IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Ronald Thorne,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 5858
	)	
United States Steel Corporation, CRC Industries, Inc., Safety-Kleen Systems, Inc., Shell Oil Company, UNIVAR Solutions USA, Inc. individually and as successor-in-interest to and f/k/a Chemcentral Corp., Southern Solvents and Chemicals Corporation and Van Waters & Rodgers, Inc., Brenntag Southwest, Inc., individually and as successor-in-interest to Delta Solvents & Chemical Company and Delta Distributors, Inc., Ashland, LLC f/k/a Ashland, Inc., Radiator Specialty Company, Union Oil Company of California d/b/a Unocal and AMSCO, individually and as successor in interest to American Mineral Spirits Company a/k/a AMSCO, Illinois Tool Works, Inc., d/b/a and successor in interest to PERMATEX, Gumout, and Fiberglass Evercoat, Henkel Corporation individually and as successor-in-interest to Loctite Corporation, PPG Industries, Inc., individually and as successor-in-interest to and d/b/a Ditzer, The Blaster Corporation, E.I. Du Pont De Nemours & Company, Inc., Berryman Products, Inc., BASF Corporation individually and as successor-in-interest to and d/b/a R-M Company f/k/a Rinshed-Mason Co. and Glassurit, Akzo Nobel Coatings, Inc., W.M. Barr & Company, Inc., Rust-Oleum Corporation, individually and as successor-in-interest to and d/b/a Parks Corporation and William Zinsser &	)	

Co., Inc., Metalflake Corporation, Marvel Oil Company, Inc., Sea Foam Sales Company, Herkules Equipment Corporation, The Berkebile Oil Company, Inc., CA Acquisition, LLC d/b/a Chicago Aerosol, Bud's Body Shop Supply, Inc., Automotive Painters Supply, Inc., National Coatings & Supplies Inc., successor-in-interest to Erkert Brothers Inc., and District Auto Parts, Inc.,

Defendants.

MEMORANDUM OPINION AND ORDER

Allegations that a defendant had actual knowledge of a danger and failed to act for the safety of another are sufficient to support a cause of action for negligence based on the willful and wanton standard. The plaintiff's second amended complaint alleges the defendants knew of the dangers to the plaintiff posed by benzene exposure and failed to act. For that reason, the defendants' various motions to dismiss are denied.

Facts

On October 8, 2020, Ronald Thorne filed a second amended complaint against the defendants. Thorne alleges that, while working for various employers between 1977 and 2003, he was exposed to products containing benzene. The defendants include his former employers and companies that manufactured, sold, or otherwise placed products containing benzene into the stream of commerce.

Thorne's latest complaint raises two counts. In the first, Thorne pleads simple negligence, and alleges the defendants knew or should have known of the dangers of products containing benzene and Thorne's exposure to them. Each defendant has answered this count. Count two is also a negligence cause of action, but pleaded to the willful and wanton standard. In count

two, Thorne alleges the defendants knew of benzene's dangers and the risks they posed to Thorne. Gone is the "or should have known" language. In other words, in count two, Thorne alleges the defendants had actual, affirmative knowledge.

Akzo Nobel Coatings Inc., BASF Corporation, The Blaster Corporation, District Auto Parts, Inc., Herkules Equipment Corporation, Marvel Oil Company, Inc., and Sea Foam Sales Company filed motions to dismiss count two. The defendants argue generally that Thorne's second amended complaint still fails to plead willful and wanton conduct. They argue specifically that Thorne's new allegations in count two, paragraphs 33-34 and 37-38, fail to identify them specifically or the willful and wanton conduct they allegedly undertook. Regardless of those alleged deficiencies, count two contains the following allegations:

> 30. Defendants knew that persons such as Plaintiff used, worked with, around and in close proximity to, handled, inhaled, dermally absorbed, ingested and was otherwise directly and indirectly exposed to their benzene-containing products and/or vapors therefrom.
>
> 31. Defendants knew that benzene causes blood and bone marrow poising and damage, damage to DNA, chromosome damage, cancer, leukemia and other blood and bone marrow disease and damage, and is otherwise extremely dangerous to human health.
>
> 33. Defendants knew that their benzene-containing products were carcinogenic, leukemogenic, inherently defective, ultra-hazardous, dangerous, deleterious, poisonous and otherwise highly harmful to the body and health of Plaintiff and persons similarly situated:
>
> ee. Defendants all knew or should have known that the State of Illinois prohibited the manufacture of benzene solvents in 1967 because of benzene's toxicity.

35. The Defendants, with the knowledge, authorization and/or ratification of their officers, directors, and/or managing agents, have conducted or hired others to conduct studies on the amount of benzene exposure caused by their products that have manipulated the data and circumstances of the studies so as to give the false impression that their products do not present a benzene exposure hazard, knowing that the United States government and others would rely on these studies when making decisions with respect to worker benzene exposures.

36. Defendants intentionally, and with intent to defraud the Plaintiff and others similarly situated by concealing a material fact known to the defendants, did not disclose that their products would expose the product user and those around the user to a chemical, to wit benzene, which was known to cause leukemia, cancer, and severe and potentially fatal damage and illness to the blood forming system. By concealing the risk of leukemia and damage to the blood forming system from the Plaintiff, defendants deprived the Plaintiff of his right to know toxic contents of the defendants' products, his right to control his health and his right to protect himself from exposure to toxic chemicals, including by not using the products at all.

Analysis

The defendants' motions to dismiss are brought pursuant to Code of Civil Procedure section 2-615. 735 ILCS 5/2-615. A section 2-615 motion to dismiss attacks a complaint's legal sufficiency. *See DeHart v. DeHart*, 2013 IL 114137, ¶ 18. Such a motion does not raise affirmative factual defenses, but alleges only defects appearing on the face of the complaint. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 484-85 (1994). A court considering a section 2-615 motion is to consider only the allegations presented in the pleadings. *See id.* at 485. All well-

pleaded facts and reasonable inferences arising from them must be accepted as true, *see Doe v. Chicago Bd. of Ed.*, 213 Ill. 2d 19, 28 (2004), but not conclusions unsupported by facts, *see Pooh-Bah Enterps., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). The paramount consideration is whether the complaint's allegations construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action for which relief may be granted. *See Bonhomme v. St. James*, 2012 IL 112393, ¶ 34.

The specificity required to plead willful and wanton conduct has, however, its limits. "[I]ssues of willfulness frequently involve facts beyond the pleadings and thus 'often cannot be resolved at the motion to dismiss stage.'" *Soto v. Great Am. LLC*, 2020 IL App (2d) 180911, ¶ 34 (quoting *Lavery v. RadioShack Corp.*, No. 13-CV-05818, 2014 U.S. Dist. LEXIS 85190, at *5 (N.D. Ill. June 23, 2014)). The determination of whether willful and wanton conduct exists "necessitates close scrutiny of the facts as disclosed by the evidence." *Yuretich v. Sole*, 259 Ill. App. 3d 311, 313 (4th Dist. 1994). If facts necessary for pleading are in the defendant's possession, but not the plaintiff's, "a complaint which is as complete as the nature of the case allows is sufficient." *Id.*

The defendants correctly point out that there is no separate and independent tort of willful and wanton conduct. *Krywin v. Chicago Trans. Auth.*, 238 Ill. 2d 215, 235 (2010) (citing *Ziarko v. Soo Line R.R. Co.*, 161 Ill. 2d 267, 274 (1994)). Rather, willful and wanton conduct is considered an aggravated form of negligence. *Id.* (citing *Sparks v. Starks*, 367 Ill. App. 3d 834, 837 (1st Dist. 2006)). To establish willful and wanton conduct in the absence of evidence of prior injuries, a plaintiff must present evidence that the defendant's activity is generally associated with a risk of serious injuries. *Barr v. Cunningham*, 2017 IL 120751, ¶ 21 (citing cases).

The defendants argue that Thorne's amended allegations in paragraphs 33-34 and 37-38 fail to plead willful and wanton conduct because they do not specifically name the defendants. Thorne's failure to name specifically and consistently each and

every defendant in paragraphs 33-34 and 37-38 is not fatal to his cause of action. The reason is that various other paragraphs, such as 30-31, 33, and 35-36 identify the defendants collectively, meaning that the alleged conduct is implicated as to each defendant. Such pleading is sufficient to put each defendant on notice of the conduct alleged.

The defendants also argue count two fails to identify specific, additional facts supporting a willful and wanton cause of action. The real issue is whether pleading actual knowledge is sufficient to support such a claim. Illinois courts have found it is. In *Hill v. Galesburg Community Unit School District 205*, for example, the plaintiff pleaded the defendant's teacher, "(1) had actual knowledge [the plaintiff-student] was performing the experiment without wearing eye protection, (2) had actual knowledge of the dangers of performing the experiment, and (3) consciously disregarded [the plaintiff student's] safety by permitting him to participate in the experiment without eye protection." 356 Ill. App. 3d 515, 522 (3rd Dist. 2004). The court concluded "these allegations are sufficient for a jury to infer a 'reckless disregard' for [the plaintiff-student's] safety 'after knowledge of impending danger.'" *Id.* Other courts have held similarly. *See Muellman v. Chicago Park Dist.*, 233 Ill. App. 3d 1066, 1069, 600 N.E.2d 48, 175 Ill. Dec. 425 (1992) (willful and wanton conduct sufficiently pleaded based on defendant taking no action despite knowing of dangerous condition); *Straub v. City of Mt. Olive*, 240 Ill. App. 3d 967, 978 (4th Dist. 1993) (defendant knew of dangers based on past incidents but took no action); *Pittsburgh, C., C. & S. L. R. Co. v. Kinnare*, 203 Ill. 388, 390-93 (1903) (allegations that defendant knew of decedent's perilous condition sufficiently alleged willful and wanton injury).

Although imperfect, count two of Thorne's second amended complaint sufficiently puts the defendants on notice of their alleged willful and wanton conduct. Ultimately, this court's decision to grant or deny the defendants' motions will have no practical effect. This court could grant the motions without prejudice, allowing Thorne to amend his complaint at a later

point, or deny the motions, allowing the defendants to file summary judgment motions at a later point. Either way, this court's ruling will not affect written or oral discovery or the evidence that will be obtained as a result.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendants' motions to dismiss are denied; and
2. The defendants shall answer count two no later than March 31, 2021.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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Circuit Court 2075