharge of any noxious odors and extra hazardous substances onto Plaintiffs properties.

39. A condition or activity which unreasonably interferes with the use of property is a nuisance.

40. Plaintiffs did not consent for noxious odors and air contaminants to physically invade their person and property.

41. By causing noxious odors and air contaminants accumulated and controlled by Defendants to physically invade Plaintiffs' person and property, Defendants substantially and unreasonably interfered with Plaintiffs' use and enjoyment of their property.

42. Defendants' substantial and unreasonable interference with Plaintiffs' use and enjoyment of their property constitutes a nuisance for which the Defendants are liable to Plaintiffs for all damages arising from such nuisance, including compensatory and exemplary, relief.

NEGLIGENCE AND/OR GROSS NEGLIGENCE

43. The allegations contained in Paragraphs 1-42 are realleged and incorporated as if referenced herein.

44. In constructing, maintaining, operating, controlling, engineering and/or designing the facility, Defendants have a duty to exercise ordinary care and diligence so that noxious odors and air contaminants do not invade Plaintiffs' person or property.

45. Defendants knowingly breached their duty to exercise ordinary care and diligence when they improperly constructed, maintained, operated, engineered and/or designed the facility and knew, or should have known, that such actions would cause Plaintiffs' person and property to be invaded by noxious odors and air contaminants.

46. As a direct and proximate result of the failure of Defendants to exercise ordinary care, Plaintiffs' person and property are physically invaded by noxious odors and air contaminants.

47. As a direct and proximate result of Defendants' negligence in operating and/or constructing and/or engineering and/or maintaining its facility, Plaintiffs' person and property are exposed to and invaded by noxious odors and air contaminants.

48. As a direct and proximate result of the invasion of Plaintiffs' person and property by noxious odors and air contaminants, Plaintiffs have suffered injuries.

49. As a direct and proximate result of Defendants' release of noxious odors and air contaminants, the Plaintiffs' have suffered mental anguish, suffering, anxiety, embarrassment, humiliation, distress, agony and other related nervous conditions and emotional sequelae.

50. The conduct of Defendants in knowingly allowing conditions to exist, which caused noxious odors and air contaminants to physically invade Plaintiffs' person and property, constitutes gross negligence as it was willful, wanton, reckless and demonstrates a substantial lack of concern for the Plaintiff and the public at large.

51. Defendants are vicariously liable for the negligence and/or gross negligence of its employees, representatives, and agents, who, during the course and scope of their employment, allowed or failed to correct the problem which caused noxious odors and air contaminants to physically invade Plaintiffs' person and property.

52. Defendants' gross negligence entitles Plaintiffs to an award of punitive damages.

TRESPASS

53. The allegations contained in Paragraphs 1-52 are re-alleged and incorporated as if referenced herein.

54. Defendants intentionally, recklessly, willfully, wantonly, maliciously and negligently failed to construct, maintain and/or operate the facility which caused the invasion of Plaintiffs' person and property by noise, noxious odors, air contaminants, and other airborne pollutants on dates too numerous to mention.

55. As a direct and proximate result of the foregoing conduct of Defendants, noxious odors, air contaminants, and airborne pollutants accumulated upon, entered upon, settled upon and physically invaded Plaintiffs' person and property.

56. It was reasonably foreseeable that Defendants' failure to properly construct, maintain and/or operate the facility could result in an invasion of Plaintiffs' possessory interests.

57. As a further direct and proximate result of the foregoing conduct of Defendants, Plaintiffs suffered substantial damages to their persons and property as alleged herein.

58. The noxious odors, air contaminants, and airborne pollutants which entered, settled and physically invaded Plaintiffs' land and property interfered with Plaintiffs' interests in the exclusive possession of Plaintiffs' land and property and constituted a continuous trespass upon Plaintiffs' property.

59. Plaintiffs did not consent for noxious odors, air contaminants, and other airborne pollutants to physically invade their land and property.

60. Defendants' actions, which resulted in the trespass upon Plaintiffs' land and property were, and continue to be, intentional, willful, and malicious and made with a conscious disregard for the rights and safety of Plaintiffs, entitling Plaintiffs to compensatory, exemplary, injunctive and punitive relief.

STRICT LIABILITY

61. The allegations contained in Paragraphs 1-60 are re-alleged and incorporated as if referenced herein.

62. Defendants intentionally, recklessly, willfully, wantonly, maliciously and negligently failed to construct, maintain and/or operate the facility which caused the invasion of Plaintiffs' person and property by noise, noxious odors, air contaminants, and other airborne pollutants on dates too numerous to mention.

63. Defendants' failure to adequately construct, maintain and/or operate the facility has contaminated Plaintiffs' property, chattels and persons by substances widely accepted and regulated as hazardous substances that create a high degree of risk of some harm.

64. The hazardous substances under Defendants' ownership and/or control have contaminated Plaintiffs' property, chattels and persons creating a harm that is great.

65. There is no safe way to release the hazardous chemicals owned and/or controlled by Defendants that simply results in simply dumping or allowing the chemicals or contaminants to settle onto Plaintiffs' property.

66. The release of hazardous chemicals of the type owned and/or controlled by Defendants onto Plaintiffs' property is not a matter of common usage and/or occurrence.

67. The release of hazardous chemicals of the type owned and/or controlled by Defendants in the manner in which Defendants release them is inappropriate in any location, but especially inappropriate in close proximity to a residential neighborhood.

68. Defendants' method of releasing hazardous chemicals into Plaintiffs' residential neighborhood is not, and was not, essential to the continuing function of Defendants' activities. As such, the value of this type of release to the community is nonexistent.

69. Defendants' release of hazardous chemicals into the Plaintiffs' residential neighborhood renders Defendants strictly liable to Plaintiffs for all damages arising from such conduct, including compensatory and exemplary relief.

70. WHEREFORE, named Plaintiffs on behalf of themselves and putative class members respectfully demand:

- a. A class be certified;
- b. Judgment against Defendants and in favor of the named Plaintiffs and putative class members for;
- c. Compensatory damages subject to proof;
- d. Punitive damages as supported by the evidence of the misconduct of the Defendants, and being that amount necessary to "punish and discourage"

- Defendants “and others from similar conduct in the future”;
- e. Reasonable attorneys’ fees;
 - f. Interest until the date of judgment;
 - g. Post-judgment interest at the rate of 12% per annum until paid;
 - h. Costs of maintaining this action;
 - i. For any and all further relief, including injunctive and equitable relief, to which named Plaintiffs and putative class members may be entitled;
 - j. Opportunity with leave of the Court to amend this Complaint to conform to the evidence; and
 - k. Trial by jury on all issues so triable.

Respectfully submitted,

GRAY & WHITE

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