

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:20-cv-2533_____

4455 JASON ST, LLC,

and

THE DENVER BEER COMPANY, LLC,

Plaintiffs,

v.

MCKESSON CORPORATION,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT AND COST RECOVERY

Plaintiffs, 4455 Jason St, LLC (“Jason Street”) and The Denver Beer Company, LLC (“DBC”), by and through their attorneys, Gablehouse Granberg, LLC, state the following as their Complaint against McKesson Corporation (“McKesson”):

INTRODUCTION

1. This action is brought to recover response costs pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

("CERCLA") and Colorado law.

2. This matter arises from the discovery of the release and threatened release of hazardous substances into the environment at the property currently known as 4455 Jason Street in Denver, Colorado (the “Site”).

3. The release and threatened release of hazardous substances are attributable to the past operations of a chemical distribution and repackaging facility (the “Chemical Distribution Facility”) on portions of the Site.

4. Plaintiffs have incurred and will continue to incur response costs in relation to investigating, assessing, evaluating, mitigating, removing, and remediating the environmental contamination attributable to the Chemical Distribution Facility.

5. McKesson is the legal successor to the companies that owned and operated the Chemical Distribution Facility. As such, McKesson is responsible for the response costs incurred in relation to the former Chemical Distribution Facility’s operations.

6. Plaintiffs bring this action against McKesson pursuant to CERCLA and Colorado law to: (1) recover the response costs and damages they have incurred and will incur in relation to the environmental contamination at the Site; and (2) obtain a declaratory judgment that McKesson is responsible for reimbursement of past and future response costs incurred by Plaintiffs at the Site.

PARTIES

7. Plaintiff, Jason Street, is a Colorado limited liability company with its principal place of business in Denver, Colorado.

8. Plaintiff, DBC, is a Colorado limited liability company with its principal place of business in Denver, Colorado.

9. Upon information and belief, McKesson is a Delaware corporation with its principal place of business in Irving, Texas.

10. Upon information and belief, McKesson is the legal successor to Merchants Chemical Company, McKesson & Robbins, Inc., Foremost-McKesson and McKesson Chemical Company.

JURISDICTION AND VENUE

11. This action arises under Sections 107(a) and 113(f)(1) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(f)(1), and Colorado law.

12. This Court has original jurisdiction over the CERCLA claims pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 9613(b).

13. Venue is proper in this District under 28 U.S.C. § 1391(b) because the property that is the subject of this action is located within the District. Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) because the release or releases of hazardous substances and related damages giving rise to this action occurred in this Judicial District.

14. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over the state law claim for trespass because this claim arises out of the same subject matter as, and is related to, the federal CERCLA claims.

GENERAL ALLEGATIONS

15. Jason Street is the current owner of the Site.

16. In or about September 2016, Jason Street purchased the Site via an assignment of a purchase and sale contract from DBC, the then tenant of the Site.

17. DBC remains a tenant at the Site.

18. Upon information and belief, the Chemical Distribution Facility was operated on portions of the Site from approximately 1947 to 1972.

19. As the successor in interest to the entities that owned and operated the Chemical Distribution Facility, McKesson is liable for the response costs incurred by Plaintiffs in relation to the release of hazardous substances that occurred on the Site during its operation as the Chemical Distribution Facility.

20. In or about November 1947, Merchants Chemical Company (“Merchants”) acquired a portion of the Site, which was then known as 1211 44th Avenue, Denver, Colorado.

21. Upon information and belief, Merchants established the Chemical Distribution Facility shortly after the property acquisition.

22. In or about 1958, McKesson & Robbins, Inc. acquired Merchants. Through this acquisition, McKesson & Robbins, Inc. acquired the Site and Chemical Distribution Facility.

23. McKesson & Robbins and its successors Foremost-McKesson and McKesson Chemical Company (McKesson & Robbins, Foremost-McKesson, and McKesson Chemical Company are collectively referred to herein as the “McKesson Chemical Companies”) aggregately owned and operated the Chemical Distribution Facility from approximately 1958 to 1972.

24. As part of the operations of the Chemical Distribution Facility, Merchants and the McKesson Chemical Companies received bulk shipments of various chemicals, including TCE and PCE, along with solvents and other substances containing TCE and PCE or their constituents.

25. TCE, PCE, and their constituents are hazardous substances under Colorado's Voluntary Clean-up and Redevelopment Act, Section 25-16-302, C.R.S., and CERCLA Section 102, 42 U.S.C. § 9602.

26. The bulk chemical deliveries were offloaded, handled, stored, and repackaged for distribution to various regional commercial and industrial operations.

27. Advertisements from the relevant timeframe indicate that Merchants and the McKesson Chemical Companies regularly handled and sold TCE and PCE. Merchants and the McKesson Chemical Companies also advertised for the sale of other substances containing TCE and PCE, such as carbon tetrachloride, chloroform, chloroethene (a/k/a vinyl chloride monomer or VCM), and styrene monomer.

28. Historical aerial photographs of the Chemical Distribution Facility's operations show a large number of tanks, barrels, totes, and other containers storing bulk and repackaged chemicals in an outdoor storage lot along the east side of the property. These photos also show loading racks and a large loading dock used for the handling and processing of chemicals.

29. Upon information and belief, TCE and PCE and substances containing TCE and PCE were spilled and released to the environment during the offloading, handling, and repackaging processes.

30. Upon information and belief, TCE, PCE, and substances containing TCE and PCE leaked from the tanks, drums, totes, and other storage containers used by the Chemical Distribution Facility.

31. In or about October 2015, DBC began the investigation of environmental contamination at the Site by engaging a qualified environmental professional to complete a

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