

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION

CIVIL ACTION NO. 94-CI-2671

STEVE PERKINS, JIMMY COLLINS,
JAMES E. MILLER, MIKE TERRY,
ELAINE S. PERKINS, DIANE B. MILLER

PLAINTIFFS

v.

**SECOND AMENDED COMPLAINT
JURY TRIAL DEMANDED**

SERV-AIR, INC., by resolution in Kentucky
AIR-SERV, INC., a Delaware Corporation
1209 Orange Street
Wilmington, Delaware 19801

DEFENDANTS

Serve: C.T. Corporation Systems
Kentucky Home Life Building
Louisville, KY 40202

and

E-SYSTEMS, INC., a Delaware Corporation
6350 LBJ Freeway
Dallas, Texas 75201

Serve: Kentucky Secretary of State
P.O. Box 718
Frankfort, KY 40602

and

IRVING MONCLOVA,
1064 Heather Gate Court
Lexington, KY 40511

Serve: Irving Monclova
1064 Heather Gate Court
Lexington, KY 40511

Plaintiffs, Steve Perkins, Jimmy Collins, James E. Miller, Mike Terry, Elaine S. Perkins, and Diane B. Miller for their second amended complaint herein state as follows:

1. Plaintiffs are citizens of the United States of America and, at all times relevant hereto including the present, residents of the Commonwealth of Kentucky.

2. Defendant, Serv-Air, Inc., (Serv-Air) is a Delaware corporation, licensed to do business in the Commonwealth of Kentucky under the name "Air-Serv, Inc."

3. Defendant, E-Systems, Inc. (E-Systems), is a Delaware corporation having its principal place of business at 6350 LBJ Freeway, Dallas, Texas, and is the parent corporation of Defendant Serv-Air.

4. Defendant, Irving Monclova (Monclova), is a resident of Fayette County, Kentucky, residing at 1064 Heather Gate Court, Lexington, Kentucky 40511. Monclova is, upon information and belief, presently employed by Serv-Air as its Director and Vice-President of its Lexington, Kentucky Division. Monclova, upon information and belief, has served as Director of Serv-Air's Lexington, Kentucky Division since 1987. In that capacity Monclova acted as the agent of Serv-Air and E-Systems.

5. This Court has jurisdiction over this matter pursuant to KRS 23A.010 and venue is proper herein pursuant to KRS 452.480.

6. During the time period October 1985, through the present, Defendants Serv-Air and E-Systems employed Plaintiffs, Steve Perkins, Jimmy Collins, James E. Miller, and Mike Terry, whose employment was terminated in and about March 1994, to perform work at their various facilities, including the Lexington Bluegrass Army Depot located in Lexington, Fayette County, Kentucky.

Defendant Monclova, in his capacity as agent of Serv-Air and E-Systems, was responsible for running and operating the facility at the Lexington Bluegrass Army Depot.

7. During this time period including and up to the present, Defendants directed Perkins, Collins, Miller, and Terry to perform various jobs and tasks involving the removal and handling of asbestos-containing materials. As a result of Defendants' actions, Perkins, Collins, Miller, and Terry were extensively exposed to asbestos by reason of their work at said location.

8. Defendants knew and know that asbestos is a carcinogen and that uncontrolled exposure creates an extremely high probability of severe health risks, including death, for the person exposed.

9. Defendants were and are aware of federal and state legal requirements regarding the exposure of employees to asbestos in their workplace.

10. Defendants were and are aware that Perkins, Collins, Miller, and Terry were and are being exposed to uncontrolled and unlawful levels of asbestos in their workplace. Defendants, including their agents and employees, were further aware of steps and procedures that would limit the dangers and perils of such exposure but failed to implement such steps and procedures.

11. Monclova was aware of the uncontrolled and unlawful exposure of Plaintiffs and others to asbestos in their workplace and informed of procedures and equipment that would have limited the exposure of Plaintiffs and others to asbestos. Monclova frustrated and precluded the implementation of such procedures and the purchase or obtaining of such equipment as would have limited the unlawful and uncontrolled exposure of Plaintiffs and others to asbestos in their workplace.

12. Defendants, including their agents and employees, had a duty to warn Plaintiffs Perkins, Collins, Miller, and Terry of the presence of and their exposure to unlawful levels of asbestos in their workplace.

13. Defendants knowingly, intentionally and willfully exposed Perkins, Collins, Miller, and Terry to asbestos in their workplace while knowingly, intentionally and willfully refusing to implement steps and procedures that would limit the dangers and perils of such unlawful exposure, while knowingly, intentionally and willfully refusing, precluding and/or otherwise preventing the purchase or obtaining of such equipment as would limit such unlawful exposure, and while knowingly, intentionally and willfully failing to warn Perkins, Collins, Miller, and Terry of their exposure to unlawful levels of asbestos in the workplace.

14. Defendants should have realized and foreseen that there was a high probability that severe emotional distress would follow from Perkins', Collins', Miller's, and Terry's exposure to unlawful levels of asbestos.

15. Perkins, Collins, and Terry first discovered that they had been unlawfully exposed to asbestos as a result of the knowing, intentional and willful actions and omissions of the Defendants in September or October 1993.

16. As a direct and proximate result of the Defendants' knowing, intentional and willful actions and omissions causing Plaintiffs' exposure to unlawful levels of asbestos, Perkins, Collins, Miller, and Terry have suffered pain, anguish, mental and emotional suffering and they will continue to suffer pain, anguish and emotional and mental distress and suffering.

17. Defendants should have foreseen that Perkins and Miller, by carrying asbestos on their clothing, would contaminate their homes and expose their spouses to asbestos.

18. Defendants should have realized that there was a high probability that severe emotional distress would follow from the exposure of Plaintiffs Elaine S. Perkins and Diane B. Miller to asbestos.

19. As a direct and proximate result of Defendants' knowing, intentional and willful actions causing exposure of their spouses to unlawful levels of asbestos in their workplace and the contamination of their homes with asbestos carried therein on their spouses' clothing, Plaintiffs, Elaine S. Perkins and Diane B. Miller have been exposed to asbestos causing them great mental and emotional pain, anguish, suffering and distress.

20. Defendants' knowing, intentional and willful actions and omissions causing exposure of Plaintiffs to asbestos is so malicious and oppressive that punitive damages should be awarded Plaintiffs.

21. As a direct and proximate result of their exposure to asbestos, Plaintiffs face the prospect of developing diseases, illnesses and sicknesses caused by their exposure to asbestos. Plaintiffs' exposure creates the need for regular medical monitoring of their health to allow for prompt treatment of diseases, illness and sicknesses that result from their exposure to asbestos caused by Defendants' knowing, intentional and willful actions and omissions.

22. Plaintiffs need for regular medical examinations to allow prompt treatment of diseases, illnesses and sicknesses arising from their exposure to asbestos constitute damages for which they have no adequate remedy at law.

CLAIMS FOR RELIEF

COUNT I

23. Plaintiffs incorporate herein paragraphs 1 through 22 hereof.

24. The actions and/or omissions of Defendants Serv-Air and E-Systems, and/or their employees, and/or agents and/or servants, in knowingly, intentionally and willfully allowing and/or directing Plaintiffs to work with and in

asbestos-containing material without taking proper steps and procedures to limit the dangers and perils posed by such work, failing to warn adequately of such dangers, causing their exposure to unlawful levels of asbestos and the contamination of their homes constitutes outrageous conduct, and the Defendants are jointly and severally liable for the emotional and mental distress and anguish suffered by Plaintiffs, which has been caused by the knowledge that Plaintiffs have been exposed to asbestos, a known carcinogen, all to their damage in an amount far in excess of the minimum jurisdictional amounts of this Court.

COUNT II

25. Plaintiffs incorporate herein paragraphs 1 through 24 hereof.

26. Defendants, Serv-Air and E-Systems, by and through its authorized agents and/or officers and/or employees, knew or should have known of the Plaintiffs' unlawful exposure to asbestos-containing material, and knowingly, intentionally, willfully, and maliciously failed to warn and/or inform and/or adopt reasonable steps and procedures to limit the dangers and perils posed by such exposure, and thus the Defendants are jointly and severally liable to Plaintiffs for punitive damages in an amount in excess of the minimum jurisdiction of this Court.

COUNT III

27. Plaintiffs incorporate herein paragraphs 1 through 26 hereof.

28. The actions and/or omissions of Defendant Monclova in knowingly, intentionally and willfully allowing and/or directing Plaintiffs to work with and in asbestos-containing material without taking proper steps and procedures to limit the dangers and perils posed by such work, failing to warn adequately of such dangers, precluding the purchase or obtaining of equipment that would limit the dangers and perils posed by such work, causing their exposure to unlawful levels of asbestos and the contamination of their homes constitutes outrageous conduct,

and the Defendant Monclova is liable for the emotional and mental distress and anguish suffered by Plaintiffs, which has been caused by the knowledge that Plaintiffs have been exposed to asbestos, a known carcinogen, all to their damage in an amount far in excess of the minimum jurisdictional amounts of this Court.

COUNT IV

29. Plaintiffs incorporate herein paragraphs 1 through 28 hereof.

30. Defendant Monclova knew or should have known of the Plaintiffs' unlawful exposure to asbestos-containing material, and knowingly, intentionally, willfully, and maliciously failed to warn and/or inform and/or cause to be adopted reasonable steps and procedures and/or the purchase or obtaining of equipment to limit the dangers and perils posed by such exposure, and thus is liable to Plaintiffs for punitive damages in an amount in excess of the minimum jurisdiction of this Court.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, Steve Perkins, Jimmy Collins, James E. Miller, Mike Terry, Elaine S. Perkins, and Diane B. Miller each demand as follows:

(1) Judgment against the Defendants, Serv-Air, Inc., d/b/a in Kentucky as Air-Serv, Inc., and E-Systems, Inc., jointly and severally, for their damages caused by Defendants' knowing, willful, intentional and outrageous conduct and infliction of emotional distress, in an amount to be determined by a jury at trial and in excess of this Court's jurisdictional minimum;

(2) Judgment against Defendant Irving Monclova for their damages caused by Defendant's knowing, willful, intentional and outrageous conduct and infliction of emotional distress, in an amount to be determined by a jury at trial and in excess of this Court's jurisdictional minimum;

(3) Judgment against the Defendants, Serv-Air, Inc., d/b/a in Kentucky as Air-Serv, Inc., and E-Systems, Inc., jointly and severally, for punitive damages in an amount to be determined by a jury at trial and in excess of this Court's jurisdictional minimum;

(4) Judgment against Defendant Irving Monclova for punitive damages in an amount to be determined by a jury at trial and in excess of this Court's jurisdictional minimum;

(5) That a permanent injunction be entered directing and requiring Defendants to establish a fund to pay for any and all medical monitoring and treatment needed by Plaintiffs for the remainder of each of their lives;

(6) That the Court retain jurisdiction of this case until the Defendants have fully complied with the orders of this Court;

(7) Such other damages as may be determined to be due and owing;

(8) Their court costs expended herein; and,

(9) Any and all other relief to which the Plaintiffs may appear entitled.

DEMAND FOR A JURY TRIAL

Pursuant to CR 38, Plaintiffs hereby demand a jury trial on all issues so triable.

ROBERT L. ABELL
145 W. Main Street, Suite 300
Lexington, KY 40507
(606) 254-7076

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, postage prepaid, this _____ day of _____, 1994, to the following:

SERV-AIR, INC.
1209 Orange Street
Wilmington, DE 19801

E-SYSTEMS, INC.
6350 LBJ Freeway
Dallas, TX 75201

COUNSEL FOR PLAINTIFFS