

STATE OF MICHIGAN

IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

**TROY WILLIAMS
ALLESHA MORRIS
JOSE MIRELES
KIM HOPKINS
CRAIG WALSH
JOSH LAFAVE
RYAN EBBINGHAUS
MAMUDA CHAM
KYLE SMITH**
Plaintiffs,

CASE NO.: 15-49 - NI

HON.:

CLERK OF COURT

CLERK OF COURT

2015 JAN 16 P 2:03

FILED

Vs.

CITY OF EAST LANSING

Defendant.

✓ **LAW OFFICE OF NEAL J. WILENSKY**
Neal J. Wilensky (P-35182)
Attorney for Plaintiff
6005 W. St. Joseph, Suite 303
Lansing, MI 48917
(517) 323-1111

COMPLAINT AND DEMAND FOR JURY TRIAL

There is no other civil action between these parties arising out of the same transaction of occurrence as alleged in the Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge, nor do I know of any other civil action, not between these parties arising out of the same transaction or occurrence as alleged in this complaint

that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a Judge in this Court.

NOW COMES, Plaintiffs and states for their complaint as follows:

1. Plaintiffs are either residents of Ingham County and are employed by the City of East Lansing working principally in the City of East Lansing, County of Ingham, State of Michigan.
2. Defendant is a municipality employing the Plaintiffs at its waste water treatment plant within the City, in the State of Michigan.
3. That the amount in controversy exceeds Twenty Five Thousand (\$25,000) Dollars.
4. That the venue is proper since the events complained of arose in Ingham County.
5. That this Court has subject matter jurisdiction over this case based on the Court's general subject matter jurisdiction.
6. That at all times relevant hereto Plaintiffs were working for Defendant in the course of their employment as workers at the East Lansing Waste Water Treatment Plant.
7. At all times relevant hereto Plaintiff were represented by UAW Local 2256 as their collective bargaining representative.
8. Defendant was covered by a collective bargaining agreement that had several

provisions pertaining to protecting and maintaining the health and safety of workers.

9. In March of 2008, in response to a grievance resolution, Defendant agreed to develop an emergency policy dealing with hazardous chemicals and spills.
10. Defendant never developed the policy.
11. In April of 1996, the State of Michigan issued to various municipalities, including the City of East Lansing, a mercury pollution prevention recommendation based on a task force report which Defendant received.
12. Prior to February 12, 1996, Defendant had contracted with Alexis to make certain recommendations for workers safety in a report dated February 12, 1996, that were never implemented.
13. In 1996, there was a spill of mercury that occurred at the Waste Water Treatment Plant.
14. That at the time the City timely contacted an outside contractor who cleaned up the hazard on a promptly and timely basis.
15. In February 2007, the City contracted with FiberTec to perform an asbestos building inspection at the Waste Water Treatment Plant.
16. The inspection was to include the collection of an appropriate number of bulk asbestos samples from friable suspect asbestos containing material (ACM) pursuant to OSHA

Standards.

17. The inspection took place January 30, 2007 through February 2, 2007.
18. The inspection identified numerous areas of asbestos; including numerous samples of friable asbestos.
19. A report was prepared by FiberTec and sent to management officials including but not limited to Chuck Peterson of the City of East Lansing.
20. The report contained numerous recommendations by FiberTec to clean up the asbestos found as part of the inspection.
21. Furthermore, the recommendation including notifying workers, build occupants, and maintenance personnel of the presence of the asbestos in the buildings along with wearing personal protective equipment for workers and repair personnel.
22. Despite having the clear results of the inspection, the City hid and concealed the results of this inspection from the Plaintiffs and its other workers at the Waste Water Treatment Plant.
23. Additionally, the City hid and concealed the results of the inspection from the wokers collective bargaining agent UAW Local 2256.
24. Additionally, the City did not adopt of implement any of the recommendations made by FiberTec and intentionally and with malice allowed its workers to be exposed to asbestos on a continuous basis with no attempt on the part of the City to alleviate,

clean up or abate the asbestos hazard and protect its workers.

25. In December of 2011, Plaintiff Troy Williams and co-employer Scott Houser asked their supervisor about certain materials hanging from pipes, specifically whether it could be asbestos.
26. The supervisor, Wayne Beede, did not identify whether it was asbestos but told the employees to keep quiet or they would lose their jobs.
27. In October of 2012, Plaintiff Josh LaFave also asked Beede about some material and was told to keep quiet or he would lose his job.
28. In the fall of 2013, the City contracted with a company to further identify potential asbestos in the Waste Water Treatment Plant.
29. An abatement was performed by HBC Contracting on January 29, 2014, removing at least eight linear feet of asbestos containing pipe and joint insulation from the electric room and tunnel.
30. Plaintiffs and workers were not informed of the October 2013 Study and the result of the January 29, 2014 abatement.
31. At a grievance meeting Plaintiffs Troy Williams and Allesha Morris who were also union stewards informed management officials including Cathryn Garnham and Todd Sneathen that they were concerned about asbestos falling from steam pipes in various locations in the Treatment Plant.

32. Only at that time, were these Plaintiffs informed about the 2007 FiberTec study, **seven years** after the inspection results were provided to Defendant.
33. In a grievance response, dated February 27, 2014 to Troy Williams, Defendant Management thru its representative Cathryn Garnham informed workers that they were exposed to asbestos.
34. Finally, on March 3, 2014, Cathryn Garnham released to workers a *summary of the 2007 FiberTech inspection; including items that were tested and **found to contain asbestos*** by the way of a three page memorandum that details the extensive amounts of asbestos found.
35. On or about November 22, 2013, there was a spill of mercury in a tub the size of about 2 x 3 feet that ended up on the floor and in the sink of the maintenance shop of the Waste Water Treatment Plant.
36. The spill was caused inadvertently by a manager.
37. Appropriate governmental agencies including but not limited to the EPA, DEQ and MIOSH were not notified of the spill according to government regulations, including but not limited to the Clean Water Act and why upper management was immediately notified by lower level Supervisor of the spill.
38. Contrary to what happened in 1996, the City did not contract with any number of outside abatement contractors to clean up and abate the spill.
39. Mercury is highly toxic at low exposure levels according to numerous literature

including but not limited to the Mercury Pollution Prevention Report of April 1996, and more toxic with airborne exposure.

40. There were attempts to clean up the mercury in house that were clearly untimely, and were ineffective, which allowed the mercury to spread to tools and other locations in the plant so that is increased the number of workers exposed to mercury.
41. Knowledge of the spill and mercury exposure was kept from most of the East Lansing Waste Water Treatment plant workers by Defendant.
42. Numerous workers regularly or intermittently worked in the maintenance shop and had airborne mercury exposure for a number of days.
43. Additionally, maintenance workers were told by Todd Sneathen, supervisor and another worker were ordered by a supervisor to clean up the mercury which increased their exposure to the mercury.
44. Due to worker and union complaints about the lack of an adequate clean up of the mercury spill, various governmental agencies performed inspections of the mercury exposure.
45. Ingham County Health Department did an inspection March 20, 2014; the Department of Environmental Quality did an inspection March 25 and April 8, 2014; and MIOSH did an inspection March 26, 2014 and at later dates.
46. At a meeting between Ingham County and East Lansing Officials regarding the mercury exposure, Plaintiff Troy Williams and Scott Hauser heard that the level

found was significantly higher than the 500-600 amograms that was listed in the Ingham County report.

47. Troy Williams was at the meeting as a union representative, but was asked to leave by various county officials, after asking questions about the level of mercury exposure.
48. Some of the mercury got in a sink that Plaintiff Josh LaFave and employee Dennis Hasbrook were told to remove on March 21, 2014 causing them further exposure to mercury by Todd Sneathen.
49. The City of East Lansing was fined significantly by MIOSH for numerous health and safety violations related to asbestos and mercury exposure among other reasons.
50. In December of 2014 MIOSH and upgrading fines and penalties to the City of East Lansing for the asbestos exposure.
51. The spill of mercury was listed as upwards of 1.5to 3 pounds on an menometer provided by the manufacturer.
52. At no time were workers ever provided protective clothing or other safety devices or training to work around asbestos or mercury in the plant facility.
53. At no time did the City timely advise Plaintiffs or other Waste Water workers of the dangers of exposure to highly toxic materials, including asbestos and mercury.
54. In 2014 after management finally disclosed the asbestos exposure as delineated above,

workers who requested safety tests were told by Paul Stokes, management supervisor, that they were not exposed enough, but on January 2, 2015 Defendant announced there was more than 1,300 additional linear feet of asbestos found that the city was now contracted to have removed by FiberTec.

55. On October 12, 2014 Joshua LaFave and Ryan Ebbinghaus were ordered to remove 12 linear feet of material suspected to contain asbestos by supervisor, Wayne Beede.
56. The health hazards of exposure to mercury and asbestos have been well known to the Defendant for many years prior to the times workers were intentionally and unnecessarily exposed to mercury and asbestos.

COUNT ONE: INTENTIONAL TORT

57. Plaintiffs re-allege and repeat the allegations of paragraphs 1-56.
58. The Defendant intentionally and with malice exposed Plaintiffs and other Waste Water Treatment Plant workers to large quantities of asbestos between February of 2007 and January 31, 2014.
59. The Defendant did so with clear and explicit knowledge by way of the FiberTec report, which was totally ignored for just short of seven years.
60. That Defendant intentionally exposed workers to the asbestos with clear and direct knowledge of the dangers of asbestos exposure, which they recklessly disregarded.
61. The Defendant intentionally and with malice exposed workers for seven years with actual knowledge of the significant dangers of asbestos exposure, particularly over

long periods of time.

62. The City had prior knowledge that there was at least one prior mesothelioma case arise out of the Waste Water Treatment Plant based on report to a database tracking mesothelioma cases in Michigan.
63. By not timely and sufficiently and adequately cleaning up the spill of mercury, the Defendant intentionally exposed workers to toxic and dangerous levels of airborne mercury for weeks and months after the spill.
64. The Defendant did so with actual knowledge of the significant dangers of airborne mercury exposure on a repeated week-to-week; month-to-month, basis of exposure, which they recklessly disregarded.
65. Defendant recklessly disregarded the health and safety of workers and disregarded government regulations as to the reporting of the mercury exposure and the required and necessary clean up of mercury.
66. Furthermore, the Defendant, thru its representatives, repeated threatened Plaintiffs and other workers with discharge if they continued to complain about potential asbestos exposure.
67. Due to the intentional conduct of Defendant as described above, Plaintiffs have suffered pain and suffering, distress, various medical problems due to the above described exposures and a loss of enjoyment of life, emotional distress, and have been caused to have to expend money for medical expenses past, present and future.

WHEREFORE, Plaintiffs demand judgment against the Defendant in an amount they are found entitled to in excess of Twenty-Five Thousand (\$25,000) Dollars together with costs, interest and attorney fees.

COUNT TWO: VIOLATION OF PROTECTED ACTIVITY UNDER MIOSH ACT

68. Plaintiff re-allege and repeat the allegations of paragraphs 1-67.
69. For the MIOSH Act is part of the Michigan statute and among other purposes is there to provide for worker safety.
70. The MIOSH Act specifically prohibits retaliation against workers for raising health and safety concerns.
71. Plaintiffs and other workers raised concerns about asbestos exposure and were told they would be fired if there were complaints.
72. This thwarted the ability the workers had to find out if they were being exposed to asbestos and chilled any attempts to investigate and remediate the situation.
73. These actions by Defendant's management employees were in clear violation of the MIOSH Act prohibiting retaliation against workers.
74. Due to the intentional conduct of Defendant as described above, Plaintiffs have suffered pain and suffering, distress, various medical problems due to the above described exposures and a loss of enjoyment of life, emotional distress, and have been caused to have to expend money for medical expenses past, present and

future.

WHEREFORE, Plaintiffs demand judgment against the Defendant in an amount they are found entitled to in excess of Twenty-Five Thousand (\$25,000) Dollars together with costs, interest and attorney fees.

DEMAND FOR JURY TRIAL

Plaintiff hereby relies upon his previous demand for jury trial in the captioned case as guaranteed by Rule 2.508(B) of the Michigan Court Rules.

Respectfully submitted,

Dated: 1-14-15

/s/ Neal J. Wilensky
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