

may be served by delivery of citation to its authorized agent for service of process, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

3. Defendant, GEORGIA-PACIFIC CORPORATION (Defendant hereafter), is a Georgia corporation, authorized to engage in business in the State of Texas. This defendant may be served by delivery of citation to its authorized agent for service of process, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

4. Defendant, JONES CHEMICALS, INC. (Defendant hereafter), is a New York corporation, authorized to engage in business in the State of Texas. This defendant may be served by delivery of citation to its authorized agent for service of process, CT Corporation System, 811 Dallas Avenue, Houston, Texas 77002.

5. Defendant, MERICHEM COMPANY (Defendant hereafter), is a Texas company and may be served by delivery of citation to its Manager, President and/or Officer of the company, 1914 Haden Road, Houston, Texas 77015.

6. Defendant, ISK BIOSCIENCE CORPORATION, f/k/a TSK BIOTECH CORPORATION (Defendant hereafter), is a Delaware corporation, authorized to engage in business in the State of Texas. This defendant may be served by delivery of citation to its authorized agent for service of process, Howard R. Peters, 2239 Haden Road, Houston, Texas 77015.

7. Defendant, ELF ATOCHEM NORTH AMERICA, INC. (Defendant hereafter) is a Pennsylvania corporation, authorized to engage in business in the State of Texas. This defendant may be served by delivery of citation to its authorized agent for service of process, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

8. Defendant, ELF ATOCHEM PLATING INC. (Defendant hereafter) is a Delaware corporation, authorized to engage in business in the State of Texas. This defendant may be served by delivery of citation to its registered agent for service of process, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

9. **ADD OTHER DEFENDANTS.**

10. At all times material hereto, the agents and employees of Defendants acted within the course and scope of their employment for Defendants.

II.

VENUE AND JURISDICTION

11. Pursuant to Chapter 15 of the Texas Civil Practice and Remedies Code, venue is proper in Harris County by virtue of the fact that all of the events and omissions giving rise to this claim occurred in Harris County, the county of Plaintiff's residence. Plaintiff's damages exceeds the jurisdictional limits of this Court.

III.

NATURE OF THE CASE

12. This is a damage suit brought by Plaintiff because of pollution at his home caused by the operation of Defendants' plant sites.

13. **LIABILITY** theories include nuisance, trespass, negligence and gross negligence.

14. **CAUSATION** relates to varying forms of environmental pollution, including: pollution of the air, soil, ground and surface water by various chemicals, routinely attended by odors sufficiently obnoxious to cause headaches, nausea and vomiting; auditory pollution caused by inadequately baffled and poorly maintained equipment, the noise from which is frequently

so intense it causes ground vibration and obscures all other sounds; and excessively intrusive lighting at the facility.

15. **DAMAGE** claims are for personal discomfort, inconvenience and annoyance; transitory symptoms of ill health; physical discomfort, pain and suffering; loss of use and enjoyment of property; emotional distress and mental anguish; loss of rental value of property; and reasonable expenses incurred in repairing Plaintiff's home, real and personal property.

16. Plaintiff does not seek recovery for any current clinically diagnosed personal injury.

IV.

FACTUAL BACKGROUND

17. Defendants' facilities are located along Interstate 10 and along the Houston ship channel in East Harris County. The plant's fence line is of such proximity to the home of Plaintiff that the air at Plaintiff's home is polluted by activities occurring at the various Defendants' facilities.

18. Shortly after Plaintiff purchased his lot, he began to develop and improve the property.

19. The Defendants' operation requires the use, mixing, refining, transportation, disposal, reclamation, processing and storage of many chemicals, their by-products and wastes. These chemicals, their by-products and wastes are systematically discharged into the air, soil, ground and surface water and the Houston ship channel in the ordinary course of their operations. Benzene and dioxin, widely known for many years to be human carcinogens, are among the chemicals routinely used at these plants.

20. These facilities operate around the clock seven (7) days a week. In addition to the air, soil and water pollution which is attended by a sickening foul odor, the various plants' operation routinely generates deafening noise, comparable to that of a commercial jet on take off and landing, as well as glaring and intrusive lights required by the twenty-four hour a day operation of the plants. Because of the continuous operation of these facilities, Plaintiff endures the obnoxious odor, noise and lights all year round at all hours of the day and night on his property.

V.

NUISANCE

21. All allegations contained in paragraphs one (1) through twenty (20) are realleged herein and incorporated by reference just as if they were again fully set forth in this section verbatim.

22. Defendants' operation of their facilities are inconsistent with surrounding land uses and unreasonable under the circumstances of the surrounding uses and is the proximate cause of substantial interference with the use and enjoyment of Plaintiff's property.

23. Because of the nature and character of Defendants' operation and the conditions created being the inevitable result of the operations at the site selected Defendants are liable for the nuisance created on Plaintiff's property. Exercise of ordinary care does not relieve Defendants of liability under the law of uisance.

24. Defendants' conduct interferes substantially and unreasonably with the Plaintiff's use of his property. The interference created by Defendants' conduct is of such continuing character and duration that an ordinary person in the same or similar circumstances would

conclude that Defendants' activities should bear the burden of harm to Plaintiff and his property because the interference is the inevitable consequence of Defendants' operation at the site selected.

25. Defendants' conduct and resulting substantial interference with and invasion of Plaintiff's property interest and right of use and enjoyment was and continues to be intentional because of Defendants' actual knowledge that the operation of these facilities would cause the conditions described.

26. Defendants' continued operation with such actual knowledge is consciously indifferent and in reckless disregard of the Plaintiff's rights to use and enjoy his property free of the conditions created by Defendants' operation.

27. Defendants are solely responsible for the creation of the conditions and for allowing these conditions to continue with knowledge of their adverse effects on Plaintiff.

28. For the two (2) year period of time immediately preceding the filing of this lawsuit, Defendants have continuously operated their facilities as described in paragraphs one (1) through twenty (20) and paragraphs thirty-three (33) through forty (40). conditions created by the operation of Defendants' facilities are the proximate cause of of the injuries and damages described in paragraphs 47.1 through 47.19.

VI.

TRESPASS

29. All allegations contained in paragraph one (1) through twenty-eight (28) are realleged herein and incorporated by reference just as if they were again fully set forth in this section verbatim.

30. Defendants conduct the operation of their facilities with full knowledge that the emissions, noise, and lights from their facilities have in the past and continues to intrude onto the property owned and occupied by Plaintiff. As such, the conduct of Defendants is intentional.

31. Defendants' conduct constitutes a physical intrusion upon Plaintiff's property. This intrusion by Defendants is an unlawful violation of Plaintiff's property rights because the Defendants have no right to possession of Plaintiff's property and the intrusion is without Plaintiff's consent.

32. Defendants' past and continuing trespass and unlawful intrusion on Plaintiff's property has and continues to be the proximate cause of Plaintiff's injuries and damages as described in paragraphs 47.1 through 47.19.

VII.

NEGLIGENCE

33. All allegations contained in paragraphs one (1) through thirty-two (32) are realleged herein and incorporated by reference just as if they were again fully set forth in this section verbatim.

34. Defendants owe a legal duty to the Plaintiff to construct, maintain and operate their facilities consistent with the degree of care that would be exercised by a reasonably prudent plant operator under the same or similar circumstances.

35. Defendants have in the past and continues to fail to exercise that degree of care in the construction, maintenance and operation of their facilities as would be exercised by a reasonably prudent operator under the same or similar circumstances.

36. Defendants' continuing breach of this duty constitutes negligence as that term is defined by law.

37. Defendants' past and continuing negligence, both their acts of omission and commission, has and continues to be the proximate cause of Plaintiff's injuries and damages, as described in paragraphs 47.1 through 47.19.

38. Defendants have and continues to deny that the operation of their facilities is negligent, that it is the cause of any nuisance or that its conduct is the proximate cause of any of Plaintiff's damages. Defendants' denials have persisted during the entire length of time of its operation of these facilities. The Defendants' misrepresentations amount to fraudulent concealment of its ongoing wrongful conduct, from the Plaintiff in particular, the public in general and the appropriate regulatory agencies.

39. The effect of the misrepresentations has been to obscure the Defendants' wrongful conduct and to make it prevent the Plaintiff, the public, and the appropriate regulatory agencies from asserting their respective rights.

40. Defendants have in the past and continues to be negligent in the construction, maintenance and operation of their facilities in the following particulars, among others:

40.1 Defendants failed in the past and continues to fail to exercise ordinary care in the design and construction of their facilities knowing that they would be operating in a residential neighborhood.

40.2 Defendants failed in the past and continues to fail to exercise ordinary care in designing and operating their facilities so as to avoid unacceptable air, noise and light pollution at the Plaintiff's residence.

40.3 Defendants failed in the past and continues to fail to exercise ordinary care to exercise ordinary care in the implementation of operating procedures to avoid unacceptable air, noise and light pollution at the Plaintiff's residence.

40.4 Defendants failed in the past and continues to fail to exercise ordinary care in its selection of equipment for the disposition of chemical wastes and by-products.

40.5 Defendants failed in the past and continues to fail to exercise ordinary care in its maintenance of equipment for the disposition of chemical wastes and by-products.

40.6 Defendants failed in the past and continues to fail to exercise ordinary care in its operation of equipment for the disposition of chemical wastes and by-products.

40.7 Defendants failed in the past and continues to fail to exercise ordinary care in its selection of methods for the disposition of chemical wastes and by-products so as to avoid unacceptable air, noise and light pollution at the Plaintiff's residence.

40.8 Defendants failed in the past and continues to fail to exercise ordinary care in its disposition of chemical wastes and by-products so as to avoid unacceptable air and noise pollution at the Plaintiff's residence.

40.9 Defendants failed in the past and continues to fail to exercise ordinary care in discharging chemicals, chemical wastes and by-products into the air without utilizing adequate equipment, so as to avoid unacceptable air and noise pollution at the Plaintiff's residence.

40.10 Defendants failed in the past and continues to fail to exercise ordinary care in discharging chemicals, chemical wastes and by-products into the air without utilizing adequate procedures, so as to avoid unacceptable air and noise pollution at the Plaintiff's residence.

40.11 Defendants failed in the past and continues to fail to exercise ordinary care in discharging chemicals, chemical wastes and by-products into the air without utilizing adequate safeguards, so as to avoid unacceptable air and noise pollution at the Plaintiff's residence.

40.12 Defendants failed in the past and continues to fail to exercise ordinary care in discharging chemicals, chemical wastes and by-products into the air without utilizing adequate processes, so as to avoid unacceptable air and noise pollution at the Plaintiff's residence.

40.13 Defendants failed in the past and continues to fail to exercise ordinary care in its methods and techniques to prevent and minimize unacceptable air and noise pollution.

40.14 Defendants failed in the past and continues to fail to exercise ordinary care in its development of policies and procedures to prevent and minimize unacceptable air and noise pollution.

40.15 Defendants failed in the past and continues to fail to exercise ordinary care in the supervision of its techniques and policies to prevent and minimize unacceptable air and noise pollution.

40.16 Defendants failed in the past and continues to fail to exercise ordinary care in the design of their facilities to prevent and minimize "fugitive emissions" so as to avoid unacceptable air pollution at the Plaintiff's residence.

40.17 Defendants failed in the past and continues to fail to exercise ordinary care in the maintenance of their facilities to prevent and minimize "fugitive emissions" so as to avoid unacceptable air pollution at the Plaintiff's residence.

40.18 Defendants failed in the past and continues to exercise ordinary care by failing to control and contain the chemicals used in its manufacturing processes so as to avoid unacceptable air pollution at the Plaintiff's residence.

40.19 Defendants failed in the past and continues to fail to exercise ordinary care by failing to control and contain the chemicals they use in the manufacturing process while they

were being stored in preparation for use so as to avoid unacceptable air pollution at the Plaintiff's residence.

40.20 Defendants failed in the past and continues to exercise ordinary care by failing to provide procedures and equipment to deal with chemicals and their disposition during "unit upsets" so as to avoid unacceptable air pollution at the Plaintiff's residence.

40.21 Defendants failed in the past and continues to exercise ordinary care by failing to provide procedures and equipment to capture and dispose of chemicals which are the subject of "accidental releases" so as to avoid unacceptable air and noise pollution at the Plaintiff's residence.

40.22 Defendants failed in the past and continues to fail to exercise ordinary care in the planning, design and execution of preventative maintenance procedures to prevent fugitive, accidental and permitted releases so as to avoid unacceptable air and noise pollution at the Plaintiff's residence.

40.23 Defendants failed in the past and continues to exercise ordinary care in the planning, design and execution of operational and maintenance procedures and protocol to maintain the equipment at their facilities in sufficient condition to minimize or prevent fugitive, accidental and unnecessary permitted chemical releases so as to avoid unacceptable air and noise pollution at the Plaintiff's residence.

40.24 Defendants failed in the past and continues to exercise ordinary care by failing to adequately warn Plaintiff of fugitive, accidental and permitted releases and the potential effects thereof.

40.25 Defendants failed in the past and continues to exercise ordinary care by failing to perform adequate inspections of its manufacturing units to detect and prevent fugitive

and accidental emissions so as to avoid unacceptable air and noise pollution at the Plaintiff's residence.

40.26 Defendants failed in the past and continues to exercise ordinary care in its training and instruction of employees to insure these facilities were operated according to reasonable standards so as to avoid unacceptable air and noise pollution at the Plaintiff's residence.

40.27 Defendants failed in the past and continues to exercise ordinary care in its disposition of chemical wastes and/or byproducts which were discharged without adequate safeguards to prevent or minimize exposure of Plaintiff and his property.

40.28 Defendants failed in the past and continues to control and contain the chemicals, chemical waste and by-products it generated in order to prevent or minimize Plaintiff's exposure to pollution discharged by Defendants into the air, water, and soil.

40.29 Defendants failed in the past and continues to maintain its plant in a reasonably safe and proper condition in order to minimize or prevent Plaintiff's exposure to chemicals used in the Defendants various manufacturing processes.

40.30 Defendants failed in the past and continues to provide adequate engineering safeguards to prevent Plaintiff's exposure to Defendants' chemicals which were discharged into the air, water and soil.

40.31 Defendants failed in the past and continues to properly instruct Plaintiff in reasonable safe procedures to prevent and to minimize property contamination and exposure to chemicals discharged by Defendants into the air, water and soil.

40.32 Defendants failed in the past and continues to properly inspect their premises to prevent or minimize discharge of chemicals into the air, water and soil.

40.33 Defendants failed in the past and continues to exercise ordinary care in the design, construction, maintenance and operation of their manufacturing facilities.

40.34 Defendants failed in the past and continues to fail to select a design and standard of operation for these facilities which allows foul odors to be emitted into the air which pollutes the environment in which the Plaintiff lives, the air which he breathes, and the property upon which he lives.

40.35 Defendants failed in the past and continues to act as an ordinary and prudent person would have acted under the same or similar circumstances to control foul smelling substances from being emitted from the Defendants' facilities.

VIII.

GROSS NEGLIGENCE

41. All allegations contained in paragraphs one (1) through forty (40) are realleged herein and incorporated by reference just as if they were again fully set forth in this section verbatim.

42. The conduct of Defendants in this case is beyond ordinary negligence or momentary thoughtlessness, inadvertence, or an error in judgment.

43. Defendants' conduct, its acts, omissions and failures to act demonstrate an entire want of care in the conduct of its business and the operation of their facilities.

44. The acts and omissions of Defendants in the operation of their facilities, as it affects this Plaintiff, is the result of actual conscious indifference to the rights, welfare and safety of the Plaintiff.

45. Each and all of the above and foregoing acts of omission and commission, in addition to being negligent and a proximate cause of the injuries and damages sustained by Plaintiff was willful, wanton and in heedless and reckless disregard to the rights of this Plaintiff, constituting gross negligence as defined by law.

IX.

DAMAGES

46. Defendants' wrongful conduct, the nuisance, trespass, negligence and gross negligence are each and all the proximate cause of the Plaintiff's injuries and damages.

A. ACTUAL DAMAGE

47. Plaintiff seeks recovery for each of the following elements of damage.

47.1 Personal discomfort, inconvenience and annoyance as would occur in a person of ordinary sensitivities under the same or similar circumstances for the past two year period immediately preceding the filing of this lawsuit.

47.2 Personal discomfort, inconvenience and annoyance as would occur in a person of ordinary sensitivities under the same or similar circumstances from the date of the filing of this lawsuit until the date of entry of a final judgment.

47.3 Transitory symptoms of ill health for the past two year period immediately preceding the filing of this lawsuit.

47.4 Transitory symptoms of ill health from the date of the filing of this lawsuit until the date of entry of a final judgment.

47.5 Physical discomfort, pain and suffering for the two year period immediately preceding the filing of this lawsuit.

47.6 Physical discomfort, pain and suffering from the date of the filing of this lawsuit until the date of entry of a final judgment.

47.7 Loss of use and enjoyment of Plaintiff's property for the two year period immediately preceding the filing of this lawsuit.

47.8 Loss of use and enjoyment of Plaintiff's property from the date of the filing of this lawsuit until the date of entry of a final judgment.

47.9 Mental anguish and emotional distress as would occur in a person of ordinary sensitivities under the same or similar circumstances for the two year period immediately preceding the filing of this lawsuit.

47.10 Mental anguish and emotional distress as would occur in a person of ordinary sensitivities under the same or similar circumstances from the date of the filing of this lawsuit until the date of entry of a final judgment.

47.11 Loss of rental value of Plaintiff's property for the two year period immediately preceding the filing of this lawsuit.

47.12 Loss of rental value of Plaintiff's property from the date of the filing of this lawsuit until the date of entry of a final judgment.

47.13 Reasonable and necessary expenses incurred to avoid, ameliorate, remedy and repair damage done to his home for the two year period immediately preceding the filing of this lawsuit.

47.14 Reasonable and necessary expenses incurred to avoid, ameliorate, remedy and repair damage done to the home from the date of the filing of this lawsuit until the date of entry of a final judgment.

47.15 Reasonable and necessary expenses incurred to avoid, ameliorate, remedy and repair damage done to their personal property for the two year period immediately preceding the filing of this lawsuit.

47.16 Reasonable and necessary expenses incurred to avoid, ameliorate, remedy and repair damage done to the personal property from the date of the filing of this lawsuit until the date of entry of a final judgment.

47.17 Reasonable and necessary expenses incurred to avoid, ameliorate, remedy and repair damage done to their real property for the two year period immediately preceding the filing of this lawsuit.

47.18 Reasonable and necessary expenses incurred to avoid, ameliorate, remedy and repair damage done to the real property from the date of the filing of this lawsuit until the date of entry of a final judgment.

47.19 Pre-judgment and post-judgment interest at the rate allowed by law for the two year period immediately preceding the filing of this lawsuit until the date of entry of a final judgment and post-judgment interest as allowed by law.

B. EXEMPLARY DAMAGES

48. Because of Defendants' intentional and reckless conduct exemplary damages should be awarded in addition to compensatory damages. Plaintiff seeks exemplary damages in an amount sufficient to deter such conduct in the future.

49. The nature and character of the Defendants' wrongful conduct, the degree of Defendants' culpability, the situation and sensibilities of the parties, the Defendants' wealth and net worth, the number and duration of Defendants' wrongful acts and the extent to which the

Defendants' conduct offends the public sense of justice and propriety should all be considered in determining the amount of exemplary damages to be awarded.

X.

JURY DEMAND

Plaintiff requests that this Honorable Court place this matter on its jury docket, and that when called for trial this matter be tried to a jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be required to appear and answer herein, and that after a jury trial and verdict, Plaintiff has judgment upon the jury's verdict for all of the damages described, punitive damages, pre- and post-judgment interest as provided by law, costs of Court and such other and further relief and damages, in law and in equity, to which they may show themselves by the evidence justly entitled.

Respectfully submitted,

PEARSON, PETTIETTE & MITCHELL

By: 

Thomas J. Pearson

SBN: 15695600

Alison Y. Pettiette

SBN: 15858450

Joe K. Mitchell

SBN: 14212500

1300 Post Oak Blvd., Suite 400

Houston, Texas 77056

(713) 622-1733

(713) 622-4791 (Facsimile)

ATTORNEYS FOR PLAINTIFF