

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

PATRICIA KELSEY, AND AS  
ADMINISTRATOR OF THE  
ESTATE OF LAWRENCE KELSEY,

Plaintiffs,

Civil Action Number:

v.

SAFETY KLEEN, INC., ASHLAND, INC.,  
AND DOES 1-25;

Defendants.

**COMPLAINT**

COMES NOW, Plaintiff, Patricia Kelsey, a resident of Kentucky, on her own behalf as administrator of the Estate of Lawrence Kelsey, who brings this action for personal injuries and damages caused by the negligence and/or fault of Safety-Kleen, Inc. and Ashland, Inc., (hereinafter "Defendants"), alleging:

**PARTIES**

1. Plaintiff, Patricia Kelsey, as administrator of the Estate of Lawrence Kelsey, is a resident of Kentucky.
2. Safety-Kleen is a corporation with its headquarters located at 2600 North Central Expressway Suite 400, Richardson, Texas and provided its products from its facilities located at 1200 Sylvan Street, Linden, NJ 07036.
3. Jurisdiction exists under the diversity of citizenship statute, and personal jurisdiction is established because the defendants made large amounts of sales and other business transactions in the State of New Jersey.

4. Ashland, Inc. is a foreign corporation licensed to do and doing business in New Jersey at 50 South Minnisinki Avenue, Parvin, NJ 08859, and which company marketed and distributed an unreasonably dangerous product for use with printing presses, which liquid was used to mix with ink, and which contained harmful cancer-causing benzene, which caused plaintiff harm resulting in fatal cancer.

5. Plaintiffs will amend this complaint to allege said fictitiously named Defendants' true names and capacities when the same shall be ascertained. Plaintiff is informed and believes and alleges that each fictitiously named Defendant was responsible in some manner for the occurrences herein, and that Plaintiff's damages as herein below set forth were directly and proximately caused by said Defendants' conduct.

6. Plaintiff is informed and believes and therefore alleges that Defendants, inclusive, are responsible under law in some manner, negligently, strictly or otherwise, for the events and happenings hereinafter described, and, pleading in the alternative, alleged they contributed to cause plaintiff's injuries and damages.

#### **VENUE AND PERSONAL JURISDICTION**

7. Venue is proper in this jurisdiction because Defendants manufactured goods that were sold or delivered through interstate commerce to locations where plaintiff was harmed, including in New Jersey; and defendant Safety-Kleen and defendant Ashland are corporations that manufactured and distributed or sold its harmful products for use in this state and caused harm to plaintiff.

**SUBJECT MATTER JURISDICTION**

8. This action arises under diversity of citizenship pursuant to 28 U.S.C. Section 1332; and this is a claim for damages in excess of \$75,000 due under New Jersey Products Liability Law, or alternatively, under the Restatement 2<sup>nd</sup> of Torts, for strict product liability, against the Defendant manufacturers of chemicals, including those whose names are unknown at this time, but whose negligence and/or fault, contributed to cause Plaintiff's injuries which Patricia Kelsey, individually and on behalf of the estate of her late husband, alleges to have been caused by his inhaling and/or by dermal contact with toxic chemicals that he was exposed to while working for Sonoco, Morrell Press and Amcor Flexible, mixing inks and cleaning parts with solvents, many hours per day for over twenty years..

**OPERATIVE FACTS**

9. Mr. Kelsey worked for Sonoco Flexible Packaging Company in Fulton, New York from 1988 through 2004, Alcan Packaging Inc. from 2005 through 2007, and for Amcor Pharmaceutical Packaging USA, Inc./Amcor Packaging, Inc. in Kentucky from 2004 through 2013 mixing inks and cleaning parts, for over twenty years, 40 hours per week.

10. Mr. Kelsey's job duties as a press operator required him to mix solvents, inks, and blends of inks for use in the printing industry.

11. Mr. Kelsey was not provided and did not wear a mask or respiratory protective gear while working with toxic chemicals dating back to 1988.

12. Mr. Kelsey worked with the benzene, toluene, Safety-Kleen solvent and other toxic chemicals on a regular and continuing basis from 1988 through 2013.

13. Following a bone marrow biopsy, Mr. Kelsey was diagnosed with Myelodysplastic Syndrome on or about March 13, 2013 at the age of 49.

14. Following a bone marrow transplant on July 19, 2013 and subsequent complications, Mr. Kelsey passed away on May 28, 2014.

15. Plaintiff claims that Defendants DOES 1 THROUGH 25 manufactured and/or sold products that were unreasonably dangerous and defective as defined in New Jersey Products Liability Law, and under Restatement of Torts, Section 402 (a) et sequence, for marketing and design defects, and alleges that the products to which he was exposed were unreasonably dangerous and defective, presenting him with:

- a. Conditions where ink and solvent products, or alternatively chemicals, and/or additives, were toxic posing an unreasonable risk of harm, which risk was unknown to the ordinary user, including Mr. Kelsey, but was known to the manufacturers;
- b. This risk of harm should have been obvious to Defendants, under foreseeable ordinary expected working conditions;
- c. Proper marketing instructions and warnings were technologically and economically feasible and could have prevented the risk of harm;
- d. Plaintiff's activities in using the toxic chemicals could have been protected against the exposure if warnings and instructions had been provided as required by applicable codes and laws.
- e. As manufactured, designed, and sold/marketed, the products complained of presented an unreasonable risk of harm that outweighed the utility of the product; the products contained defects that the ordinary consumer would not be aware existed, severe cancer-causing toxic characteristics, and were sold and put in commerce with marketing defects.

**COUNT I: DESIGN AND MARKETING DEFECTS**

16. Plaintiff incorporates the above allegations 1-16 as if set forth under this cause of action.

17. The chemicals that Defendants and JOHN DOES 1 THROUGH 25 made and sold were used as either ink, ink additives, or solvents, or pleading in the alternative, as other chemicals for use in industries in which Mr. Kelsey worked, and these products were defective in design

and marketing because they:

- a. Failed to warn of the toxic characteristics of the chemicals, and the extreme risk of permanent impairments, damage to the blood cells of the body, the risk of being caused to develop Myelodysplastic Syndrome, Acute Myelogenous Leukemia, with damage to the blood manufacturing system, and damage to other organs and to the neurological system;
- b. Failed to instruct how to protect oneself against the danger from the use of the products, which were benzene laden solvents, or other products;
- c. Failed to warn of the need to wear respiratory protection and dermal protection.
- d. As designed, were unreasonably dangerous as sold and marketed.

**COUNT II: ALLEGATIONS OF FAULT AND NEGLIGENCE**

18. Plaintiff incorporates the above allegations 1-17 as if set forth under this cause of action.

19. Plaintiff's husband, Mr. Kelsey, worked as a ink mixer and printer, using solvents from 1988 to 2013, and he alleges that each of the Defendants manufactured, sold or distributed the deleterious toxic products that he breathed and contacted performing his usual and customary work tasks at the printing rooms; and, each of the Defendants was negligent, or alternatively strictly liable as a seller and/or a manufacturer of products which were defectively marketed and designed, as defined under New Jersey products liability laws, and that in doing the acts herein alleged, their fault was a substantial factor in causing his Myelodysplastic Syndrome, related illnesses, and death, rendering defendants liable for the damages and injuries that resulted from this conduct.

20. Mr. Kelsey's job required him to work twelve hour shifts mixing ink and solvents from 55 gallon drums and also to use solvents to clean cylinders. He did this on a regular and continuing basis that exposed him to Defendants' products without warnings by Defendants of the necessity to use respiratory protection, and he was not warned or instructed by Defendants of the need for

special handling and precautions from exposure to avoid injury, while being exposed to the various benzene-based chemicals and other toxic chemicals.

21. Mr. Kelsey was unaware of the risk of personal injury or death caused by working with Defendants' products, and the hazards that they created under his working conditions, which were foreseeable to the defendants.

22. Plaintiff's job required him to pump the benzene-based chemicals from fifty-five gallon drums for use at work for the purpose of making ink, and cleaning the presses. He did this on a regular and continuing basis that exposed him to Defendants' products without warnings by Defendants of the necessity to use respiratory protection, and he was not warned or instructed by Defendants of the need for special handling and precautions from exposure to avoid injury, while being exposed to the various toxic chemicals.

23. Plaintiff was unaware of the risk of personal injury or death caused by working with Defendants' products, and the hazards that they created under his working conditions, which were foreseeable to the defendants.

24. Pleading in the alternative, Plaintiff developed myelodysplastic syndrome because of the negligence of Defendants in designing and marketing their ink and solvents, and failing to test their toxic chemical products, which products were unreasonably dangerous and defective, containing manufacturing, design, and marketing defects under New Jersey Products Liability Law, making defendants liable for negligence and strictly liable under products laws.

25. Defendants knew of the risks of harm, and acted as if they did not care if persons, including Mr. Kelsey, became ill with cancer, or other diseases like MDS, and showed a conscious indifference to the welfare of the people using this product.

26. Plaintiff incorporates herein by reference paragraphs 1 through 25 above as if each was

fully set forth herein, pleading each contention against defendants and each un-named JOHN DOE Defendant.

27. Defendants were negligent and/or strictly liable for the following breaches of duty, or violations of product liability laws:

- a. Defendants had a duty to conform their conduct to a reasonable standard of care in the manufacture, design, and marketing of the product, requiring them to issue proper instructions for the use of the product, and to warn of the dangers of their product's use;
- b. To have inspected and tested the product for safe usage;
- c. To notify plaintiff and the public of the dangers that product posed and the protection needed from this danger; to recommend medical monitoring of the health of users of the product;
- d. Defendants failed to conform its conduct to this appropriate standard of care, failed to warn and instruct on what to do using the products to avoid the risk of injury from toxic exposure, or alternatively, what protective equipment and other safety measures were necessary to use and available to the public;
- e. The packaging and the instructions on the product were defectively designed and contained marketing defects as that term is used in products liability law;
- f. Defendants breached their legal duty to Plaintiff to warn and to instruct of the dangers and risks of harm associated with their product, and they sold a defectively designed package and product;
- g. Defendants' substandard conduct, and/or fault, was a cause-in-fact of the Plaintiff's injuries;
- h. Defendants' substandard conduct, and/or fault under products liability laws was the legal cause of the Plaintiff's injuries, and actual damages.

28. As a result of Defendants' negligence and, in the alternative, fault under strict liability for making and selling defective products, Plaintiff sustained the following injuries and past, present, and future damages for which Plaintiff sues the Defendants:

- a. Developing myelodysplastic syndrome [MDS], Fear of cancer, physical pain and suffering, mental anguish, and loss of enjoyment of life;
- b. Medical, pharmaceutical, physician, hospital, and other medical expenses;
- c. Emotional Pain and Fear of progressing impairments and complications;
- d. Lost wages and benefits in the past, severe diminution of earning capacity for the remainder of his life expectancy;
- e. Permanent physical disabilities and loss of physical function associated with his exposure to Defendant's products.
- f. Travel and other medically related expenses for medical treatment and care.

29. Defendants, each of them, knew that persons working in such industries, including the Plaintiff, would be exposed to said hazardous products and contamination arising from exposure to or the use of harmful and excessive levels of products containing toluene and benzene and other harmful toxic products and substances contained in their product, all at levels unsafe for human health, and failed to exercise reasonable care to make the environment safe.

**COUNT III: Wrongful Death- N.J.S.A 2A:31-4 et seq.**

28. Plaintiff, incorporates the above allegations 1-29 and as the duly appointed, qualified, and acting executor of the estate of Lawrence R. Kelsey, deceased, who died on May 28, 2014, leaving as survivors those persons listed below.

29. The only surviving heirs of Lawrence R. Kelsey, deceased (here referred to as decedents), are:



<u>Name</u>	<u>Relationship</u>
Patricia Kelsey	Widow
Shawn Kelsey	Son
David Kelsey	Son
Katy Kelsey	Daughter

30. As a direct and proximate result of the death of decedent, decedent's surviving heirs have been deprived of decedent's future support, love, care, comfort, affection, society, presence, companionship, counsel, protection, and services, and, as to plaintiff, deprived of consortium, and thus have suffered pecuniary loss.

31. As a further direct and proximate result of the death of the death of the decedent, decedent's heirs have paid funeral and burial expenses.

**COUNT IV: Survival Action – N.J.S.A. 2A-31-1 et seq.**

32. Plaintiff realleges paragraphs 1 to 31 of this Complaint as if fully set forth here.

33. Prior to decedent's death, decedent incurred medical and hospital expenses as a direct and proximate result of defendants' wrongful acts or omissions described in this Complaint.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Patricia Kelsey, individually and on behalf of the estate of Lawrence Kelsey, comes now and prays that after Defendants are made to appear and answer, that Defendants be cast in judgment in excess of \$75,000 together with Defendants JOHN DOES 1 THROUGH 25, each of them, and held liable jointly and severally for the injuries and damages suffered, and punitive damages together with pre-judgment and post-judgment interest as allowed; all general and equitable relief, costs of suit; and for such other and further relief as the Court deems just and proper.

**TRIAL BY JURY DEMANDED.**

Dated: May 27, 2015.

Respectfully submitted,

/s/ Lawrence A Katz, Esq.

Lawrence A. Katz

**Coffey Kay Myers and Olley**

718 Two Bala Plaza

Bala Cynwyd, PA 19004

(610) 668-9800

(610) 667-3352 (facsimile)

lakatzesq@aol.com

MORGAN & PAUL, PLLC

GREGORY G. PAUL, ESQUIRE

Applicant for *Pro Hac Vice*

PA ID Number: 83334

618 Beaver Street, Suite 202

Sewickley, PA 15143

(888) 967-5674

(888) 822-9421 (facsimile)

gregpaul@morgan-paul.com

---

S. REED MORGAN

P.O. Box 38

Comfort, TX 78013

Telephone (830) 995-2464

Facsimile (830) 995-2728

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Patricia Kelsey, and as Administrator of the Estate of Lawrence Kelsey

(b) County of Residence of First Listed Plaintiff KENTUCKY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)

Lawrence A. Katz, Esquire, Coffey Kaye Myers & Olley Suite 718, Two Bala Plaza, Bala Cynwyd, PA 19004

DEFENDANTS

Safety Kleen, Inc., Ashland, Inc., and Does 1-25.

County of Residence of First Listed Defendant LINDEN, NJ (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Section 1332

Brief description of cause: Inhalation and exposure to toxic chemicals.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 05/27/2015 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE