



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

JOSEPH R. COSCHKA,

Plaintiff,

vs.

RIVERVIEW PROPERTIES, LLC;
GENERAL ELECTRIC RAILCAR REPAIR
SERVICES CORPORATION, n/k/a UTC
RAILCAR REPAIR SERVICES, LLC; and
NEBRASKA RAILCAR CLEANING
SERVICES, LLC,

Defendants.

CASE NO. CI 17 - 4195

COMPLAINT

ASSIGNED TO Pankonin

Comes now Plaintiff, Joseph R. Coschka, and for his claims for relief against the Defendants, and each of them, alleges and states as follows:

GENERAL ALLEGATIONS

1. The Plaintiff is a resident of Plattsmouth, Cass County, Nebraska. On April 14, 2015, the Plaintiff was an employee of Nebraska Railcar Cleaning Services, LLC, at its railcar cleaning facility located at 115-120 Hickory Street, Omaha, Douglas County, Nebraska.

2. Defendant Riverview Properties, LLC ("Riverview"), is a Nebraska limited liability company licensed to and conducting business in Omaha, Douglas County, Nebraska. On April 14, 2015, Riverview was the owner of the real property located at 115-120 Hickory Street, Omaha, Nebraska, that included the property upon which the aforesaid railcar cleaning facility was operated (hereinafter referred to collectively as the "Hickory Street property"). In addition, at that time and place, Riverview had agreed to provide a portion of the Hickory Street property for use by third parties as a railcar cleaning facility.

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3. Defendant General Electric Railcar Repair Services Corporation (“GERRS”), n/k/a UTC Railcar Repair Services, LLC, at all times material hereto, was a Delaware corporation licensed to do business and doing business in Omaha, Nebraska, under a Railcar Cleaning Services Agreement with Defendant Nebraska Railcar Cleaning Services dated February 13, 2012.

4. In addition, GERRS and Defendant Riverview had entered into a Site Use Agreement by which Riverview agreed to provide GERRS the right to use a portion of the Hickory Street property as a railroad car cleaning facility.

5. Defendant Nebraska Railcar Cleaning Services, LLC (“NRCS”), at all times material, was a Nebraska limited liability company that had contracted with Defendant GERRS to provide railcar cleaning services for railcars provided by GERRS at the Hickory Street property. On April 14, 2015, NRCS provided its employees, including the Plaintiff, to perform the railcar cleaning services at the Hickory Street property. NRCS is joined as a party-defendant in this action to determine its rights and liabilities pursuant to Neb. Rev. Stat. § 48-118 of the Nebraska Worker’s Compensation Act.

6. On April 14, 2015, the Plaintiff and other employees of NRCS were assigned to clean out the chemical residue of railroad tank car NATX303912 that had been transported by GERRS to the railcar cleaning facility at the Hickory Street property, pursuant to the Site Use Agreement between Riverview and GERRS.

7. At approximately 1:41 p.m. on that date, while the Plaintiff and his co-workers were in the process of cleaning the interior of the railroad tank car, an explosion occurred inside the tank car, resulting in the deaths of two co-workers of the Plaintiff and causing severe injuries to the Plaintiff as more fully set forth hereinafter.

FIRST CLAIM FOR RELIEF:

NEGLIGENCE OF DEFENDANT RIVERVIEW PROPERTIES, LLC

8. The Plaintiff incorporates herein by this reference the allegations contained in paragraphs 1 through 7 above as if fully set forth herein.

9. On April 14, 2015, the Plaintiff was on the premises owned by Riverview as an employee of NRCS and pursuant to the Site Use Agreement between Riverview and GERRS.

10. The railroad tank car being cleaned by the Plaintiff and his co-workers was located on the part of the property owned by and under the control of Riverview for use as a railcar cleaning facility.

11. At that time and place, unknown to the Plaintiff and his co-workers, the railroad tank car they were cleaning contained the residue of liquified natural gasoline that involved an unreasonable risk of harm to the Plaintiff and his co-workers.

12. Riverview knew, or in the exercise of reasonable care, should have known of the unreasonable risk of harm to which the Plaintiff and his co-workers were exposed as a result of the flammable and explosive substance contained in the railroad tank car.

13. Riverview, in the exercise of reasonable care, could have made the dangerous condition safe for the Plaintiff and his co-workers, and required that special precautions were taken, prior to and during the process of cleaning the tank car, but failed to do so.

14. Riverview failed to provide adequate warning and failed to ensure that others provided adequate warning to the Plaintiff and his co-workers of the unreasonably dangerous condition created by the flammable and explosive substance contained in the railroad tank car.

15. Riverview failed to use reasonable care to inspect the railroad tank car located on its premises to determine the nature and extent of the flammable and explosive substance contained in the railcar prior to the railcar being cleaned at its railcar cleaning facility.

16. As a direct and proximate result of Riverview's negligence as described in paragraphs 9-14, the Plaintiff sustained severe and disabling injuries and damages as more fully described hereinafter.

SECOND CLAIM FOR RELIEF:

NEGLIGENCE OF GENERAL ELECTRIC RAILCAR REPAIR SERVICES

17. The Plaintiff incorporates herein by this reference the allegations contained in paragraphs 1 through 7 above as if fully stated herein.

18. On or before April 14, 2015, GERRS caused to be transported to the Hickory Street property a railroad tank car, NATX303912, pursuant to the Railcar Cleaning Services Agreement with Defendant NRCS dated February 13, 2012.

19. On April 14, 2015, the Plaintiff and other employees of NRCS were assigned to clean out the chemical residue of railroad tank car NATX303912 pursuant to the Site Use Agreement between Riverview and GERRS. Unknown to the Plaintiff and his co-workers, the railroad tank car they were cleaning contained the residue of liquified natural gasoline that involved an unreasonable risk of harm to the Plaintiff and his co-workers.

20. At approximately 1:41 p.m. on that date, while the Plaintiff and his co-workers were in the process of cleaning the interior of the railroad tank car, an explosion occurred inside the tank car, resulting in the deaths of two co-workers of the Plaintiff and causing severe injuries to the Plaintiff as more fully set forth hereinafter.

21. The aforesaid explosion and resulting injuries and damages to the Plaintiff were proximately caused by the negligence and concurring negligence of GERRS and its employees in the following particulars, to-wit:

a. In failing to properly inspect the railroad tank car to determine the exact nature of the flammable and explosive substance contained therein prior to the beginning of the cleaning process by the Plaintiff and his co-workers;

b. In failing to provide adequate warning and failing to ensure that others provided adequate warning to the Plaintiff and his co-workers of the unreasonably dangerous condition created by the flammable and explosive substance contained in the railroad tank car, and the need to use special caution in cleaning the interior of the tank car;

c. In failing to make the dangerous condition of the railroad tank car safe for cleaning of the substance in the tank car prior to allowing the Plaintiff and his co-workers to begin the process of cleaning the interior of the tank car;

d. In failing to inform the Plaintiff and his co-workers of the dangerous flammable and explosive nature of the substance remaining in the railroad tank car so that the proper materials could be obtained for safe cleaning of the interior of the tank car;

e. In failing to comply with and adhere to the safety provisions contained in the Railcar Cleaning Services Agreement with Defendant NRCS dated February 13, 2012, and the safety provisions contained in Site Use Agreement between GERRS and Riverview relating to the railroad car cleaning facility;

f. In failing to provide warnings on each side of the railroad tank car of the hazardous material contained in the tank car, in violation of 49 C.F.R. 172.302 and 172.330

g. In failing to affix the appropriate placards on the railroad tank car required by 49 C.F.R. 172.508 in order to warn the Plaintiff and his co-workers of the hazardous substance contained in the tank car.

22. As a direct and proximate result of the negligence of GERRS, as described in paragraph 21 immediately above, the Plaintiff sustained severe and disabling injuries and damages as more fully described hereinafter.

INJURIES AND DAMAGES SUSTAINED BY THE PALINTIFF

23. As a direct and proximate result of the negligence of Defendants, and each of them, the Plaintiff sustained the following injuries and damages:

a. Physical injuries to his head, neck, mid and low back, both upper extremities and both lower extremities, resulting in severe mental and physical pain and suffering, high anxiety, depression, sleep impairment, PTSD symptoms, all continuing to the present;

b. Medical expenses in excess of \$45,000.00 to date, and the reasonable value of the medical expenses reasonably certain to be needed and provided for the rest of his life;

c. The wages, income and benefits that he has lost in excess of \$52,000.00 to date because of his total inability to engage in gainful employment;

d. The reasonable value of his 40% diminished earning capacity sustained as a result of his permanent injuries and disabilities;

e. The reasonable monetary value of the physical pain, mental suffering and emotional distress he has experienced to date and is reasonably certain to experience in the future;

f. The reasonable monetary value of the inconvenience he has experienced to date and is reasonably certain to experience in the future;

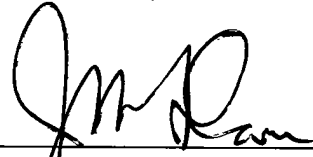
g. The reasonable monetary value of his permanent disabilities and impairments.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, and each of them, for his special damages in excess of \$100,000.00 to date and continuing into the future, the reasonable value of his general damages, interest as allowed by law, and the costs of this action.

DATED this 19th day of May, 2017.

JOSEPH R. COSCHKA, Plaintiff,

By: _____



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