

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.:

DANIEL J. O'BRIEN and
KAREN SUTLIFFE, his wife,

Plaintiffs,

vs.

PESTCO PEST CONTROL, INC.,

Defendant.

_____ /

COMPLAINT

Plaintiffs, **DANIEL J. O'BRIEN** and **KAREN SUTLIFFE**, by and through their undersigned counsel, hereby sue the Defendant, **PESTCO PEST CONTROL, INC.**, and in support thereof allege the following:

Parties, Jurisdiction and Facts Common to All Counts

1. This is an action for damages in excess of Fifty Thousand Dollars (\$50,000.00).
2. Plaintiff, DANIEL J. O'BRIEN, was and is a resident of Broward County, Florida.
3. Plaintiff, KAREN SUTLIFFE, was and is a resident of Broward County, Florida.
4. At all salient and relevant times, Defendant, PESTCO PEST CONTROL, INC., (hereinafter "PESTCO"), was and is a Florida Profit Corporation that conducts and is authorized to and doing business in Broward County, Florida, and was the corporate entity responsible for monthly pesticide services at Chuck's Steak House and Coconuts Restaurants (hereinafter collectively, "Chuck's") in Broward County, Florida.

5. Plaintiff, DANIEL J. O'BRIEN, worked at the Chuck's located at 1207 17th Street, Fort Lauderdale, Broward County, Florida, for about 9 years, from 1990 to 1998 as a musician. Since July of 2020, Chuck's Steak House is currently out of business and a dissolved corporation.

6. Plaintiff, DANIEL J. O'BRIEN, was employed by Chuck's during the times PESTCO provided regular and recurring pest control services for Chuck's locations throughout the County.

7. Inter alia, PESTCO regularly fumigated the restaurants, often while employees were still inside during the nightly closing operations of Chuck's. Upon entering the restaurant the following day, the Chuck's employees would find pesticide chemical remnants on kitchen surfaces and in the air.

8. In 2012, at the age of 58, Plaintiff, DANIEL J. O'BRIEN, was diagnosed with Parkinson's disease, despite having no family history. Parkinson's disease is a brain disorder that causes unintended or uncontrollable movements, such as shaking, stiffness, and difficulty with balance and coordination. Symptoms usually begin gradually and worsen over time. Plaintiff, DANIEL J. O'BRIEN is now 69 years old.

9. Around December 2021 to early 2022, Plaintiff DANIEL J. O'BRIEN, communicated with a former Chuck's co-worker, Richard Naylor, and/or his spouse, Cynthia, and from them, Mr. O'Brien learned that six (6) of his former co-workers at Chuck's had also been diagnosed with Parkinson's disease who had been exposed to the same pesticides while working at Chuck's. Those individuals were Richard Naylor, Raymond Bost, Dawne Pincince, Michael Kingsley, Lee Pires, and Christine Kelius. It was then Mr. O'Brien realized his long-term exposure to pesticides while working at Chuck's had likely caused his Parkinson's disease.

10. The accumulated effects of pesticide exposure did not manifest themselves to Plaintiff, DANIEL J. O'BRIEN, in a way which supplied some evidence of a causal relationship to his exposure to the fumigation and other pest control services conducted by Defendant PESTCO at Chuck's until receiving the information cited in Paragraph 9 above. Based on this information, the Plaintiffs contacted local lawyers to see if something could be done.

11. Plaintiffs assert all applicable state statutory and common law rights and theories related to accrual of a cause of action, the tolling or extension of any applicable statute of limitations, including equitable tolling, class action tolling, delayed discovery, discovery rule, and fraudulent concealment.

12. Plaintiffs plead that the discovery rule should be applied to delay the running of the statute of limitations and/or statute of repose until Plaintiffs knew, or through the exercise of reasonable care and diligence should have known, of facts indicating that Plaintiffs had been injured, the cause of the injury, and the tortious nature of the wrongdoing that caused the injury.

13. Despite diligent investigation by Plaintiff, DANIEL J. O'BRIEN, into the cause of his injuries, including consultations with his medical providers, the nature of his injuries and damages, and their relationship to the currently unknown subject pesticide(s) was not discovered, and through reasonable care and due diligence could not have been discovered, until a date within the applicable statute of limitations for filing Plaintiffs' claims.

14. The running of the statute of limitations in this cause is tolled due to equitable tolling. The Defendant is estopped from asserting a statute of limitations and/or statute of repose defense due to the fact Mr. O'Brien's physicians were unaware, and could not have known or have learned through reasonable diligence that he had been exposed to the risks alleged herein and that

those risks were the direct and proximate result of the wrongful acts and omissions of the Defendant.

COUNT I
NEGLIGENCE OF DEFENDANT, PESTCO PEST CONTROL, INC.

Plaintiffs reaffirm and reallege paragraphs 1 through 14 as if fully set forth herein and further allege:

15. PESTCO's performance of monthly pest control services, while Chuck's employees were still within the premises, is something PESTCO and or its agents knew or should have known, was a danger, likely to result in serious injury or death to Chuck's employees.

16. Defendant, PESTCO, owed to Plaintiff, DANIEL J. O'BRIEN, the duty to use due care and to have performed in a safe, competent and workmanlike manner all of the work and activity which Defendant, PESTCO, agreed to, was required to, and undertook to perform, at the request of Chuck's.

17. Defendant, PESTCO, breached its duties of care to Plaintiffs by failing to perform the monthly pest control services in a safe manner, and, inter alia, chose to conduct these services while employees of Chuck's were still within the premises and allowing said employees to be exposed to harmful chemicals, particularly from fumigation and other pest control activities.

18. The above recitals are not exhaustive. Plaintiffs are continuing their investigation. Additional negligence may exist and Plaintiffs will move to amend this Complaint at such time as said additional negligence becomes known.

19. As a direct, proximate and foreseeable result of Defendant, PESTCO's, negligence, Plaintiff, DANIEL J. O'BRIEN, developed Parkinson's disease and has endured pain and suffering, disability, physical impairment, mental anguish, inconvenience, reduced life

expectancy, loss of capacity for the enjoyment of life in the past and in the future, medical, nursing, rehabilitation, and therapeutic expenses both in the past and in the future.

20. In that the injuries suffered by Plaintiff, DANIEL J. O'BRIEN's, medical condition is continuing in nature, he will continue to suffer said damages on into the future and will be further compelled to expend great sums for medical, nursing, rehabilitation, and therapeutic and related treatment for those injuries.

WHEREFORE, Plaintiff, DANIEL J. O'BRIEN, demands judgment for damages against the Defendant, PESTCO PEST CONTROL, INC., together with pre-judgment interest and costs and demands trial by jury of all issues triable as of right by jury.

COUNT II
LOSS OF CONSORTIUM

Plaintiffs reaffirm and reallege paragraphs 1 through 20 as if fully set forth herein and further allege:

21. At all times material hereto, Plaintiff, KAREN SUTLIFFE, was and is the lawful spouse of DANIEL J. O'BRIEN.

22. As a direct and proximate result of Defendant, PESTCO PEST CONTROL, INC.'s, negligence, Plaintiff, KAREN SUTLIFFE, has suffered, and will continue to suffer, the loss of her spouse's services, support, consortium, and the care and comfort of his society.

WHEREFORE, Plaintiff, KAREN SUTLIFFE, demands judgment for damages against the Defendant, PESTCO PEST CONTROL, INC., together with pre-judgment interest and costs

and demands trial by jury of all issues triable as of right by jury.

DATED this 10th day of August, 2023.

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