

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**DEBORAH M. MOONEYHAN and
MICHAEL MOONEYHAN**

PLAINTIFFS

VS.

CIVIL ACTION NO.: 4:15-CV-181-DMB-DAS

**WAL-MART STORES, INC. and
WAL-MART STORES EAST, LP**

DEFENDANTS

AMENDED COMPLAINT

(JURY TRIAL REQUESTED)

_____ **COME NOW** the Plaintiffs, Deborah and Michael Mooneyhan, and file this Amended Complaint against the Defendants and for cause would show unto the Court the following facts:

JURISDICTION

1. This Court has subject matter jurisdiction over this dispute because there is complete diversity among the parties, and the matter in controversy, exclusive of interest and costs, exceeds \$75,000.00.

PARTIES

2. Plaintiffs, Deborah and Michael Mooneyhan, are married adult resident citizens of Cleveland, Bolivar County, Mississippi.

3. Defendant, Wal-Mart Stores, Inc., is a corporation organized and existing under the laws of the State of Delaware with a principal office address of 702 SW 8th Street Bentonville, Arkansas 72716-8611, that is licensed to do business and is doing business in the State of Mississippi. Wal-Mart Stores, Inc. is the sole member of Wal-Mart Stores East, LLC (an Arkansas limited liability company), which is the sole member of WSE Management, LLC (a Delaware limited liability company) and WSE Investment, LLC (a Delaware limited liability company), both of which

together form the partnership which is Wal-Mart Stores East, LP (WSE Management, LLC as the general partner and WSE Investment, LLC as the limited partner).

4. Defendant Wal-Mart Stores East, LP, is a limited liability partnership organized and existing under the laws of the State of Delaware with a principal office address of 702 SW 8th Street, Bentonville, Arkansas, 72716-555, that is licenced to do business and is doing business in the State of Mississippi.

FACTS

5. At all times material to this lawsuit, Wal-Mart Stores, Inc. and Wal-Mart Stores East, LP, were engaged in the business of maintaining, owning and operating retail establishments that provide products and services to the general public.

6. At all relevant times Wal-Mart Stores, Inc. was the alter ego of Wal-Mart Stores East, LP, as evidenced by the corporate structure in that Wal-Mart Stores, Inc. is ultimately the sole member of all the entities that make up Wal-Mart Stores East, LP.

7. At all relevant times Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc., maintained, owned and operated, a retail establishment at 710 N. Davis Drive, Cleveland, Mississippi 38732. This retail establishment is designated as Store Number 1530.

8. Through Store Number 1530, Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc., offered products for sale, and expressly and impliedly invites the public on its premises to purchase products and services.

9. Pursuant to this invitation, Deborah M. Mooneyhan entered Store Number 1530 on June 16, 2014, intending to purchase several items, including a liquid drain cleaner.

10. Deborah M. Mooneyhan decided to purchase the liquid drain cleaner “Liquid Lightning” whose primary active ingredient is sulfuric acid.

11. When Deborah M. Mooneyhan retrieved a bottle of “Liquid Lightning” from the shelf, the contents of the “Liquid Lightning” container were on the outside of the bottle and its plastic bag. Although the bottle was covered in a plastic bag, the contents of the bottle had escaped and/or burned through the plastic bag creating a hazardous condition. Therefore, when Deborah M. Mooneyhan handled or touched the bottle and the plastic bag, Deborah M. Mooneyhan’s hands came in contact with sulfuric acid.

12. When the contents of the “Liquid Lightning” container made contact with Deborah M. Mooneyhan’s exposed skin, her hands began to burn and hurt.

13. Deborah M. Mooneyhan immediately rushed to a restroom on the premises of Store Number 1530 to rinse her hands.

14. While in the restroom rinsing her hands, Deborah M. Mooneyhan informed a janitor, who was present in the restroom, that drain cleaner had leaked on her hands.

15. In less than five minutes, two Wal-Mart Stores East, LP, associates came into the restroom, and insisted that Deborah M. Mooneyhan cease rinsing her hands and that she show the manager or assistant manager where the incident had taken place.

16. Deborah M. Mooneyhan complied and showed the manager or assistant manager where the incident had taken place.

17. The manager or assistant manager also insisted that Deborah M. Mooneyhan cooperate in the preparation of an “incident report.”

18. During the investigation of the incident, the manager or assistant manager found several other damaged containers of “Liquid Lightning” which were leaking and whose contents had escaped or burned through the plastic bag.

19. At no time did anyone employed by Wal-Mart Stores East, LP, advise Deborah M.

Mooneyhan to continue rinsing her hands or that she should call a physician immediately.

20. At no time did anyone employed by Wal-Mart Stores East, LP, offer Deborah M. Mooneyhan first aid or medical assistance nor did anyone employed by Wal-Mart Stores East, LP, call a physician or ambulance for her.

21. After Deborah M. Mooneyhan left Store 1530, she presented to the emergency room at the Bolivar Medical Center, 901 Hwy. 8 East, Cleveland, Mississippi 38732.

22. The Bolivar Medical Center immediately referred Deborah M. Mooneyhan to the “Joseph M. Still Burn Center” at Central Mississippi Medical Center, 1850 Chadwick Drive, Jackson, Mississippi 39204.

23. Deborah M. Mooneyhan was transferred by ambulance to the “Joseph M. Still Burn Center” at Central Mississippi Medical Center, where she stayed for two days.

24. Deborah M. Mooneyhan continues to suffer loss of physical function, pain, and discomfort as a result of the burns she received on the premises of Store Number 1530.

25. “Liquid Lightning” is a hazardous substance subject to federal regulations regarding hazard communication.

26. Upon information and belief, Store Number 1530 was required to maintain any “Material Safety Data Sheets” accompanying shipments of “Liquid Lightning.”

27. In the alternative, Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc., was required to develop and maintain a written hazard communication program for the workplace.

28. The Material Safety Data Sheet for “Liquid Lightning” offers emergency first aid procedures. In the case of skin contact, the Material Safety Data Sheet requires that the affected area be “Flush well with large amounts of cool water for 15 minutes. Call physician immediately.”

29. Upon information and belief, at some time prior to the incident in question, Wal-Mart

Stores, Inc. entered into a General Merchandise Supplier Agreement with the Jones Stephens Corporation.

30. Pursuant to the General Merchandise Supplier Agreement, Jones Stephens Corporation agreed to provide to Wal-Mart Stores, Inc. the liquid drain cleaner “Liquid Lightning” for retail sale.

31. Upon information and belief, Wal-Mart Stores, Inc. provided “Liquid Lightning” to store number 1530 for retail sale.

32. Upon information and belief, prior to the incident in question, Jones Stephens Corporation had retained Hi-Tech Laboratories to exclusively manufacture “Liquid Lightning” with specific requirements and guidelines for sale in Wal-Mart retail stores such as store number 1530.

33. Upon information and belief, the “Liquid Lightning” manufactured by Hi-Tech Laboratories contained “buffers” which would lessen the impact of incidental contact with “Liquid Lightning.”

34. Upon information and belief, the “Liquid Lightning” manufactured by Hi-Tech Laboratories was bottled with a chemically resistant seal which would not erode or burn with incidental contact with “Liquid Lightning”, and which would help to prevent incidental leakage.

35. Upon information and belief, the “Liquid Lightning” manufactured by Hi-Tech Laboratories was bottled with a chemically resistant cap which would not erode or burn with incidental contact with “Liquid Lightning”, and which would help to prevent incidental leakage.

36. Upon information and belief, the “Liquid Lightning” manufactured by Hi-Tech Laboratories was packaged with a high grade, chemically resistant bag surrounding the bottle, which also would help to prevent incidental leakage, and incidental contact with “Liquid Lightning.”

37. Upon information and belief, the “Liquid Lightning” manufactured by Hi-Tech Laboratories had a bottle specially designed to allow the product to be poured without splashing to

prevent incidental contact with “Liquid Lightning.”

38. Upon information and belief, by at least April 21, 2014, Jones Stephens Corporation no longer retained Hi-Tech Laboratories to manufacture “Liquid Lightning” and had retained another manufacturer, Roto Corporation, to manufacture “Liquid Lightning” exclusively for Wal-Mart Stores, Inc.

39. Upon information and belief, the “Liquid Lightning” made by the new manufacturer contained no buffers and was 93.18 % sulfuric acid.

40. Upon information and belief, the “Liquid Lightning made by the new manufacturer did not contain a chemically resistant seal, but rather a standard aluminum seal which would dissolve or disintegrate with direct exposure to “Liquid Lightning.”

41. Upon information and belief, the “Liquid Lightning made by the new manufacturer did not contain a chemically resistant cap, but rather a standard plastic cap which would dissolve or disintegrate or leak with direct exposure to “Liquid Lightning.”

42. Upon information and belief, the “Liquid Lightning” made by the new manufacturer was not packaged with a high grade, chemically resistant bag, but was packaged with a low grade polyethylene bag, which would dissolve or disintegrate when exposed to “Liquid Lightning” and allow the contents of the bottle to escape.

43. Upon information and belief, the “Liquid Lightning” made by the new manufacturer was not packaged with a bottle specially designed to allow the product to be poured without splashing to prevent incidental contact with “Liquid Lightning.”

44. Upon information and belief, prior to June 16, 2014, Wal-Mart Stores, Inc. became aware that Jones Stephens Corporation was no longer employing Hi-Tech Laboratories to manufacture “Liquid Lightning” and that the new “Liquid Lightning” differed in material respects

from the product manufactured by Hi-Tech Laboratories. In particular, Wal-Mart Stores, Inc. knew or should have known that the new product was nearly 100% pure sulfuric acid, and manufactured without the chemically resistant seal, cap, bag or specialized bottled. These material differences made the new “Liquid Lightning” unreasonably dangerous for retail sale and prone to leaking.

45. Despite this knowledge, Wal-Mart Stores, Inc. continued to cause the new “Liquid Lightning” to be distributed to Wal-Mart affiliated retail stores, including store number 1530, did not warn store number 1530, or the general public that this new “Liquid Lightning” was unreasonably dangerous, stronger and more likely to leak, and did not instruct Wal-Mart affiliated retail stores, including store number 1530, to stop selling and remove the new “Liquid Lightning”. It is believed this was done because the new "Liquid Lightning" was cheaper to purchase and resulted in a higher profit margin for Wal-Mart Stores, Inc. and its related retail stores.

CAUSES OF ACTION

Negligence **Count I**

46. At the time of the aforesaid incident, Deborah M. Mooneyhan was an invitee on the premises of Store Number 1530.

47. As a person invited onto the premises of Store Number 1530, to conduct business, Deborah M. Mooneyhan was owed a duty of reasonable care. Specifically, Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc., owed Deborah M. Mooneyhan a duty to avoid inflicting negligent injury upon her.

48. Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc., owed Deborah M. Mooneyhan the duty to both keep the premises reasonably safe, and to warn Deborah M. Mooneyhan of latent defects in the premises.

49. Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc., breached these duties by either creating a hazardous condition on its premises, failing to remedy the hazardous condition, thus rendering its premises unreasonably dangerous, or in failing to warn Deborah M. Mooneyhan of a latent, hazardous condition of which Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc., should have been aware, namely that bottles of “Liquid Lightning” were leaking sulfuric acid that could easily come in contact with the public in general and Deborah M. Mooneyhan in particular.

50. As a direct and proximate result of these breaches, Deborah M. Mooneyhan suffered injury.

Count II

51. Having become aware that “Liquid Lightning” had made contact with Deborah M. Mooneyhan’s exposed skin, and having involved Deborah M. Mooneyhan in an investigation of the incident, Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc., was under a duty to behave reasonably towards Deborah M. Mooneyhan, especially in light of Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc.’s superior knowledge as to the properties, and hazards of “Liquid Lightning.”

52. Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc., breached this duty by negligently interrupting Deborah M. Mooneyhan as she was rinsing her hands, thus preventing her from flushing her hands for fifteen minutes as required by the Material Safety Data Sheet.

53. Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc., further breached this duty by negligently failing to advise Deborah M. Mooneyhan to immediately call a physician as recommended by the Material Safety Data Sheet.

54. Wal-Mart Stores East, LP and/or Wal-Mart Stores, Inc., further breached this duty by negligently failing to provide first aid or medical assistance and by negligently failing to call a physician or ambulance.

55. As a direct and proximate result of these breaches, Deborah M. Mooneyhan suffered injury.

Count III

56. As supplier and alter ego of Wal-Mart Stores East, LP, Wal-Mart Stores, Inc. was on actual notice that the new Liquid Lightning being provided to Wal-Mart affiliated entities was stronger and less safe than the Liquid Lightning manufactured by Hi-Tech Laboratories and that it was prone to leak.

57. By virtue of its superior knowledge as to the properties and lack of safety features of the new Liquid Lightning and its tendency to leak, Wal-Mart Stores, Inc., owed a duty to the public in general and Plaintiffs in particular to warn of the latent, defective dangers of the new Liquid Lightning and to prevent the same from being sold in its retail stores.

58. Wal-Mart Stores, Inc., breached this duty by failing to warn the public that the new Liquid Lightning was stronger and less safe than the product manufactured by Hi-Tech Laboratories and was prone to leak and by continuing to allow the new Liquid Lightning to be sold in its retail stores such as Store Number 1530.

59. As a direct and proximate result of these breaches, Plaintiff Deborah Mooneyhan suffered injury when she came in contact with the new Liquid Lightning.

DAMAGES

60. Plaintiffs respectfully requests a judgment of and from Defendants, compensating them for the following elements of damage:

- a. Medical expenses incurred to treat Deborah Mooneyhan's injuries;
- b. Medical expenses reasonably likely to occur in the future as a result of Defendants' negligence;

- c. Physical pain and suffering accompanying Deborah Mooneyhan's injuries;
- d. Physical pain and suffering likely to occur in the future as a result of Defendants' negligence;
- e. Mental pain and worry arising out of Deborah Mooneyhan's injuries;
- f. Mental pain and worry likely to occur in the future as a result of Defendants' negligence;
- g. Loss of enjoyment of life;
- h. Lost wages from June 16, 2014, through the date of trial;
- I. Lost wage earning capacity caused by Deborah Mooneyhan's injuries; and
- j. Loss of companionship and consortium.

61. **WHEREFORE, PREMISES CONSIDERED,** in that the aforesaid injuries and damages were all proximately caused or contributed to by the acts and omissions of Defendants, Plaintiffs respectfully pray:

- a. That the Defendants be served with a copy of this Amended Complaint and be cited and required to answer the same within the delays provided by law;
- b. That Defendants be responsible for all costs of these proceedings; and
- c. That after expiration of all legal delays and due proceedings there be a judgement hearing in favor of Deborah M. Mooneyhan and Michael Mooneyhan against Wal-Mart Stores, Inc., and Wal-Mart Stores East, LP, holding these Defendants jointly and severally liable for the following relief:

- I. Judgment hearing in favor of Deborah M. Mooneyhan and Michael Mooneyhan against Defendants, for compensatory damages in an amount justified by the evidence at trial, plus any applicable interest on said sum

including prejudgment and post-judgment interest in the highest amount allowed by law;

- ii. Judgment hearing in favor of Deborah M. Mooneyhan and Michael Mooneyhan and against Defendants, for punitive damages as allowed by law in an amount justified by the evidence at trial, plus any applicable interest on said sum including prejudgement and post-judgment interest in the highest amount allowed by law; and
- ii. All other legal or equitable relief to which Plaintiffs are entitled.

Respectfully submitted,

**DEBORAH M. MOONEYHAN and
MICHAEL MOONEYHAN**

BY: /s/ Jonathan B. Fairbank

ATTORNEYS FOR PLAINTIFFS:

Jonathan B. Fairbank, Esq.
Mississippi State Bar Number: 5119
Post Office Box 13276
Jackson, MS 39236-3276
Phone: (601) 956-8999
Fax: (601) 957-9779
E-Mail: Jonfairbanklaw@gmail.com

Christopher P. Williams, Esq. (MSB #10774)
Allen M. Gressett, Esq. (MSB #103576)
DIAZ LAW FIRM
208 Waterford Square, Suite 300
Madison, MS 39110
(601) 607-3456
E-Mail: chris@diazlawfirm.com
E-mail: allen@diazlawfirm.com

CERTIFICATE OF SERVICE

_____ I, Jonathan Fairbank, certify that I electronically filed the foregoing AMENDED COMPLAINT with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

R. Brittain Virden, Esq.
P.O. Box 1856
Greenville, MS. 38702-1856
Counsel for Wal-Mart Stores East, L.P.

This the 3RD day of May 2016.

/S/Jonathan B. Fairbank
As Attorney for Deborah and Michael Mooneyhan

Jonathan B. Fairbank, Esq.
Mississippi State Bar Number: 5119
Post Office Box 13276
Jackson, MS. 39236-3276
Phone: (601)956-8999
Fax:(601)957-9779
E-Mail: [Jonfairbanklaw@gmail](mailto:Jonfairbanklaw@gmail.com)