

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

JOHN WILLIAMS and
MONICA HARRIS-WILLIAMS,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

MAGNESIUM ELEKTRON NORTH
AMERICA, INC.,

SERVE REGISTERED AGENT:
Registered Agent Solutions, Inc.
901 S. 2nd Street Ste. 201
Springfield, IL 62704

Defendant.

No. 11-L-1163

FILED

NOV 04 2011

CLERK OF CIRCUIT COURT #74
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

CLASS ACTION COMPLAINT

NOW COMES the Plaintiffs, JOHN WILLIAMS and MONICA HARRIS-WILLIAMS, by and through their attorneys, Holland, Groves, Schneller & Stolze, LLC, and for their Class Action Complaint on behalf of themselves and all others similarly situated state and allege as follows:

PARTIES

1. For all times relevant, class members were residents of Madison County, Illinois and more specifically the communities of Venice, Illinois and Madison, Illinois. Named Plaintiffs John Williams and Monica Harris-Williams were at all relevant times residents of Madison, Illinois. On information and belief, in excess of two-thirds of the class members are

and were citizens of the State of Illinois. In addition, all the principal injuries claimed occurred in the State of Illinois.

2. Defendant Magnesium Electron North America, Inc., operates a metal casting operation and rolling mill at 1001 College Street in Madison, Illinois. Upon information and belief, portions of Defendant's facility are also located in Venice, Illinois. Defendant is authorized to do business in Illinois. Defendant's principal office is located in Madison, Illinois, and Defendant is a citizen of Illinois.

JURISDICTION AND VENUE

3. The Court has personal jurisdiction over this action pursuant to 735 ILCS 5/2-209 because Defendant transacts business in Illinois and because Defendant's acts alleged herein were committed in this State and this Judicial Circuit.

4. Venue is proper in this county pursuant to 735 ILCS § 5/2-101(1) and 735 ILCS 5/2-102(a), as Defendant is a foreign corporation authorized to transact business in Illinois and is doing business in Madison County, Illinois. In addition, venue is proper under 735 ILCS § 5/2-101(2) because Madison County is the county in which the actions or omissions occurred, and it is the county out of which Plaintiffs and the class members' causes of action arose.

FACTS

5. On or about the evening of October 4, 2010, explosions and fire occurred at Defendant's magnesium casting facility ("the Magnesium Facility") in Madison County, Illinois. Upon information and belief the explosions and fire originated at or around a coil reheating furnace ("the Furnace") used to heat large magnesium coils.

6. Upon information and belief, the fire was exacerbated when a water line above the furnace ruptured, allowing water to contact molten magnesium, and causing a chemical reaction with hydrogen gas that resulted in a series of explosions.

7. As a result of the explosions and fire, a large plume of magnesium oxide particulates and other contaminants was emitted into the atmosphere, migrating to the nearby communities of Madison, Illinois and Venice, Illinois ("the Release").

8. Upon information and belief, because water cannot be used to put out magnesium fires, firefighters were essentially forced to allow the fire to burn itself out, causing even further emission of magnesium oxide particulates and other contaminants.

9. Upon information and belief, as a result of the explosions and fire residence near the facility were evacuated and an elementary school was forced to close the following day for precautionary reasons. Upon information and belief, a six-year old evacuee's inhalation of the omission resulted in the child vomiting.

10. Plaintiffs John Williams and Monica Harris-Williams, residents of Madison, Illinois, were home on the evening of October 4, 2010, and witnessed the huge plume of magnesium oxide particulates and other contaminants emanating from the Facility and covering the surrounding communities.

11. Plaintiffs John Williams and Monica Harris-Williams also detected an unpleasant odor in the air and eventually noticed a thin film of contamination covering their vehicle and house. In addition, both John Williams and Monica Harris-Williams detected the unpleasant odor from inside their home.

12. Following the incident, the Illinois Environmental Protection Agency ("Illinois EPA") began an investigation to determine whether any harmful contaminants were emitted as a result of the Release.

13. Shortly following the incident, Illinois EPA spokeswoman Maggie Carson was quoted in a local news source as saying, "This was a significant environmental concern."

14. Upon information and belief, the Illinois EPA's investigation is still ongoing but Illinois EPA director Doug Scott requested the state's Attorney General to file suit against Defendant for endangering human health and the environment as a result of the Release.

15. On October 20, 2010, the Illinois Attorney General filed suit against Defendant in the Circuit Court of Madison County, Illinois, in *People of the State of Illinois, ex. rel. Lisa Madigan v. Magnesium Elektron North American, Inc.*, No. 10-CH-1337. That suit alleges that Defendant violated the Illinois Environmental Protection Act and caused air pollution in sufficient quantities and duration to be injurious to human, plant, or animal life; to health or property; and to unreasonably interfere with the enjoyment of life or property.

16. The Illinois Attorney General's action seeks remedies authorized by the Illinois Environmental Protection Act, including civil penalties, attorney's fees, declaratory relief, and injunctive relief arising from Defendant's conduct.

CLASS ALLEGATIONS

17. Pursuant to 735 ILCS 5/2-801 *et seq.* Plaintiffs bring this action on behalf of themselves and a class of similarly situated persons defined as:

All persons who were residents, property owners or lessees of property in the legal boundaries of Madison or Venice, Illinois.

Excluded from the Class is Defendant and any parent, subsidiary, or affiliate of Defendant, as well as any officers, directors or immediate family members of the officers or directors of Defendant and any parent,

subsidiary or affiliate of Defendant; government entities; all persons who make a timely election to be excluded from the Class; and the judges to whom this case is assigned and any immediate family members thereof. Plaintiffs are not asserting any claim for present personal injury as a result of the release. Specifically excluded from the Class are any persons with a claim for personal injury as a result of the release. Plaintiffs reserve the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

18. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of 735 ILCS 5/2-801 *et. seq.*

19. The class is so numerous that joinder of all members is impracticable but on information and belief the number of class members is in the thousands. The precise number of Class members and their addresses is unknown to Plaintiffs, but is capable of ascertainment. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

20. A class action is an appropriate means for the fair and efficient prosecution of this litigation. The claims of John Williams and Monica Harris-Williams and all or almost all class members are relatively small, so that individual litigation is not economically feasible. In the absence of a class action, these wrongs will go unredressed.

21. Plaintiffs, like all Class members, have been damaged by Defendant in that Plaintiffs and their properties have been subject to vapor intrusion, property contamination, risks of adverse health effects, lost use and enjoyment of their properties and lives, require remediation to remove the magnesium oxide particulates and other contaminants from their properties, and suffered the diminution in value of their properties. Furthermore, the factual basis of Defendant's conduct is common to all Class members, and arises out of the same acts or omissions, resulting in injury to all members of the Class.

22. There are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual Class members.

23. Among the questions of law and fact common to the Class are:

- a. Whether Defendant was negligent in its operation of the Magnesium Facility;
- b. Whether Defendant was negligent in its maintenance and/or its fire and emergency preparedness of the Magnesium Facility;
- c. Whether Defendant was negligent in its inspection of the Magnesium Facility;
- d. Whether Defendant was negligent in its repair of the Magnesium Facility;
- e. Whether Defendant knew or should have known of the problems and/or defects with the Furnace that caused the fire and explosion;
- f. Whether Defendant was aware of the risks to neighboring residents and their property that arose as a result of the Defendant's failure to properly operate and maintain its Magnesium Facility;
- g. Whether Defendant created a nuisance for Plaintiffs and the Class members and their properties by causing a plume of magnesium oxide and other particulates to be released into the environment and onto and into the person and property of Plaintiffs and the Class members;
- h. Whether Defendant caused a trespass against Plaintiffs and the Class members and their properties by causing a plume of magnesium oxide and other particulates to be released into the environment and onto and into the person and property of Plaintiffs and the Class members;

24. Plaintiffs' claims are typical of the claims of other Class members, in that they arise out of the same series of acts or omissions by Defendant which caused the release of the plume of magnesium oxide and other particulates. Plaintiffs have suffered the harm alleged and have no interests antagonistic to the interests of any other Class member.

25. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of complex class actions and, in particular, multiple cases on behalf of individuals and property owners involving environmental

releases and exposures. Plaintiffs' counsel has prosecuted complex class actions in state and federal courts across the country. Defendant has no defenses unique to Plaintiffs. Plaintiffs' interests coincide with, and are not antagonistic to other Class Members' interests. Accordingly, Plaintiffs are adequate representatives and will fairly and adequately protect the interests of the Class.

26. Even if Class members themselves could afford individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

COUNT I - NEGLIGENCE

27. Plaintiffs repeat, reallege and incorporate herein Paragraphs 1 – 26 as though fully set forth herein.

28. Defendant had a duty to operate, inspect, maintain, and repair the Magnesium Facility with ordinary care so as to prevent the release of magnesium oxide particulates and other contaminants into the environment and to avoid exposing Plaintiffs and the Class members and their properties to magnesium oxide particulates and other contaminants.

29. Defendant knew of the dangers posed by operating the Magnesium Facility and knew or should have known that an explosion and fire could cause the release of magnesium

oxide particulates and other contaminants into the environment, thereby exposing Plaintiffs and the Class members and their properties to the contamination.

30. Defendant breached its duties of care by negligently operating, inspecting, maintaining, and/or repairing the Magnesium Facility so as to allow the release of magnesium oxide particulates and other contaminants into the environment and exposing Plaintiffs and the Class members and their properties to magnesium oxide particulates and other contaminants in their soil, water, and air and further, despite the known risks, breached its duties of care by failing to implement adequate emergency and disaster preparedness measures thereby exacerbating the extent of the release.

31. Defendant's negligent acts and omissions proximately caused and continue to cause damages to Plaintiffs and the Class members and their properties in a variety of ways including, but not limited to, vapor intrusion, contamination of property, risks of adverse health effects, remediation costs to remove the magnesium oxide particulates and other contaminants from their properties, the loss use and enjoyment of their properties and lives, and the diminution in value of their properties.

WHEREFORE, Plaintiffs pray for judgment against Defendant, for a fair and just award in excess of Fifty Thousand Dollars (\$50,000) each, equitable and/or injunctive relief requiring Defendant to clean up and remediate the contamination in an expeditious manner, and for such other relief as this Court deems just and proper.

COUNT II - TRESPASS

32. Plaintiffs repeat, reallege and incorporate herein Paragraphs 1 – 31 as though fully set forth herein.

33. Defendant knew of the proximity of Plaintiffs and the Class members and their properties near their Magnesium Facility and knew that if magnesium oxide and other particulates were allowed to be released into the environment it would constitute a substantial and unreasonable invasion onto and into Plaintiffs and the Class members and their properties.

34. Defendant's release of magnesium oxide particulates and other contaminants into the environment resulted in the invasion and presence of magnesium oxide particulates and other contaminants onto and into Plaintiffs and the Class members and their properties without their permission or authority.

35. Defendant knew or should have known, to a substantial degree of certainty that the release of magnesium oxide particulates and other contaminants into the environment would result in an intrusion onto and into Plaintiffs and the Class members and their properties.

36. Defendant's release of magnesium oxide particulates and other contaminants into the environment and their intrusion onto and into Plaintiffs and the Class members and their properties constitutes trespass.

37. Defendant's trespass onto and into Plaintiffs and the Class members and their properties proximately caused and continues to proximately cause damages to Plaintiffs and the Class members and their properties in a variety of ways including, but not limited to, vapor intrusion, contamination of property, risks of adverse health effects, remediation costs to remove the magnesium oxide particulates and other contaminants from their properties, the loss use and enjoyment of their properties and lives, and the diminution in value of their properties.

WHEREFORE, Plaintiffs pray for judgment against Defendant, for a fair and just award in excess of Fifty Thousand Dollars (\$50,000) each, equitable and/or injunctive relief requiring

Defendant to clean up and remediate the contamination in an expeditious manner, and for such other relief as this Court deems just and proper.

COUNT III - NUISANCE

38. Plaintiffs repeat, reallege and incorporate herein Paragraphs 1 – 37 as though fully set forth herein.

39. Plaintiffs and the Class members had and continue to have a protectable right to the exclusive possession, physical condition, use and enjoyment of their properties, free from contamination.

40. Plaintiffs and the Class members have a right to have the environment of their communities including their properties free from contamination by magnesium oxide particulates and other contaminants released by Defendant.

41. Defendant's release of magnesium oxide particulates and other contaminants into the environment substantially and unreasonably interfered with and continues to interfere with the use and enjoyment of their properties and lives.

42. Defendant's release of the magnesium oxide particulates and other contaminants into the environment proximately caused damages to Plaintiffs and the Class members and their properties in a variety of ways including, but not limited to, vapor intrusion, contamination of property, risks of adverse health effects, remediation costs to remove the magnesium oxide particulates and other contaminants from their properties, the loss use and enjoyment of their properties and lives, and the diminution in value of their properties.

WHEREFORE, Plaintiffs pray for judgment against Defendant, for a fair and just award in excess of Fifty Thousand Dollars (\$50,000) each, equitable and/or injunctive relief requiring

Defendant to clean up and remediate the contamination in an expeditious manner, and for such other relief as this Court deems just and proper.

Respectfully submitted,

HOLLAND, GROVES, SCHNELLER &
STOLZE, L.L.C.

By: 

Eric D. Holland, #6207110
Steven J. Stolze, #6203254
Kevin D. Wilkins # 6305154
300 N. Tucker, Suite 801
St. Louis, Missouri 63101
Telephone: (314) 241-8111
Facsimile: (314) 241-5554