

IN THE 19TH JUDICIAL CIRCUIT COURT, COLE COUNTY, MISSOURI

CHRISTOPHER RUSSELL)
 1007 Lomo Drive)
 Jefferson City, Missouri 65109)

AND)

ELIZABETH RUSSELL)
 1007 Lomo Drive)
 Jefferson City, Missouri 65109)

AND)

Xtreme Body & Paint, LLC)
 1007 Lomo Drive)
 Jefferson City, Missouri 65109)

Plaintiffs,)

VS.)

MFA OIL Company)
 A Missouri Corporation)
 (Serve: Janice Serpico)
 One Ray Young Drive)
 Columbia, Missouri 65201)

AND)

CHARLIE HOUCHINS)
 7265 Dyers Drive)
 Fulton, Missouri 65251)

Defendants.)

No. _____

PLAINTIFFS' PETITION FOR DAMAGES

(PERSONAL INJURY AND PROPERTY DAMAGE)

Plaintiffs for their cause of action against Defendants, state and allege as follows:

ALLEGATIONS COMMON TO ALL COUNTS:

1. Plaintiff Christopher Russell is an individual who now and at the time of the incident giving rise to this petition, resides at 1007 Lomo Drive, Jefferson City, MO 65109.

2. Plaintiff Elizabeth Russell is an individual who now and at the time of the incident giving rise to this petition, resides at 1007 Lomo Drive, Jefferson City, MO 65109.

3. Plaintiff Elizabeth Russell, at all relevant times herein, was and is the lawful spouse of Plaintiff Christopher Russell.

4. Xtreme Body & Paint, LLC is a Missouri Limited Liability Company owned and operated by Plaintiffs, Christopher and Elizabeth Russell with its principle place of business at 1007 Lomo Drive, Jefferson City, MO 65109.

5. MFA Oil Company is a Missouri Corporation doing business in Missouri and service may be obtained upon MFA Oil Company (hereinafter "MFA") by serving its registered agent, Janet Serpico, One Ray Young Drive, Columbia, MO 65201.

6. MFA is engaged in (a) the retail marketing and distribution of propane for residential, commercial, industrial, agricultural, and other retail uses; (b) the wholesale marketing and distribution of propane and natural gas liquids and crude oil to the retail propane industry, the chemical and petrochemical industries and other commercial and agricultural markets; (c) the repair and maintenance of propane heating systems and appliances; and (d) the sale of propane related supplies, appliances, and other equipment.

7. MFA is a distributor of propane gas to wholesale and retail customers. MFA distributes millions of gallons of propane and other natural gas liquids to independent dealers, resellers and end users.

8. All actions of MFA were performed by and through their agents and employees, who at all times were acting within the course and scope of their employment or agency with MFA.

9. Defendant Charles Houchins is an individual who at all times relevant was an employee of Defendant MFA and can be served at: 7265 Dyers Drive, Fulton, Missouri 65251.

10. On or about January 30 and 31, 2019, Christopher and Elizabeth Russell, had both their home and business, Xtreme Body & Paint, located at 1007 Lomo Drive Jefferson City Missouri 65109.

11. Xtreme Body & Paint (hereinafter “Xtreme”) is a business engaged primarily in painting of commercial vehicles as well as collision and/or body repairs and powder coating of various equipment.

12. Xtreme operates a Powder Coat Building, with an attached area referred to as “the garage” and a separate larger building referred to as “the main building.”

13. Prior to January 30, 2019, MFA had removed approximately two propane tanks from Plaintiffs’ property that were connected to the Powder Coat Building via an underground gas line.

14. When MFA removed the two gas tanks, MFA left the underground line connected to the Powder Coat Building rather than cutting and capping the line at the Powder Coat Building. The unused line was connected and supplied with propane from two 1000-gallon propane tanks adjacent to the powder coat building. The underground and unused line is hereinafter sometimes referred to as “the line to nowhere.”

15. The line to nowhere from the Powder Coat Building, had a shut-off valve connected to prevent propane from the 1000-gallon tanks from filling the line. This shut-off valve was located at the rear of the Powder Coat Building,

16. When MFA removed the old tanks, MFA made the conscious decision to leave the line to nowhere connected to the Powder Coat Building rather than to cut and cap this unused line, creating unnecessary and foreseeable danger to persons and property.

17. Before January 30, 2019, two, 1,000 -gallon Liquid Petroleum (“LP gas”) tanks (“the tanks”) were installed and located near the southwest corner of the Powder Coat Building. These 1,000-gallon tanks were installed after the two tanks described above were removed by MFA. These newer 1,000-gallon tanks supplied the residence, the Powder Coat Building, and the line to nowhere.

18. The regulator, gas piping, and fittings connected to the tanks were owned by MFA.

19. MFA sold, supplied, and delivered the LP gas contained in the 1,000-gallon LP gas tanks connected to the Powder Coat Building, residence, and unused underground line.

20. At all times material to this petition, MFA was required to operate in compliance with Mo. Rev. Stat. § 323.010 through § 323.210 and 2 C.S.R. 90-10.001 through 2 C.S.R. 90-10.120.

21. MFA had a legal duty to Plaintiffs to exercise ordinary and reasonable care for Plaintiffs’ personal safety, security, and protection.

22. MFA had a legal duty to warn of the potential of LP gas to cause harm to Plaintiffs and their property.

23. Prior to January 31, 2019, MFA delivered LP gas to the tanks connected to the Powder Coat Building and residence.

24. On January 29, 2019, Plaintiff Christopher Russell contacted MFA and notified Charlie Houchins that some of the Powder Coat Building's propane appliances were not working.

25. After another call to MFA by Plaintiff Christopher Russell on January 30th MFA sent employees, including Charles Houchins, to the Powder Coat Building on January 30, 2019.

26. MFA employees removed and reinstalled a regulator at the rear of the Powder Coat Building, and turned on the shut-off valve to the line to nowhere, causing hundreds of gallons of propane to escape underground.

27. MFA never conducted a leak test at the Powder Coat Building or residence on or after January 30, 2019.

28. On or about January 30, 2019 hundreds of gallons of propane escaped the unused line into the ground under and around the Powder Coat Building as well as the Main Building.

29. The escaped propane vapors entered the Powder Coat Building's attached garage, up to and including to the explosive limit of atmospheric saturation.

30. There was an isolated fire and explosion in the "furnace room" (a small utility closet labeled "furnace room," no actual furnace in the room) of the Main Building on January 30, 2019 due to propane vapors entering from underground and along various conduit.

31. On January 31, 2019, Plaintiff Christopher Russell entered the Powder Coat Building's attached garage at approximately 4:30 a.m.

32. An explosion and fire occurred at the Powder Coat Building's garage shortly after Plaintiff Christopher Russell entered the garage.

33. At the time of the explosion, Plaintiff Christopher Russell was inside the garage and was severely burned.

34. Each of the acts or omissions committed by MFA set forth in this Petition contributed to and directly and proximately caused the explosion and fire at the Powder Coat Building Garage and resulting injuries to Plaintiffs.

VENUE AND JURISDICTION

35. Venue and jurisdiction are proper in this county pursuant to R.S.Mo. § 508.010, as all acts and injuries occurred in Cole County, Missouri. There is no diversity of citizenship jurisdiction pursuant to 28 U.S.C.A. § 1331, §1332 or §1441(b) because Plaintiffs and Defendants are all citizens of the State of Missouri and/or Defendant MFA has its headquarters in the State of Missouri.

COUNT I NEGLIGENCE
(Plaintiffs v. MFA and Charlie Houchins)

36. To the extent they do not conflict with the allegations contained in this count, Plaintiffs incorporate all other allegations of this Petition as if more fully set forth herein.

37. Defendants knew of prior fires, explosion, injuries, and deaths caused by escaped LP gas.

38. Prior to January 30 and 31, 2019, the LP gas of MFA was introduced into the stream of commerce and was ultimately supplied to the Powder Coat Building.

39. Defendants knew, or in the exercise of reasonable and ordinary care should have known that:

a. Opening the shut-off valve to the unused underground gas lines would cause the release of propane gas.

b. LP gas that escapes underground will take the path of least resistance and migrate underground;

c. LP gas that escapes underground can become trapped in certain areas;

d. LP gas as well as vapors from LP gas, that escapes underground can and will emanate from in and/or around drains and sewer lines into structures.

e. LP gas in its natural state is odorless;

f. LP gas is heavier than air;

g. The odorant used in their LP gas, ethyl mercaptan, in the event of a leak, will fade, oxidize, or absorb to particular surface;

- h. LP gas and ethyl mercaptan are subject to stratification, and as a result of stratification, LP gas may not be smelled;
- i. In the event of a leak, LP gas will remain in an enclosed area, such as the Powder Coat Building Garage, for a relatively long period of time without dissipating;
- j. The odor of ethyl mercaptan could be masked or covered up by other odors.

(These six characteristics (e-j) will be referred to as “LP gas and ethyl mercaptan’s characteristics”);

40. MFA owed duties to the ultimate consumers, including Plaintiffs, to properly select, train, and inspect its employees.

41. MFA owed duties to the ultimate consumers, including Plaintiffs, to have and adequate safety program in place to protect LP gas consumers, like Plaintiffs, from the dangers associated with LP gas.

42. MFA owed duties to the ultimate consumers, including Plaintiffs, to warn of the latent risks associated with those selections of the products offered by MFA.

43. Defendants owed further duties to the ultimate including, including Plaintiffs, to;
 - a. Perform adequate and appropriate leak checks on propane tanks and propane system;
 - b. Install and maintain an adequate, appropriate, and reasonably safe propane system on Plaintiffs' property;
 - c. Adequately inspect, analyze, and/or repair Plaintiffs' propane system when issues were reported to them;
 - d. Remove shut-off valves and/or cap propane gas lines that are no longer in use;
 - e. Ensure that shut-off valves are not opened erroneously by their employees.
 - f. Warn those persons in the chain of distribution of LP gas, and the ultimate consumers, including the Plaintiffs, of LP gas and ethyl mercaptan's characteristics;
 - g. Take steps to learn of the dangerous propensities of LP gas and ethyl mercaptan as set forth above and to inform the ultimate consumer, including plaintiffs;
 - h. Properly train and supervise its employees as to the dangerous nature of LP gas, the use of LP gas, the applicable laws, codes, regulations, standards, and operating procedures;
 - i. Warn the ultimate consumers, including Plaintiffs, about the need for LP gas detectors;
 - j. Supply LP gas consumers and users with LP gas detectors;

44. Defendants were negligent and breached their duties to Plaintiffs by knowing of prior LP gas fires and explosions, including prior LP gas fires and explosions resulting from the negligence and incompetence of MFA in selling, delivering, maintaining, and/or handling of propane gas and propane gas systems, and:
 - a. Failing to perform adequate and appropriate leak checks on Plaintiffs' propane gas system;
 - b. Failing to install and maintain an adequate and appropriate propane gas system on Plaintiffs' property;
 - c. Failing to adequately inspect, analyze, and/or repair Plaintiffs' propane system for possible leaks on or before January 30, 2019;
 - d. Failing to remove shut-off valves and/or cap previous propane lines no longer in use on Plaintiffs' property;
 - e. Opening a shut-off valve on Plaintiffs' propane system to an underground line not connected to another terminus;
 - f. Failing to properly select, train, and inspect its employees;
 - g. Failing to have an adequate safety program in place to protect LP gas consumers, including Plaintiffs, from the dangers and hazards associated with LP gas;
 - h. Failing to take steps to learn of the dangerous propensities of LP gas and ethyl mercaptan as set forth above and to warn the ultimate consumer, including Plaintiffs;

- i. Failing to warn those persons or companies in the chain of distribution in particular, the ultimate consumers, including Plaintiffs, of said dangerous propensities.
- j. Failing to train and supervise its employees as to the dangerous propensities of LP gas, the use of LP gas, the applicable laws, codes, regulations, standards, and operating procedures;
- k. Failing to give information and warnings to the Plaintiffs that LP gas in its natural state is odorless, colorless, and heavier than air;
- l. Failing to warn Plaintiffs about the need for LP gas detectors;
- m. Failing to supply LP gas detectors to LP gas consumers and/or users, including Plaintiffs;
- n. Failing to have and/or use a warning system when irregular leaks of propane from the tanks on plaintiffs' property are identified.

45. As a direct and proximate result of the negligent acts and omissions of defendants, an explosive mixture of LP gas vapors accumulated in the Powder Coat Building and was ignited, resulting in a violent explosion and fire that directly caused Plaintiff Christopher Russell to sustain severe injuries including, but not limited to: severe burns of the head, neck, arms, hands and body; substantial damage to his eyes; scarring; severe pain, anguish, and suffering; all of which required hospitalization and treatment causing Plaintiff Christopher Russell to incur substantial medical costs. As a result of these permanent, disabling, and disfiguring injuries, Plaintiff Christopher Russell will continue to endure severe pain, anguish, and suffering. He will continue to incur medical expenses, and has lost and will continue to lose earnings from work.

46. As a further direct and proximate result of the negligence of defendants, Xtreme's property and customer inventory was severely damaged and/or destroyed. Xtreme further suffered lost revenue, profits, and other business losses as a direct and proximate result of the explosion.

47. Defendant knew that their conduct involved an unreasonable risk to LP gas consumers, including Plaintiffs.

48. The actions, conduct, and omissions of defendants were committed with complete indifference to or in conscious disregard for the safety of Plaintiff Christopher Russell and others. By virtue of the attitude and conduct of defendants, Plaintiffs are entitled to punitive damages in the amount that will properly punish defendants, and that will deter them and others from like conduct.

WHEREFORE, Plaintiffs pray for judgement against Defendants, under Count I, for general damages in such sum as is fair and reasonable, for special damages in such sum as proven at trial, punitive damages in an amount that will properly punish MFA and deter them and others from like conduct, for the Plaintiffs' cost and expenses, and for such other relief as the Court deems just and proper.

COUNT II - IMPLIED WARRANTY
(Plaintiffs v. MFA)

49. To the extent they do not conflict with the allegations contained in this count, Plaintiffs incorporate all other allegations of this Petition as though more fully set forth herein.

50. As the designer, assembler, manufacturer or suppliers of the LP gas to the residence, MFA Oil Company, by introducing said LP gas into the stream of commerce, impliedly warranted that said LP gas was of merchantable quality, reasonably safe, suited and fit for the use intended, was not defective and was not unreasonably hazardous or dangerous for normal use.

51. The intended use for the LP gas supplied by MFA Oil Company was for use in LP gas appliances, including those in the powder coat building and MFA Oil Company knew when they introduced the LP gas into the stream of commerce of the use for which it was intended.

52.. Contrary to these warranties, however, the LP gas system was not of merchantable quality, not reasonably safe, not suited and fit for the use intended, but rather was defective and was unreasonably hazardous or dangerous for normal use.

53. The LP gas system supplied by MFA was designed, engineered, manufactured and furnished in a manner, not reasonably safe, not suited and fit for the use intended, but rather was defective and was unreasonably hazardous and dangerous for normal use and, thereby, MFA breached their implied warranties because:

- a. An old propane gas line remained attached to the gas system supplied by the new tanks installed by MFA;

b. MFA failed to cap the old propane gas line and instead merely relied on a shut-off valve;

54. As a direct and proximate result of the breaches of implied warranties by MFA, LP gas was allowed to escape through the LP gas system, leading to the explosion and fire in the Powder Coat Building as well as the Furnace Room of the Main Building.

55. As a direct and proximate result of the negligent acts and omissions of defendants, an explosive mixture of LP gas vapors accumulated in the Powder Coat Building and was ignited, resulting in a violent explosion and fire that directly caused Plaintiff Christopher Russell to sustain severe injuries including, but not limited to: severe burns of the head, neck, arms, hands and body; substantial damage to his eyes; scarring; severe pain, anguish, and suffering; all of which required hospitalization and treatment causing Plaintiff Christopher Russell to incur substantial medical costs. As a result of these permanent, disabling, and disfiguring injuries, Plaintiff Christopher Russell will continue to endure severe pain, anguish, and suffering. He will continue to incur medical expenses, and has lost and will continue to lose earnings from work.

56. As a further direct and proximate result of the negligence of MFA, Xtreme's property and customer inventory was severely damaged and/or destroyed. Xtreme further suffered lost revenue, profits, and other business losses as a direct and proximate result of the explosion.

57. MFA knew that their conduct involved an unreasonable risk to LP gas consumers, including Plaintiffs.

58. The actions, conduct, and omissions of defendants were committed with complete indifference to or in conscious disregard for the safety of Plaintiff Christopher Russell and others. By virtue of the attitude and conduct of defendants, Plaintiffs are entitled to punitive damages in the amount that will properly punish defendants, and that will deter them and others from like conduct.

WHEREFORE, Plaintiffs pray for judgement against Defendants, under Count II, for general damages in such sum as is fair and reasonable, for special damages in such sum as proven at trial, punitive damages in an amount that will properly punish MFA and deter them and others from like conduct, for the Plaintiffs' cost and expenses, and for such other relief as the Court deems just and proper.

**COUNT III - STRICT PRODUCT LIABILITY -
VIOLATION OF MO. REV. STAT. §537.760
 (Plaintiffs v. MFA)**

59. To the extent they do not conflict with the allegations contained in this count, Plaintiffs incorporate all other allegations of this Petition as though more fully set forth herein.

60. MFA transferred/sold LP gas systems in the course of their business.

61. MFA sold the LP gas system with a “line to nowhere,” relying on a shut-off valve rather than eliminating the hazard by cutting and capping the line.

62. The LP gas system was then in a defective condition and unreasonably dangerous when put to a reasonably anticipated use.

63. The LP gas system was used in a manner reasonably anticipated.

64. The LP gas system was then unreasonably dangerous when put to a reasonably anticipated use without knowledge of its characteristics.

65. As a direct and proximate result of the defective condition as it existed when the LP gas system was sold and installed and as a result of the LP gas system being sold without adequate warnings, LP gas was allowed to escape, resulting in a violent explosion.

66. As a direct and proximate result of the negligent acts and omissions of defendants, an explosive mixture of LP gas vapors accumulated in the Powder Coat Building and was ignited, resulting in a violent explosion and fire that directly caused Plaintiff Christopher Russell to sustain severe injuries including, but not limited to: severe burns of the head, neck, arms, hands and body; substantial damage to his eyes; scarring; severe pain, anguish, and suffering; all of which required hospitalization and treatment causing Plaintiff Christopher Russell to incur

substantial medical costs. As a result of these permanent, disabling, and disfiguring injuries, Plaintiff Christopher Russell will continue to endure severe pain, anguish, and suffering. He will continue to incur medical expenses, and has lost and will continue to lose earnings from work.

67. As a further direct and proximate result of the negligence of MFA, Xtreme's property and customer inventory was severely damaged and/or destroyed. Xtreme further suffered lost revenue, profits, and other business losses as a direct and proximate result of the explosion.

68. As further direct and proximate result of the negligence of MFA and resulting injuries to Plaintiff Christopher Russell as set forth in the preceding paragraphs of this Petition, Plaintiff Elizabeth Russell has suffered a loss of service and consortium, and will continue to do so in the future.

69. MFA knew that their conduct involved an unreasonable risk to LP gas consumers, including Plaintiffs.

70. The actions, conduct, and omissions of defendants were committed with complete indifference to or in conscious disregard for the safety of Plaintiff Christopher Russell and others. By virtue of the attitude and conduct of defendants, Plaintiffs are entitled to punitive damages in an amount that will properly punish defendants, and that will deter them and others from like conduct.

WHEREFORE, Plaintiffs pray for judgement against Defendants, under Count III, for general damages in such sum as is fair and reasonable, for special damages in such sum as proven at trial, punitive damages in an amount that will properly punish MFA and deter them and others from like conduct, for the Plaintiffs' cost and expenses, and for such other relief as the Court deems just and proper.

**COUNT IV – NEGLIGENCE PER SE
(Plaintiffs v. All Defendants)**

71. To the extent they do not conflict with the allegations contained in this count, Plaintiffs incorporate all other allegations of this Petition as though more fully set forth herein.

72. At all times material hereto, was required to operate in compliance with Mo. Rev. Stat. § 323.010 through § 323.210 and 2 C.S.R. 90-10.001 through 2 C.S.R. 90-10.120.

73. MFA violated these statutes and regulations.

74. Plaintiffs are members of the class of persons intended to be protected by these statutes and regulations.

75. The injuries and damages incurred by Plaintiffs are of the type that these statutes and regulations were designed to prevent.

76. The violation of the statutes and regulations by MFA was a proximate cause of the explosion.

77. As a direct and proximate result of the explosion, Plaintiff Christopher Russell sustained severe injuries including, but not limited to: severe burns of the head, neck, arms, and hands; substantial damage to his eyes; scarring; severe pain, anguish, and suffering; all of which required hospitalization and treatment causing Plaintiff Christopher Russell to incur substantial medical costs. As a result of these permanent, disabling, and disfiguring injuries, Plaintiff Christopher Russell will continue to endure severe pain, anguish, and suffering. He will continue to incur medical expenses, and has lost and will continue to lose earnings from work.

78. As a further direct and proximate result of the negligence of MFA, Xtreme's property and customer inventory was severely damaged and/or destroyed. Xtreme further suffered lost revenue, profits, and other business losses as a direct and proximate result of the explosion.

79. As further direct and proximate result of the negligence of MFA and resulting injuries to Plaintiff Christopher Russell as set forth in the preceding paragraphs of this Petition, Plaintiff Elizabeth Russell has suffered a loss of service and consortium, and will continue to do so in the future.

80. MFA knew that their conduct involved an unreasonable risk to LP gas consumers, including Plaintiffs.

81. The actions, conduct, and omissions of defendants were committed with complete indifference to or in conscious disregard for the safety of Plaintiff Christopher Russell and others. By virtue of the attitude and conduct of defendants, Plaintiffs are entitled to punitive damages in an amount that will properly punish defendants, and that will deter them and others from like conduct.

WHEREFORE, Plaintiffs pray for judgement against Defendants, under Count IV, for general damages in such sum as is fair and reasonable, for special damages in such sum as proven at trial, punitive in an amount that will properly punish MFA and deter them and others from like conduct, for the Plaintiffs' cost and expenses, and for such other relief as the Court deems just and proper.

COUNT V-LOSS OF CONSORTIUM

(Plaintiff Elizabeth Russell v. Defendant MFA and Charlie Houchins)

82. To the extent they do not conflict with the allegations contained in this count, Plaintiffs incorporate all other allegations of this Petition as though more fully set forth herein.

83. At all times material hereto, Plaintiff Elizabeth Russell is the wife of Plaintiff Christopher Russell and was entitled to his services, society, and companionship.

84. As a direct and proximate result of the negligence and resulting injuries to Plaintiff Christopher Russell as set forth in the preceding paragraphs of this Petition, Plaintiff Elizabeth Russell has suffered a loss of service, society, companionship, and consortium, and will in the future continue to do so.

WHEREFORE, Plaintiff Elizabeth Russell prays for judgement against Defendants under Count V for general damages in such sum as is fair and reasonable, punitive damages, special damages in such sum as proven at trial for her costs and expenses incurred herein, and for such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial on all issues.

Respectfully submitted,

THE ACCURSO LAW FIRM
A Professional Corporation

/s/Louis C. Accurso

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