

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

QUORUM MANAGEMENT CORPORATION, a/k/a
QUORUM MANAGEMENT COMPANY,
JUAN MARTIN NERO, GUILLERMO CASET,
NICOLAS ESPAIN, and
DIAMOND STATE INSURANCE COMPANY,
a/s/o QUORUM MANAGEMENT CORPORATION

Plaintiffs,

① v.

FRANCK'S PHARMACY, INC. and
FRANCK'S LAB, INC.

Defendants.

2010CA 009112XXXX FD
CIVIL ACTION NO.:

FILED
10 MAR 29 PM 5:18
CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 4

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiffs, Quorum Management Corporation, a/k/a Quorum Management Company, Juan Martin Nero, Guillermo Caset, Nicolas Espain and Diamond State Insurance Company (hereinafter referred to collectively as "Plaintiffs"), by and through their respective counsel, hereby demand judgment against Defendants, Franck's Pharmacy, Inc. and Franck's Lab, Inc. (hereinafter referred to collectively as "Defendants"), and complain against Defendants as follows:

PARTIES

1. Plaintiff, Quorum Management Corporation, a/k/a Quorum Management Company ("Quorum"), is a corporation duly organized and existing under the laws of the State of Florida with its principal place of business located at 12300 South Shore Boulevard, Suite 200, Wellington, Florida, and, at all times relevant hereto, owned Turca, Shakira, Platera, Cocata, Teletubi, Lunita, Xuxa, Federica, Abridadita, Julieta, Nina and Mojarritta, all internationally competitive polo horses.

EXHIBIT
A

2. Plaintiff, Juan Martin Nero ("Nero"), is an adult individual, an internationally known polo player, and a national citizen of Argentina, who, at all times relevant hereto, owned Minibank, Princesa, Vasuda, Gausuncho and Pelusa, all internationally competitive polo horses.

3. Plaintiff, Guillermo Caset ("Caset"), is an adult individual, an internationally known polo player, and a national citizen of Argentina, who, at all times relevant hereto, owned Holandesa and CanCan, both internationally competitive polo horses.

4. Plaintiff, Nicolas Espain ("Espain"), is an adult individual, an internationally known polo player, and a national citizen of Argentina, who, at all times relevant hereto, owned Monzon and Oracion, both internationally competitive polo horses.

5. Plaintiff, Diamond State Insurance Company ("Diamond State"), is a corporation duly organized and existing under the laws of the State of Indiana with its principal place of business located at 5253 Hohman Avenue, Hammond, Indiana, and, at all times relevant hereto, was engaged in the insurance business and was licensed to do business in the State of Florida.

6. Defendant, Franck's Pharmacy, Inc. (hereinafter along with Defendant Franck's Lab, Inc. referred to collectively as "Franck's"), upon information and belief, is a corporation duly organized and existing under the laws of the State of Florida with its principal place of business located at 1210 SW 33rd Avenue, Ocala, Florida, and, at all times relevant hereto, was engaged, *inter alia*, in the business of designing, formulating, compounding, manufacturing, selling, and distributing veterinary medications and nutritional supplements.

7. Defendant, Franck's Lab, Inc. (hereinafter along with Defendant Franck's Pharmacy, Inc. referred to collectively as "Franck's"), upon information and belief, is a corporation duly organized and existing under the laws of the State of Florida with its principal place of business located at 1210 SW 33rd Avenue, Ocala, Florida, and, at all times relevant hereto, was engaged, *inter alia*, in the business of designing, formulating, compounding, manufacturing, selling, and distributing veterinary medications and nutritional supplements.

8. Diamond State issued Policy No. AEM 0219157 to Quorum for the period December 10, 2008, through December 10, 2009, insuring Quorum's internationally competitive polo horses.

9. Diamond State has made payments to Quorum under the aforementioned Policy in the amount of \$1,320,000.00 for the loss of Quorum's internationally competitive polo horses when they were killed on or about April 19, 2009, by an injection of a nutritional supplement that was designed, formulated, compounded, manufactured, sold and distributed by Franck's, and is subrogated to the rights of its insured to the extent of its payments pursuant to the terms of the Policy, and now seeks recovery of said payments.

JURISDICTION AND VENUE

10. Jurisdiction and Venue are proper in this Court because the cause of action occurred in Palm Beach County, all of the internationally competitive polo horses which are the subject of the litigation were located in Palm Beach County at the time of the incident, and the damages suffered by Plaintiffs exceed the jurisdictional limitation of this Court, exclusive of interest and costs.

11. This Circuit Court has subject matter jurisdiction pursuant to Florida Statute Section 26.012.

12. This Circuit Court has personal jurisdiction over the Defendants pursuant to Florida Statute Section 48.193.

13. Venue is proper in this jurisdiction pursuant to Florida Statute Section 47.051.

STATEMENT OF FACTS COMMON TO ALL COUNTS

14. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 13 above as if fully re-alleged herein.

15. On or about April 15, 2009, Dr. James Belden ("Belden"), a veterinarian duly licensed to practice veterinary medicine in the State of Florida, ordered a nutritional supplement compound from Franck's to be administered to Plaintiffs' polo horses.

16. The compound Dr. Belden ordered from Franck's on or about April 15, 2009, was a mineral and vitamin supplement to replenish the polo horses' bodies and help muscle recovery after heavy competition and workouts.

17. The compound Dr. Belden ordered from Franck's on or about April 15, 2009, when properly formulated, was safe and appropriate for polo horses given the rigors of the United States Open Polo Championship.

18. The nutritional supplement compound that was designed, formulated, compounded, manufactured, sold and distributed by Franck's, was administered to Plaintiffs' polo horses on April 19, 2009.

19. Shortly after Plaintiffs' polo horses were administered the nutritional supplement compound that was designed, formulated, compounded, manufactured, sold and distributed by Franck's on April 19, 2009, the horses went into cardiac arrest and died shortly thereafter.

20. Plaintiffs' polo horses died as the direct and proximate result of being administered the nutritional supplement compound that was designed, formulated, compounded, manufactured, sold and distributed by Franck's.

21. As a direct and proximate result of the death of the polo horses, Plaintiffs suffered damages in an amount in excess of \$4,076,000.00.

22. As a direct and proximate result of the death of the polo horses, Plaintiffs Nero, Caset and Spain lost revenues as polo players, the full extent of which is yet to be determined.

COUNT I - NEGLIGENCE

23. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 22 above as if fully re-alleged herein.

24. The death of Plaintiffs' polo horses was caused by and resulted from the negligent, careless and/or reckless acts and/or omissions of Franck's, by and through its agents, subagents, servants, representatives, workmen, employees and/or sub-contractors acting within the course and scope of their employment. Said acts and/or omissions consisted of one or more of the following:

(a) designing and/or formulating and/or compounding and/or manufacturing a dangerously defective nutritional supplement compound that Franck's knew or reasonably should have known exposed Plaintiffs' polo horses to an unreasonable risk of harm;

(b) selling and/or distributing a dangerously defective nutritional supplement compound into the stream of commerce that Franck's knew or reasonably should have known subjected Plaintiffs' polo horses to an unreasonable risk of harm;

(c) failing to properly and adequately design, formulate, compound and/or manufacture the nutritional supplement compound before introducing it into the stream of commerce;

(d) failing to properly and adequately inspect and/or test the nutritional supplement compound before introducing it into the stream of commerce;

(e) improperly designing, formulating, compounding, manufacturing, selling and distributing into the stream of commerce the nutritional supplement compound with dangerously high levels of sodium selenite in it that rendered the compound hazardous and unreasonably dangerous for its contemplated, foreseeable and intended use;

(f) failing to provide adequate and sufficient warnings and instructions with respect to the nutritional supplement compound that rendered it defective, hazardous and unreasonably dangerous;

(g) failing to warn Plaintiffs and other intended users and consumers of the nutritional supplement compound of the aforesaid dangerously defective conditions that Franck's

knew or reasonably should have known existed and created an unreasonable risk of harm to Plaintiffs' polo horses;

(h) failing to correct the defective conditions that Franck's knew or reasonably should have known existed and created an unreasonable risk of harm to Plaintiffs' polo horses;

(i) misrepresenting the attributes and uses of its product when Franck's knew or reasonably should have known that future users would justifiably rely on those misrepresentations;

(j) failing to properly and adequately hire, train and supervise its agents, subagents, servants, representatives, workmen, employees and/or sub-contractors to ensure that proper and safe means and methods were used when designing, formulating, compounding, manufacturing, selling and distributing the nutritional supplement compound;

(k) failing to ensure that proper and safe design, formulating and compounding practices were used when the nutritional supplement compound was manufactured, sold, and distributed into the stream of commerce;

(l) failing to apply the degree of skill that would customarily be brought to the design, formulating, compounding and manufacturing of the nutritional supplement compound by competent and skilled veterinary compounding pharmacies in and about the relevant community;

(m) failing to take proper and adequate precautions to protect Plaintiffs' polo horses from an unreasonable risk of harm;

(n) failing to perform its work in a good and workmanlike manner; and

(o) otherwise failing to use due care under the circumstances.

25. As a direct and proximate result of Franck's negligent, careless, reckless acts and/or omissions, Plaintiffs suffered damages in an amount in excess of \$4,076,000.00.

WHEREFORE, Plaintiffs, Quorum Management Corporation, a/k/a Quorum Management Company, Juan Martin Nero, Guillermo Caset, Nicolas Espain and Diamond State Insurance Company, demand judgment against Defendants, Franck's Pharmacy, Inc. and Franck's Lab, Inc., for damages in an amount in excess of \$4,076,000.00, together with interest, costs, attorneys' fees and such other damages as may properly be awarded by this Court.

COUNT II - STRICT LIABILITY

26. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 22 above as if fully re-alleged herein.

27. At all times relevant hereto, the nutritional supplement compound that Franck's designed, formulated, compounded, manufactured, sold and distributed into the stream of commerce was not modified, changed and/or abused by Plaintiffs and/or other users of same prior to administering the supplement to Plaintiffs' polo horses.

28. Franck's designed, formulated, compounded, manufactured, sold and distributed into the stream of commerce the nutritional supplement compound in a dangerously defective condition.

29. The death of Plaintiffs' polo horses was caused by and/or resulted from the acts and/or omissions of Franck's, by and through its agents, subagents, servants, representatives, workmen, employees and/or sub-contractors acting within the course and scope of their employment, for which Franck's is strictly liable pursuant to §402A Restatement (Second) of Torts, for engaging in one or more of the following:

(a) designing and/or formulating and/or compounding and/or manufacturing a dangerously defective nutritional supplement compound that Franck's knew or reasonably should have known exposed Plaintiffs' polo horses to an unreasonable risk of harm;

(b) selling and/or distributing a dangerously defective nutritional supplement compound into the stream of commerce that Franck's knew or reasonably should have known subjected Plaintiffs' polo horses to an unreasonable risk of harm;

(c) failing to properly and adequately design, formulate, compound and/or manufacture the nutritional supplement compound before introducing it into the stream of commerce;

(d) failing to properly and adequately inspect and/or test the nutritional supplement compound before introducing it into the stream of commerce;

(e) improperly designing, formulating, compounding, manufacturing, selling and distributing into the stream of commerce the nutritional supplement compound with dangerously high levels of sodium selenite in it that rendered the compound hazardous and unreasonably dangerous for its contemplated, foreseeable and intended use;

(f) failing to provide adequate and sufficient warnings and instructions with respect to the nutritional supplement compound that rendered it defective, hazardous and unreasonably dangerous;

(g) failing to warn Plaintiffs and other intended users and consumers of the nutritional supplement compound of the aforesaid dangerously defective conditions that Franck's knew or reasonably should have known existed and created an unreasonable risk of harm to Plaintiffs' polo horses;

(h) failing to correct the defective conditions that Franck's knew or reasonably should have known existed and created an unreasonable risk of harm to Plaintiffs' polo horses;

(i) misrepresenting the attributes and uses of its product when Franck's knew or reasonably should have known that future users would justifiably rely on those misrepresentations; and

(j) otherwise acting in a manner which subjected Franck's to strict liability under all of the circumstances.

30. As a direct and proximate result of Franck's wrongful acts and/or omissions for which Franck's is strictly liable to Plaintiffs pursuant to §402A Restatement (Second) of Torts, Plaintiffs suffered damages in an amount in excess of \$4,076,000.00.

WHEREFORE, Plaintiffs, Quorum Management Corporation, a/k/a Quorum Management Company, Juan Martin Nero, Guillermo Caset, Nicolas Espain and Diamond State Insurance Company, demand judgment against Defendants, Franck's Pharmacy, Inc. and Franck's Lab, Inc., for damages in an amount in excess of \$4,076,000.00, together with interest, costs, attorneys' fees and such other damages as may properly be awarded by this Court.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

This the 25 day of March, 2010.

ARMSTRONG & MEJER, P.A.

BY: 

ALVARO L. MEJER, ESQUIRE
Florida Bar No.: 227623
2222 Ponce de Leon Blvd.
Penthouse Suite
Coral Gables, FL 33134
(305) 444-3355 - Telephone
(305) 442-4300 - Facsimile

Attorneys for Plaintiff,
Quorum Management Corporation

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 50 2010 CA 009112 XXXX MB

QUORUM MANAGEMENT CORPORATION, a/k/a :
QUORUM MANAGEMENT COMPANY, :
JUAN MARTIN NERO, GUILLERMO CASET, :
NICOLAS ESPAIN, and :
DIAMOND STATE INSURANCE COMPANY, :
a/s/o QUORUM MANAGEMENT CORPORATION :

Plaintiffs, :

v. :

FRANCK'S PHARMACY, INC., FRANCK'S LAB, INC., :
ANTHONY J. CAMPBELL, JAMES S. BELDEN, DVM, :
and LEFT BANK EQUINE, INC. :

Defendants. :

**THIRD AMENDED COMPLAINT FOR
DAMAGES AND DEMAND FOR JURY TRIAL**

Plaintiffs, Quorum Management Corporation, a/k/a Quorum Management Company, Juan Martin Nero, Guillermo Caset, Nicolas Espain and Diamond State Insurance Company (hereinafter referred to collectively as "Plaintiffs"), by and through their respective counsel, hereby demand judgment against Defendants, Franck's Pharmacy, Inc., Franck's Lab, Inc., Anthony J. Campbell, James S. Belden, DVM and Left Bank Equine, Inc., and complain against Defendants as follows:

PARTIES

1. Plaintiff, Quorum Management Corporation, a/k/a Quorum Management Company ("Quorum"), is a corporation duly organized and existing under the laws of the State



