

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

**ANN MARIE CAFFREY, a New Mexico
resident, as the personal representative of
the ESTATE OF CHRISTOPHER CAFFREY,
deceased, and ANN REDDY, a New Mexico
resident,**

Plaintiffs,

v.

No. _____

**MALO, INC., an Oklahoma corporation,
and MASSMANN ENTERPRISES, INC.,
a Missouri corporation,**

Defendants.

COMPLAINT FOR WRONGFUL DEATH

Plaintiffs, Ann Marie Caffrey, as personal representative for the wrongful death claim of her brother, Christopher Caffrey, deceased, and Christopher's mother, Ann Reddy, through their attorneys, Willis H. Blacknall, III of Blacknall & Little LLP, Roger Dodd of Dodd & Burnham, PC, and Randi McGinn of McGinn, Carpenter, Montoya & Love, P.A., state the following as their Complaint:

PARTIES

1. At the time of his Type-A *Clostridium botulinum* "botulism" death on September 9, 2007, Christopher Caffrey (52), was a resident and domiciliary of Bernalillo, New Mexico.
2. Christopher Caffrey was never married and therefore left no surviving spouse.
3. Christopher Caffrey never had any children and therefore left no surviving children.
4. Christopher Caffrey's father passed away in 1970.

5. Plaintiff Ann Reddy is Christopher Caffrey's mother and is a resident and domiciliary of Albuquerque, New Mexico.

6. Ann Reddy is 86 years old and suffers from progressive Alzheimer's disease. Her condition requires constant care from others, as she has the typical brain function limitations (i.e., memory loss, disorientation, difficulty comprehending, etc.) associated with Alzheimer's disease.

7. Plaintiff Ann Marie Caffrey is Christopher Caffrey's sister and is an adult resident and domiciliary of Albuquerque, New Mexico.

8. Ann Marie Caffrey was appointed by the New Mexico state district court as the duly appointed personal representative of Christopher Caffrey's Estate for purposes of bringing wrongful death claims for the benefit of Christopher Caffrey's next of kin and is authorized to bring all legal claims and causes of action against those corporations, business, and individuals responsible for the wrongful death of Christopher Caffrey.

9. Before Ann Marie Caffrey's appointment as the personal representative of Christopher Caffrey's Estate, and while she was still able to make her own decisions, Ann Reddy concurred in Ann Marie Caffrey's appointment as personal representative, agreed that a lawsuit should be brought against those who caused her son's death, and agreed that Ann Marie Caffrey should make any and all decisions related to Christopher Caffrey's wrongful death claims. Ann Reddy is now unable to make decisions or travel to the State of Georgia because of her ongoing battle with Alzheimer's disease.

10. Defendant Malo, Inc. ("Malo") is an Oklahoma corporation that has its principal place of business located at 12111 East 51st Street, Suite 106, Tulsa, Oklahoma 74146. Malo is a

manufacturer, wholesaler, and servicer of crateless retort systems, which at all times relevant hereto was doing business in Augusta, Georgia with the Bumble Bee or Castleberry's corporations.

11. At all times pertinent hereto, Defendant Malo was acting through its officers, agents, employees, and subsidiary corporate entities, for which it is liable under the theories of agency and *respondeat superior*.

12. Defendant Massmann Enterprises, Inc. ("Massmann") is a Missouri corporation that has its principal place of business located at 1314 North Wheeling Avenue, Tulsa, Oklahoma 74110 and/or 12111 East 51st Street, Suite 106, Tulsa, Oklahoma 74146.

13. Massmann is the parent company of Malo, Inc. and owns 100% of the stock of that company. Massmann is a manufacturer of food-processing equipment, which at all times relevant hereto was doing business in Augusta, Georgia with the Bumble Bee or Castleberry's corporations.

14. At all times pertinent hereto, Defendant Massmann was acting through its officers, agents, employees, and subsidiary corporate entities, for which it is liable under the theories of agency and *respondeat superior*.

15. In a case filed in the spring of 2009 in federal court in the Southern District of Georgia, it is alleged by Bumble Bee Foods, LLC, that Defendants Massmann and Malo (collectively referred to herein as "Malo"), designed a defective crateless retort system, which equipment was utilized by Bumble Bee in its Augusta, Georgia plant owned by Castleberry's Food Company ("Castleberry's"), resulting in the production of contaminated products.

16. Bumble Bee additionally has alleged that Malo not only manufactured defectively designed and engineered equipment, but that it failed to use ordinary care and failed to warn

Bumble Bee of known risks associated with the design of the Malo system in the delivery of purchase, installation, and operation services at the Castleberry's facility.

17. Bumble Bee alleged that Malo's conduct is the direct and proximate result of the distribution of botulism-poisoned food products across the country and the damages it has suffered by way of recall costs, plant closure, liability claims, and other damages.

18. Bumble Bee's allegations, if true, would mean that the negligence or misconduct of the Malo defendants were also the cause of a Castleberry's botulism-tainted product reaching and killing Christopher Caffrey in the State of New Mexico.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the parties are citizens of different states and the amount in controversy exceeds \$75,000.

20. Venue is appropriate pursuant to 28 U.S.C. § 1391(a)(2) because the contract or agreement entered into between Malo/Massmann and Bumble Bee/Castleberry's was made or executed within this judicial district and the events, acts, or omissions giving rise to the claims related to the production of the botulism-tainted product that killed Chris Caffrey stated herein occurred within this judicial district.

21. Christopher Caffrey consumed the botulism-tainted product that killed him in New Mexico; therefore, the place of his injury was New Mexico and the substantive law of New Mexico governs the resolution of Plaintiffs' wrongful death claims under Georgia law and the doctrine of *lex loci delicti*.

FACTUAL BACKGROUND

22. From 2005 until late 2008, Bumble Bee owned and operated the Castleberry's plant in Augusta, Georgia.

23. Until late 2008, Castleberry's produced various food products including canned chili, beef stew, and hot dog chili sauce, under the Castleberry's brand name and other brand names. These products were produced at the Augusta, Georgia plant.

24. In 2000, Castleberry's purchased a crateless retort system that was engineered and manufactured by Defendants Massmann and Malo to be installed in its food processing plant in Augusta, Georgia.

25. Defendants Massmann and Malo entered into an agreement with Castleberry's to design, configure, install, monitor, inspect, and maintain the crateless retort system in the Augusta plant.

26. According to Bumble Bee, after entering its agreement, Defendants Massmann and Malo knew or should have known that a properly engineered, configured, designed, and operating crateless retort system was necessary to adequately sterilize the canned food being produced at Bumble Bee's plant by heating and sterilizing the canned food with steam at temperatures higher than boiling, to ensure that all dangerous bacteria (including *Clostridium botulinum*) were destroyed before the food was packaged and shipped to consumers.

27. According to Bumble Bee, Defendants Massman and Malo knew or should have known that if the system was improperly engineered or designed; if there was a defect or if there was a failure in crateless retort system it engineered, designed, installed and maintained, the result would be the nationwide distribution of tainted canned food products with the potential for injury and death to citizens of other states.

28. According to Bumble Bee, the FDA concluded the probable cause of the under-processing of the canned food that led to the botulism outbreak at issue in this case was a leaking cooling water valve and a back up in the water system in the Malo crateless retort system that resulted in cans not reaching the critical higher-than-boiling temperature and pressure necessary for safe sterilization.

29. Bumble Bee alleges that one or more of the following defects of the Malo crateless retort system created an unreasonable safety risk and are the direct cause of the under-processing of the canned food that led to the botulism outbreak, including:

- a. the design permitted the leak of cooling water valve to occur contrary to 21 CFR 113.40(a)(11);
- b. the design prevented the water from being expelled from the system and/or permitted the leak to escape detection;
- c. the "T" shape connection did not allow water to be expelled below the ½ inch condensate drain pipe and was not engineered in a position readily visible to the retort operator;
- d. the condensate drain was susceptible to clogging, lacked a device to detect, record, and alert for clogging, and clogging was not readily apparent to the operator;
- e. the 90 degree elbow-shaped vent pipe on the cushion water tank was unreasonably safe;
- f. the cooling water valve was prone to deterioration under the heat and pressure conditions present during the cook cycle, and was thus susceptible to leakage, could not expel leakage, and lacked a detection system;
- g. the sight glass for the cushion water tank was out of view of the operator, as it was beneath and the retort operator platform;
- h. under certain conditions, cushion water could flow upstream;
- i. under high pressure conditions the single leak-detection system could fail; and
- j. the system lacked a double block and bleed leak-detection system or any similarly suitable leak-blocking or leak-detecting control devices.

30. According to Bumble Bee, Malo was aware of these defects before the *Clostridium botulinum* Castleberry's outbreak yet took no steps to advise its customers or consumers.

31. In 2007, contaminated products were processed at the Castleberry's plant on the Malo retorts.

32. In New Mexico, Christopher Caffrey consumed one of the contaminated products, which led to six weeks of painful paralysis and decline, followed by his September 9, 2007 death.

COUNT I:
NEGLIGENCE AND NEGLIGENCE PER SE AGAINST DEFENDANTS MALO AND MASSMANN

All previous paragraphs are incorporated herein by reference.

33. A manufacturer of equipment that will be used to distribute canned food products nationwide has a duty to exercise reasonable care in engineering, designing, engineering, manufacturing, installing, maintaining, inspecting, and testing the equipment to ensure that it is reasonably safe for its intended and foreseeable use in commercial food sterilization.

34. According to Bumble Bee, Defendants Malo and Massmann breached their duties and were negligent, negligent *per se*, or acted intentionally, wantonly, willfully, or in reckless disregard of the danger as described in **paragraph 29, *supra***.

35. According to Bumble Bee, the design defects created an unreasonable risk of introducing un-sterilized canned food products into the food supply and as a natural, probable, and foreseeable consequence, the defects led to contaminated products released from the Castleberry's plant in 2007.

36. As a direct and proximate result of Malo or Massmann's negligence or negligence *per se*, Christopher Caffrey consumed a poisoned product, contracted botulism, and died, resulting in the following wrongful death damages: loss of full value of life, pain and suffering, emotional distress, lost household services, lost earnings and earning capacity, aggravating circumstances, funeral expenses, and medical expenses.

37. Because the actions and decisions of Defendants Malo and Massmann, if true as alleged by Bumble Bee, were egregious, reprehensible, willful, and wanton, they are also subject to the deterrence and punishment provided by punitive damages.

COUNT II:
FAILURE TO WARN AS AGAINST MALO AND MASSMANN

All previous paragraphs are incorporated herein by reference.

38. According to Bumble Bee, Malo and Massmann had unique knowledge about the atypical operation, maintenance, and the defects intrinsic to their crateless retort system, and knew or should have known of the danger attendant to that design.

39. According to Bumble Bee, Malo and Massmann had a duty to warn Bumble Bee and Castleberry's about the safety risks associated with the Malo crateless retort system, its dangers for use in commercial food sterilization, and the need to make adjustments to the design of the equipment.

40. According to Bumble Bee, as a natural, probable, and foreseeable consequence of Malo's failure to warn Bumble Bee and Castleberry's about the safety risks, contaminated canned food left the Castleberry's factory in 2007.

41. As a direct and proximate result of Malo and Massmann's failure to warn, Christopher Caffrey consumed a poisoned product, contracted botulism, and died, resulting in the following wrongful death damages: loss of full value of life, pain and suffering, emotional

distress, lost household services, lost earnings and earning capacity, aggravating circumstances, funeral expenses, and medical expenses.

42. Because the actions and decisions of Defendants Malo and Massmann, if true as alleged by Bumble Bee, were egregious, reprehensible, willful, and wanton, they are also subject to the deterrence and punishment provided by punitive damages.

COUNT III
NEGLIGENCE – FAILURE TO TRAIN AGAINST MALO AND MASSMANN

All previous paragraphs are incorporated herein by reference.

43. According to Bumble Bee, Malo and Massmann had a specific duty to exercise ordinary care in advising Bumble Bee about safe operation of the Malo crateless retort system.

44. According to Bumble Bee, Malo and Massmann knew or should have known that Bumble Bee was relying on its advice for the safe operation of the system.

45. According to Bumble Bee, it did in fact relay, to its detriment, to Malo and Massmann advice regarding the safe operation and maintenance of the system.

46. According to Bumble Bee, Malo and Massman breached their duty of ordinary care in failing to advise of the defects and corrective measures as described in **paragraph 29**, *supra*.

47. According to Bumble Bee, as a natural, probable, and foreseeable consequence of the breach, contaminated canned goods left the Castleberry plant in 2007.

48. As a direct and proximate cause of Malo and Massmann's failure to train, Christopher Caffrey consumed a poisoned product, contracted botulism, and died, resulting in the following wrongful death damages: loss of full value of life, pain and suffering, emotional distress, lost household services, lost earnings and earning capacity, aggravating circumstances, funeral expenses, and medical expenses.

49. Because the actions and decisions of Defendants Malo and Massmann, if true as alleged by Bumble Bee, were egregious, reprehensible, willful, and wanton, they are also subject to the deterrence and punishment provided by punitive damages.

COUNT IV
BREACH OF CONTRACT

All previous paragraphs are incorporated herein by reference.

50. Upon information and belief, Defendants Malo and Massmann had a contract or agreement with Bumblebee or Castleberry's whereby they would design and maintain a crateless retort system for the safe production of canned food products.

51. Upon information and belief, any contract or agreement may have contained an indemnification provision.

52. The intended third-party beneficiary to any contract or agreement between the Malo Defendants and Bumble Bee or Castleberry's were those members of the American public who would purchase and consume the canned goods being manufactured at the Castleberry's plant in Augusta, Georgia, including Christopher Caffrey.

53. As a direct and proximate cause of Malo and Massmann's breach of their contract or agreement with Bumble Bee or Castleberry's, Christopher Caffrey consumed a poisoned product, contracted botulism, and died, resulting in the following wrongful death damages: loss of full value of life, pain and suffering, emotional distress, lost household services, lost earnings and earning capacity, aggravating circumstances, funeral expenses, and medical expenses.

PRAYER FOR RELIEF

54. As a result of the acts and omissions of Malo and Massmann, Christopher Caffrey incurred expenses for medical attention and hospitalization in the sum of \$362,708.30, and the reasonable funeral expenses for Christopher Caffrey amounted to \$2,231.31.

55. On September 9, 2007, Christopher Caffrey was 53 years of age and his reasonable life expectancy was 78 years.

56. On the date of his death on September 9, 2007, Christopher Caffrey was earning a total of approximately \$1,123.50 a month from part-time employment and social security disability payments. He would have been capable of earning at least \$164,025 if his life had not been prematurely ended.

57. Plaintiffs are entitled to recover the following additional damages for the benefit of the next of kin of Christopher Caffrey:

- a. \$5,000,000 in loss of enjoyment of life;
- b. \$1,500,000 in pain and suffering;
- c. Three to ten times compensatory damages in aggravating circumstances damages; and
- d. Punitive damages in an amount to be determined by the jury.

58. Plaintiffs are entitled to recover from Malo and Massman for the wrongful death of Christopher Caffrey compensatory damages in an amount exceeding \$7,028,964.61, depending on the award for aggravating circumstances, which represents the amount of the full value of life of Christopher Caffrey, and punitive damages in an amount sufficient to punish and deter the misconduct of Malo and Massmann.

WHEREFORE, Plaintiffs request that judgment be entered against Defendants Malo and Massmann for the Estate of Christopher Caffrey, compensatory damages, punitive damages, costs, pre-judgment interest, post-judgment interest, and such other and further relief as this Court deems just and proper. Plaintiffs also demand a trial by jury pursuant to Federal Rule of Civil Procedure 38(a).

Respectfully submitted,

/s/ Willis H. Blacknall III

Willis H. Blacknall III
Blacknall & Little LLP
319 Albany Ave.
P.O. Box 177
Waycross, GA 31502-0177
t/ (912) 285-9508
f/ (912) 283-2363
e/ whb-bllaw@mediastreamga.com
Georgia Bar No.: 060775

and

Roger Dodd
Dodd & Burnham PC
613 North Patterson Street
P.O. Box 1066
Valdosta, GA 31601
t/ (229) 242-4470
f/ (229) 245-7731
e/ rdodd@doddlaw.com
Georgia Bar No.: 224300
(*pro hac vice* admission pending)

and

Randi McGinn
McGinn, Carpenter, Montoya & Love, P.A.
201 Broadway SE
Albuquerque, NM 87102
t/ (505) 843-6161
f/ (505) 242-8227
e/ Randi@McGinnlaw
New Mexico Bar No.: 1753
(*pro hac vice* admission pending)

Counsel for Plaintiff Ann Marie Caffrey