

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

**BETTY J. LEMKE, Individually and  
as Executrix of the Estate of  
GALEN LEMKE, Deceased  
712 Grandview Court  
Elmore, Ohio**

**Plaintiff**

**vs.**

**Brush Wellman, Inc.  
17876 St. Clair Avenue  
Cleveland Ohio 44110**

**SERVE:  
Michael C. Hasychak  
Brush Wellman, Inc.  
17876 St. Clair Avenue  
Cleveland Ohio 44110**

**Defendant**

**Case No.**

**Judge**

**WRONGFUL DEATH  
EMPLOYER INTENTIONAL TORT  
COMPLAINT AND JURY DEMAND**

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Now comes Plaintiff, by and through counsel, who for her Complaint against Defendant, states as follows:

1. Plaintiff brings this action against Defendant to seek compensation for the wrongful death of Galen Lemke ("Lemke") incurred as a direct and proximate result of the deliberate and intentional actions of Defendant in requiring Lemke to work in unreasonably and abnormally hazardous and dangerous working conditions and work areas.

2. Plaintiff was duly appointed Executrix of the Estate of Galen Lemke, deceased, by the Probate Court of Ottawa County, in Case No. 99-1334. She brings these actions for wrongful death, survival action for pain and suffering, and punitive damages as personal representative for the exclusive benefit of the Estate and statutory beneficiaries of Galen Lemke, deceased, pursuant to Ohio Revised Code §2125.01 et seq.

3. Defendant deliberately and intentionally exposed Lemke to unreasonably and abnormally hazardous and dangerous working conditions, knowing that injury and disease would occur.

#### **JURISDICTION AND VENUE**

4. Plaintiff states that Lemke worked at the Brush Wellman plant at Elmore, Ohio from 1959 until approximately March 1969.

5. Defendant is now and was at all times relevant to this complaint a corporation duly organized and existing under the laws of the state of Ohio having its corporate headquarters in Cuyahoga County, Ohio.

6. At all times relevant hereto Defendant has been transacting business within the state of Ohio and has sufficient contacts, ties and relations in the state of Ohio to be subject to the jurisdiction of this Court.

7. Venue is properly placed in this Court because the Defendant's corporate headquarters is in Cuyahoga County, Ohio.

## **ALLEGATIONS OF FACTS**

8. Lemke began work at Brush Wellman in 1959. During his employment, Lemke worked as a laborer, production helper, grinder, technical person in ceramics, and ceramics production engineering technician.

9. During his employment at Brush Wellman, Lemke worked in outside maintenance and decontamination areas of the plant. In decontamination, Lemke was cleaning up areas of the plant. In outside maintenance he dumped barrels of trash, picked up trash, and burned trash. Lemke was exposed to beryllium in these jobs.

10. Lemke also worked in machining of beryllium oxide ceramics where he was exposed to beryllium dust. Doors to the machines where beryllium oxide was processed were left open. Approximately 50% of the ventilation hoods over the machines leaked. Coolant containing beryllium oxide just dripped from the machines and was caught in the drip pans.

11. There were also operations where pressed beryllium oxide parts were on a lathe for grinding or turning and there was no ventilation hood over the lathes. Lemke was exposed to beryllium in this area.

12. Lemke also worked as an engineering technician in the dry pressing area where the beryllium powder hoppers were not enclosed. While the worker was filling the hopper with beryllium powder, the operator just dumped a bag of powder into the hopper or scooped the powder from a drum into the hopper without a ventilation hood. Lemke was exposed to beryllium in this area.

13. Lemke also worked in the isopress area where there were two presses that were setting in the middle of the ceramic area with no ventilation hoods. The molds were

filled by either scooping the powder from a drum into the mold or pouring it in from a plastic bag. Lemke was exposed to beryllium in this area.

14. There were two fires in the exhaust system of the plant while Lemke worked there. One fire started at a hot plate area where they waxed beryllium oxide rods onto cordite slabs. The other fire started, to the best of Lemke's knowledge, at a Blanchard grinder where a spark off of the wheel ignited the coolant. Lemke was present in the building during the fires. Lemke was exposed to beryllium during these fires.

15. Lemke was diagnosed with beryllium disease in 1970.

16. On August 18, 1999 Lemke died of chronic beryllium disease.

17. During the time that Lemke worked at the Elmore plant, the U.S. Atomic Energy Commission had a written contract with Defendant for the production of beryllium. That contract provided that airborne levels of beryllium shall not exceed 2.0 micrograms of beryllium/ cubic meter of air.

18. The Walsh-Healey Act prescribed the same 2 micrograms of beryllium per cubic meter of air standard, but the U.S. Atomic Energy Commission chose not to enforce either the Walsh-Healey Act or the contract provision.

19. In 1961, while Lemke was employed at Defendant's Elmore Plant, the Atomic Energy Commission's Beryllium Medical Advisory Committee noted that the environmental data from Defendant's plant rather conclusively demonstrated that large numbers of people had been exposed to concentrations of beryllium in excess of the accepted standards.

20. During the time that Lemke worked at Defendant's Elmore Plant, the Defendant was required to keep air counts of beryllium below 2 micrograms/cubic meter of air

pursuant to the written contract. In 1967, a memo written by Defendant's employee states that the Plant had never had all of the operations at or below the 2.0 micrograms of beryllium/cubic meter of air standard. In addition, operations were averaging daily weighted air counts that were over 5.0 micrograms of beryllium/cubic meter of air.

21. The memo states further that "the air counts in the Be [beryllium] refinery concern me most because we are working with metal powder and I feel that we may be running into the same trap that we ran into at Perkins where we developed berylliosis cases."

22. There were operations at Elmore where the daily weighted average of beryllium (DWA) per cubic meter of air exceeded 5 micrograms. These operations were out of control.

23. In 1965, maintenance and decontamination effort was lacking and operations were out of control.

24. The memo continues that "to keep air counts in control requires good maintenance of equipment and ventilation and good housekeeping. It is not reasonable to expect all DWA's to be at or below target level of 2.0 micrograms of beryllium/ cubic meter of air, but it is reasonable to expect DWA's to run under 5.0 micrograms of beryllium/cubic meter of air. I believe if this is done, and it can be done if our management wants it that way, then we will have gone a long way towards eliminating chronic berylliosis at the Elmore plant."

25. In a memo from the U.S. Atomic Energy Commission dated March 8, 1961, it states that "if the AEC should enforce the contract requirement of 2 micrograms of

beryllium/cubic meter of air, the contractors may be required to shut down the plant and install extensive and expensive additional equipment.”

26. In its “Welcome to Brush Wellman Elmore, Ohio Contractor Orientation Manual” Brush Wellman acknowledged it knew that historically, two percent of the Brush Wellman employees had developed Chronic Beryllium Disease, that there is no proven test to determine who is susceptible, and that everyone must assume that he or she is susceptible.

27. Brush Wellman further acknowledged that the two microgram per cubic meter limit may not protect everyone.

#### **COUNT ONE COMMON LAW INTENTIONAL TORT**

28. Plaintiff incorporates herein all of the allegations set forth above as if fully restated herein.

29. Defendant, by and through its officers, agents, and employees, had knowledge of the existence of dangerous processes, procedures, instrumentalities, and conditions in the Elmore, Ohio plant.

30. Defendant, by and through its officers, agents, and employees, had knowledge that if Lemke and other employees were subjected to the dangerous processes, procedures, instrumentalities, and conditions, then harm to Lemke and other employees was substantially certain to occur.

31. Defendant under such circumstances and with such knowledge, required Lemke and other employees to continue to perform the dangerous tasks.

32. As a direct and proximate result of Defendant requiring Lemke and other employees to perform such dangerous tasks under such dangerous conditions, Lemke suffered personal injuries, severe emotional distress and death from berylliosis.

33. Plaintiff's decedent died as a direct and proximate result of Defendant's wrongful conduct, as described herein on August 18, 1999.

34. This claim is brought under O.R.C. §2125.02, for the benefit of Betty J. Lemke, surviving spouse, Natalie Kay Fork, daughter, and David A. Lemke, son.

35. Lemke's wife and children are entitled to damages by reason of his death.

36. Betty J. Lemke, as Executrix of the Estate of Galen Lemke, deceased, incurred reasonable funeral and burial expenses for Galen Lemke as a result of his wrongful death.

37. As a direct and proximate result of the negligent acts and omissions of Defendant, the surviving spouse and children of Lemke were caused to suffer great mental anguish and the loss of support, contribution, love, affection and companionship that would have been derived from Lemke, deceased.

#### **COUNT TWO PUNITIVE DAMAGES**

38. Plaintiff incorporates herein by reference all of the allegations set forth above as though fully rewritten.

39. Defendant, by permitting and requiring Lemke and other employees to work in an environment where they were overexposed to airborne beryllium, when Defendant knew through its officers, agents and employees, that the working conditions were unsafe and would cause injury, disease and/or death, acted with malice and with willful,

wanton, and/or reckless disregard for the rights and safety of the Lemke and other employees.

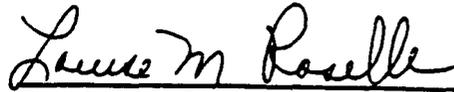
40. Defendant, by and through its officers, agents and employees, engaged in deliberate and intentional acts and willfully, recklessly, wantonly, and with total disregard for the rights and safety of Lemke and the other employees, subjected them to unreasonable, unnecessary and abnormally serious risk of injury.

41. The willful, wanton, reckless and/or malicious conduct of Defendant entitles Plaintiff to punitive damages against Defendant.

WHEREFORE, Plaintiff's decedent died as a direct and proximate result of Defendants' intentional tort conduct, as described. Plaintiff prays for the following relief from Defendant:

- (a) Judgment in favor of Plaintiff against Defendant;
- (b) Compensatory damages including, but not limited to, pain and suffering, loss of past and future income, funeral and burial expenses and substantial medical expenses, from Defendant in an amount to be determined but in excess of \$25,000 plus interest, costs, attorneys' fees, and such other relief as the Court may deem just and appropriate;
- (c) Punitive damages from Defendant in an amount to be determined but in excess of \$25,000 plus interest, costs, attorneys' fees, and such other relief as the Court may deem just and appropriate; and
- (d) Such other and further relief as is warranted in the interest of justice.

Respectfully submitted,



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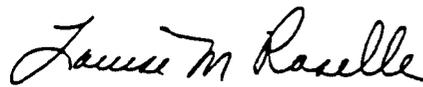
and

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Attorneys for Plaintiff

**JURY DEMAND**

Plaintiff hereby requests a trial by jury.



Louise M. Roselle, Esq.