

**JURY FEE PAID  
THIS DATE:  
BY: AUG 28 2009**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

DONNA MALONE  
TORRI HARRIS,  
LACHESA WILLIAMS and  
ANNA GILBERT,  
Co-Class Representatives  
of all those similarly situated,

Plaintiffs,

v

STERLING OIL & CHEMICAL  
CO., INC., a Michigan corporation, and  
STERLING SERVICES, LTD., a Michigan  
corporation,

Defendants.

MALONE, DONNA , et al. v STERLING  
Hon. Gershwin A Drain 08/28/2009



HERTZ SCHRAM PC  
ARI M. CHARLIP (P57285)  
ELIZABETH C. THOMSON (P53579)  
1760 S. Telegraph Rd., Ste. 300  
Bloomfield Hills, MI  
248-335-5000

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**CLASS ACTION COMPLAINT, MOTION FOR CLASS CERTIFICATION  
AND DEMAND FOR JURY TRIAL**

Plaintiffs by and through their attorneys Hertz Schram PC, hereby complain against the above named Defendants, move this court for class certification, demand for jury trial and state as follows:

**THE PARTIES**

1. Plaintiff, Donna Malone, lives in the County of Wayne, State of Michigan in immediate proximity to Defendants' business.

2. Plaintiff, Torri Harris, lives in the County of Wayne, State of Michigan in immediate proximity to Defendants' business.

3. Plaintiff, LaChesa Williams, lives in the County of Wayne, State of Michigan in immediate proximity to Defendants' business.

4. Plaintiff Anna Gilbert, lives in the County of Wayne, State of Michigan in immediate proximity to Defendants' business.

5. Defendant Sterling Oil & Chemical Company is a Michigan corporation and at all times pertinent hereto was doing business in the County of Wayne, State of Michigan.

6. Defendant Sterling Services, Ltd., is a Michigan corporation and at all times pertinent hereto was doing business in the County of Wayne, State of Michigan. (Sterling Oil & Chemical Company and Sterling Services, Ltd. shall hereinafter collectively be referred to as "Defendants".)

#### **JURISDICTION AND VENUE**

7. Plaintiffs and all others similarly situated are residents of Wayne County.

8. The damages suffered by the Plaintiffs and all others similarly situated were suffered in Wayne County.

9. The Defendants' actions, which were the proximate and legal cause of Plaintiffs' damages as alleged herein, occurred in Wayne County.

10. Plaintiffs seek monetary damages in excess of \$25,000 per Plaintiff, exclusive of costs and attorney fees, and equitable relief.

11. This Court has personal and subject matter jurisdiction over Defendant.

12. Venue is proper in this Court.

## GENERAL ALLEGATIONS

13. Defendants handle, store, blend and distribute industrial lubricants including hydraulic oils, grease and petroleum products for companies such as Dow, ExxonMobil and other automotive and related industries.

14. Defendants maintain a 5 acre tank farm, located at 1530 Commor in the City of Hamtramck, with a total storage capacity of almost 5 million gallons.

15. Defendants' facility routinely uses, handles, treats and stores hazardous and non-hazardous chemicals and/or substances.

16. In the morning of August 27, 2009, a massive explosion and fire ignited at the Defendants' facility.

17. Based upon information and belief, witnesses from Trenton, River Rouge and even Ontario, Canada reported observing smoke from the fire.

18. The Department of Environmental Quality immediately sent in crews to address environmental concerns.

19. Residents and businesses were evacuated from the area and ordered not to return to their homes.

20. After the explosion and fire and at all times during and after the emergency evacuation occurred, Plaintiffs and all others similarly situated suffered damage to property, an interference with property rights and an interference with the right to peace and comfort as a result of the Defendants' actions as herein alleged.

21. Based upon information and belief, Defendants failed to comply with conditions of the permits under which it operates and/or failed to operate with the proper permits.

22. Based upon information and belief, Defendants were in violation of state and federal regulations which govern the handling, treatment and/or storage of hazardous and non-hazardous substances and chemicals.

23. Defendants are vicariously liable for all damages suffered by Plaintiffs caused by Defendants' employees, agents, and servants.

24. Defendants knew or should have known that its continuing violations of state and federal regulations would cause harm, but elected to continue operating the facility.

25. Defendants have intentionally and knowingly failed to properly correct its equipment or operations so as to prevent chemical explosions and the release of hazardous and non-hazardous substances.

#### **COUNT I – NUISANCE**

26. Plaintiffs restate their allegations in Paragraphs 1 through 25 as if set forth fully herein.

27. Defendants' actions at its facility have interfered with the Plaintiffs, and all others similarly situated, property rights, privileges, and use and enjoyment of their property so as to constitute a nuisance.

28. The events at the Defendants' facility were unreasonably loud and caused an unreasonable and wrongful level of noise to be heard by residents and businesses located near those facilities.

29. The events at the Defendants' facility caused an unreasonable and wrongful odor in the vicinity.

30. The events at the Defendants' facility caused an unreasonable and wrongful release of hazardous and non-hazardous substances in the vicinity.

31. The release of air pollutants onto the Plaintiff's property and that of all others similarly situated has resulted in significant harm to Plaintiffs and all others similarly situated.

32. Defendants' actions as alleged herein constituted an unreasonable interference with the safety, peace, comfort, or convenience of the Plaintiffs and all others similarly situated.

33. The harm caused by Defendants is a direct and natural result of Defendants' actions in emitting various airborne pollutants from its facility.

34. Defendants' emissions of pollutants are intentional and unreasonable and are otherwise actionable.

35. The interference with Plaintiffs' rights caused by Defendants' actions or lack thereof have caused significant harm to Plaintiffs and others similarly situated, including but not limited to:

- a. Physical harm to Plaintiffs' personal property;
- b. Physical harm to Plaintiffs' real property;
- c. Loss of and interference of Plaintiffs' use and enjoyment of their property rights, including but not limited suffering from the effects of unpleasant odors, smoke, visible emissions, noise and otherwise horrible conditions that forced Plaintiffs indoors, to shut their windows and/or evacuate their homes.
- d. Interference with Plaintiffs' right to peace and comfort.

WHEREFORE, Plaintiffs respectfully request that this Court grant judgment in its favor of Plaintiffs and those similarly situated and against Defendants and award to Plaintiffs and all those similarly situated:

- A. All actual damages suffered by Plaintiffs and those similarly situated;
- B. All other relief this Court deems just and appropriate, including but not limited to, all costs and attorneys' fees associated with bringing this action and interest from the date of the filing of this Complaint until the date of judgment at the statutory rate;
- C. A permanent injunction enjoining Defendants from any further operation; and

D. Exemplary Damages.

**COUNT II – NEGLIGENCE**

36. Plaintiffs restated their allegations in Paragraphs 1 through 35 as if set fully herein.

37. Defendants owed a duty of care to residents and property owners located in the vicinity of their facility.

38. The duty of care owed by Defendants was and is a duty to exercise reasonable conduct to follow all applicable environmental standards and to minimize any discharge of noxious, dangerous, and hazardous chemicals and/or other substances into the air from its operations and to prevent the leakage of said substances.

39. Defendants failed to exercise reasonable care because it in fact discharged untreated, noxious, dangerous and hazardous chemicals and/or other substances into the air at all times during and after the leakage at its facility.

40. Defendants knew or should have known that its facility was operating under hazardous conditions, not in compliance with Michigan and Federal standards, therefore, causing said leak which created the discharge of noxious, dangerous, and hazardous chemicals and/or other substances onto Plaintiffs' property and onto the property of those similarly situated.

41. Defendants also knew that said chemicals and/or other substances were noxious, dangerous, and hazardous and would have harmful effects on Plaintiffs' property and the property of those similarly situated. Defendants' conduct in this regard was unreasonable.

42. Defendants' actions in causing said chemicals and/or other substances to discharge into the surrounding environment were voluntary.

43. Defendants' actions in causing said chemicals and/or other substances to discharge into the surrounding environment caused feelings among the Plaintiffs and those similarly situated of humiliation, outrage, and indignity.

44. Defendants' actions in causing said chemicals and/or other substances to discharge into the surrounding environment were malicious and/or willful and demonstrate a reckless disregard of Plaintiffs' rights and the rights of those similarly situated.

45. Defendants' conduct is the proximate cause of damages to the Plaintiffs and those similarly situated.

46. Plaintiffs and those similarly situated have been damaged by Defendants' conduct in the following ways:

- a. Physical harm to Plaintiffs' personal property;
- b. Physical harm to Plaintiffs' real property;
- c. Loss of and interference of Plaintiffs' use and enjoyment of their property rights, including but not limited suffering from the effects of unpleasant odors, smoke, visible emissions, noise and otherwise horrible conditions that force Plaintiffs indoors, to shut their windows and/or to evacuate their homes.
- d. Interference with Plaintiffs' right to peace and comfort.

WHEREFORE, Plaintiffs respectfully request that this Court grant judgment in its favor of Plaintiffs and those similarly situated and against Defendants and award to Plaintiffs and all those similarly situated:

- A. All actual damages suffered by Plaintiffs and those similarly situated;
- B. All other relief this Court deems just and appropriate, including but not limited to, all costs and attorneys' fees associated with bringing this action and interest from the date of the filing of this Complaint until the date of judgment at the statutory rate;
- C. A permanent injunction enjoining Defendant from any further operation; and
- D. Exemplary Damages.

**COUNT III – TRESPASS**

47. Plaintiffs restate their allegations in Paragraphs 1 through 46 as if set forth fully herein.

48. Defendants allowed noxious, dangerous, and hazardous chemicals and/or substances into the air, which then settle over and on to Plaintiffs' property.

49. Said emissions over and on Plaintiffs' property are unauthorized direct or immediate intrusions of physical, tangible objects on land over which Plaintiffs have an exclusive right of possession.

50. The noxious, dangerous, and hazardous chemicals and/or substances settle on and become part of and in fact alter the land on which they settle.

51. Plaintiffs have been and continue to be damaged by Defendants' trespass onto their real property and/or exclusive possessory real property rights.

52. As a result of the actions of Defendants, Plaintiffs and all others similarly situated have been damaged in the following ways:

- a. Physical harm to Plaintiffs' personal property;
- b. Physical harm to Plaintiffs' real property;
- c. Loss of and interference of Plaintiffs' use and enjoyment of their property rights, including but not limited suffering from the effects of unpleasant odors, smoke, visible emissions, noise and otherwise horrible conditions that force Plaintiffs from their homes and/or indoors with closed doors and windows.
- d. Interference with Plaintiffs' right to peace and comfort.

WHEREFORE, Plaintiffs respectfully request that this Court grant judgment in its favor of Plaintiffs and those similarly situated and against Defendants and award to Plaintiffs and all those similarly situated:

- A. All actual damages suffered by Plaintiffs and those similarly situated;
- B. All other relief this Court deems just and appropriate, including but not limited to, all costs and attorneys' fees associated with bringing this action and interest from the date of the filing of this Complaint until the date of judgment at the statutory rate;
- C. A permanent injunction enjoining Defendants from any further operation; and



D. Exemplary Damages.

**COUNT IV – STRICT LIABILITY**

53. Plaintiffs reallege paragraphs 1 through 52 though fully restated herein.

54. Defendants have engaged in an abnormally dangerous activity by storing, handling, and disposing of hazardous wastes and substances.

55. Defendants knew, or should have known, of the high degree of risk attendant with storing, handling, and disposing of hazardous wastes and substances.

56. Defendants knew, or should have known, that storing, handling, and disposing of hazardous wastes and substances could threaten property damage and harm the air, soil, groundwater, and surface water.

57. Defendants are liable for all damages and injuries resulting from their abnormally dangerous activities.

58. Plaintiffs' person and/or their property have been damaged by Defendants' abnormally dangerous activities.

59. As a result of the actions of Defendants, Plaintiffs and all others similarly situated have been damaged in the following ways:

- a. Physical harm to Plaintiffs' personal property;
- b. Physical harm to Plaintiffs' real property;
- c. Loss of and interference of Plaintiffs' use and enjoyment of their property rights, including but not limited suffering from the effects of unpleasant odors, smoke, visible emissions, noise and otherwise horrible conditions that force Plaintiffs indoors and to shut their windows.
- d. Interference with Plaintiffs' right to peace and comfort.

WHEREFORE, Plaintiffs respectfully request that this Court grant judgment in its favor of Plaintiffs and those similarly situated and against Defendants and award to Plaintiffs and all those similarly situated:

- A. All actual damages suffered by Plaintiffs and those similarly situated;
- B. All other relief this Court deems just and appropriate, including but not limited to, all costs and attorneys' fees associated with bringing this action and interest from the date of the filing of this Complaint until the date of judgment at the statutory rate;
- C. A permanent injunction enjoining Defendant from any further operation; and
- D. Exemplary Damages.

**COUNT V – CLASS ACTION ALLEGATIONS**

60. Plaintiffs reallege paragraphs 1 through 59 though fully restated herein.

61. That Plaintiffs bring this class action alleging claims of nuisance, negligence, trespass and strict liability by the Defendant named herein as a Class Action pursuant to Rule 3.501 of the Michigan Court Rules on behalf of all residents and/or property owners of the City Hamtramck and all others who have suffered nuisance, property damages, economic losses and other damages as a result of the Defendant's actions as herein alleged. Plaintiffs' class includes:

- a. All individuals who have suffered property or other economic damages as a result of the Defendant's actions as herein alleged;
- b. All individuals who suffered the interference with the use and enjoyment of property;
- c. All individuals who suffered the interference with their right to peace and comfort; and/or
- d. All residents and/or property owners in the City of Hamtramck or other areas who request injunctive relief.

62. That Plaintiffs herein allege and appoint Plaintiffs as class representatives on behalf of all past and present residents and students of Hamtramck or other areas who have suffered annoyance, nuisance, property damage and an interference with their rights to use and enjoy property and to peace and comfort, as a result of the Defendants' actions.

63. That the claims of the representative party Plaintiffs are typical of the claims of the members of the Class.

64. Plaintiffs and all members of the Class sustained damages, from which they continue to suffer, arising from the actions of the Defendant as herein alleged.

65. The Class of Plaintiffs is so numerous that joinder of all members would be impracticable.

66. That the class representatives will fairly and adequately assert and protect the interests of the members of the class and designated subclasses and have retained counsel competent and experienced in this type of litigation. Plaintiffs have no interest that is contrary to or in conflict with the class members they seek to represent.

67. That the maintenance of the action as a Class Action will be superior to other available methods of adjudication in promoting the convenient administration of justice, as otherwise there could be conflicting rulings from different courts with regard to the claims made by the Class members against Defendant.

68. That Class Action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, due to the size of the Class, the expense and burden of individual litigation makes it impossible for the members of the Class individually to address wrongs done to them. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a Class Action.

69. That there are common questions of fact and law among all members of the Class as herein alleged.

WHEREFORE, Plaintiffs respectfully request that this Court grant judgment in its favor of Plaintiffs and those similarly situated and against Defendants and award to Plaintiffs and all those similarly situated:

- A. All actual damages suffered by Plaintiffs and those similarly situated;
- B. All other relief this Court deems just and appropriate, including but not limited to, all costs and attorneys' fees associated with bringing this action and interest from

the date of the filing of this Complaint until the date of judgment at the statutory rate;

- C. A permanent injunction enjoining Defendant from any further operation;
- D. Exemplary Damages; and
- E. Certify this matter as a class action.

Respectfully submitted,

HERTZ SCHRAM PC

By: 

ELIZABETH C. THOMSON (P53579)

1760 S. Telegraph, Ste. 300

Bloomfield Hills, MI 48302

248-335-5000

Dated: August 28, 2009

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**JURY DEMAND**

Now come the above-named Plaintiffs, by and through their attorneys, and hereby demand a trial by jury.

Respectfully submitted,

HERTZ SCHRAM PC

By:   
ELIZABETH C. THOMSON (P53579)  
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248-335-5000

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