

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

KAREN VAVRO and PHILLIP VAVRO, her husband,

CIVIL DIVISION

Docket No.

Plaintiffs,

vs.

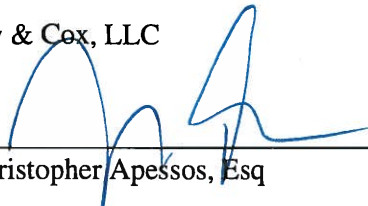
WALMART INC., a Delaware corporation;
WALMART STORES EAST, INC., a
Delaware corporation; WALMART STORES
EAST, L.P., a Pennsylvania limited liability
company; NOVOLEX HOLDINGS, LLC; a
Delaware limited liability company; HILEX
POLY CO. LLC; a Delaware limited liability
company and DURO HILEX POLY, LLC, a
Delaware limited liability company,

Defendants.

CERTIFICATE OF COMPLIANCE

*I certify that this filing complies with the provisions
of the Public Access Policy of the Unified Judicial
System of Pennsylvania: Case Records of the
Appellate and Trial Courts that require filing
confidential information and documents differently
than non-confidential information and documents.*

Friday & Cox, LLC

for 
G. Christopher Apessos, Esq

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiffs:
Karen Vavro and Phillip Vavro

Counsel of Record for these parties:

G. Christopher Apessos, Esquire
Pa. I.D. # 90908

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JURY TRIAL DEMANDED

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EAST, L.P., a Pennsylvania limited liability
company; NOVOLEX HOLDINGS, LLC; a
Delaware limited liability company; HILEX
POLY CO. LLC; a Delaware limited liability
company and DURO HILEX POLY, LLC, a
Delaware limited liability company,

Defendant.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**Lawyer Referral Service
Allegheny County Bar Association
11th Floor, Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 261-5555**

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company; NOVOLEX HOLDINGS, LLC; a
Delaware limited liability company; HILEX
POLY CO. LLC; a Delaware limited liability
company and DURO HILEX POLY, LLC, a
Delaware limited liability company,
Defendants.

COMPLAINT IN CIVIL ACTION

Plaintiffs, Karen Vavro and Phillip Vavro, by and through their attorneys, G. Christopher Apossos, Esquire and Friday & Cox LLC, file the following Complaint in Civil Action:

1. Plaintiff Karen Vavro ("wife plaintiff") is an adult individual residing at 129 Cornell Drive, Butler, Butler County, Pennsylvania 16001.
2. Plaintiff Phillip Vavro ("husband plaintiff") is an adult individual residing at 129 Cornell Drive, Butler, Butler County, Pennsylvania 16001.
3. At all relevant times, plaintiffs were, and still are, married as husband and wife.
4. Defendant Walmart Inc. is a Delaware corporation with a principal place of business located at 702 SW 8th Street, Bentonville, Arkansas 72716.
5. Defendant Walmart Stores East, Inc. is a Delaware corporation with a principal place of business located at 702 SW 8th Street, Bentonville, Arkansas 72716.

6. Defendant Walmart Stores East, L.P is a Pennsylvania limited liability company with a principal place of business located at 702 SW 8th Street, Bentonville, Arkansas 72716.

7. Defendants Walmart Inc., Walmart Stores East, Inc., and Walmart Stores East, L.P. are hereinafter collectively referred to as defendant “Walmart.”

8. At all relevant times, defendant Walmart regularly conducted business in the Commonwealth of Pennsylvania and Allegheny County by providing goods and services to customers gaining substantial revenue therefrom.

9. The incident described herein occurred at the Butler Walmart Supercenter located at 400 Butler Commons, Butler, Pennsylvania 16001 (“premises”).

10. Defendant Novolex Holdings, LLC is a Delaware limited liability company with a principal place of business located at 101 E. Carolina Avenue, Hartsville, South Carolina 29550.

11. Defendant Hilex Poly Co. LLC is a Delaware limited liability company with a principal place of business located at 101 E. Carolina Avenue, Hartsville, South Carolina 29550.

12. Defendant Duro Hilex Poly, LLC is a Delaware limited liability company with a principal place of business located at 101 E. Carolina Avenue, Hartsville, South Carolina 29550.

13. Defendant Novolex Holdings, LLC serves as the parent company to both defendant Hilex Poly Co. LLC and defendant Duro Hilex Poly, LLC.

14. Defendants Novolex Holdings, LLC, Hilex Poly Co. LLC and Duro Hilex Poly, LLC shall collectively be referred to herein as “defendant Hilex.”

15. All defendants regularly, systematically, and continually transact business in Allegheny County.

16. At all relevant times defendant Hilex conducted business as a designer, manufacturer, assembler, producer, distributor, seller and/or supplier of plastic grocery bags for use in numerous retail stores including defendant Walmart.

17. Accordingly, at all relevant times, defendant Hilex regularly conducted business in the Commonwealth of Pennsylvania and Butler County by providing its plastic grocery bags to customers at various retail stores, including but not limited to the at issue Walmart, gaining substantial revenue therefrom

18. At all relevant times, defendants acted by and through their agents, servants, workmen, representatives, distributors, shippers, carriers and/or employees who were acting within the course and scope of their agency, employment and/or authority and in furtherance of defendants' businesses.

19. Defendants designed, manufactured, marketed, assembled, distributed and/or sold to the public, including wife plaintiff, the subject plastic grocery bag, which was manufactured marketed, distributed, designed, assembled and/or sold in a defective condition such that the handles of the bag would fail to be secure in users' hands and/or fingers when heavy items were placed in the bag which would cause severe injury to users' hands and/or fingers.

20. On January 3, 2018, wife plaintiff went grocery shopping at the at issue Walmart.

21. Plaintiff purchased a gallon of milk which was placed in a plastic grocery bag provided by Walmart.

22. Plaintiff then began walking to her car while carrying the plastic grocery bag between her fingers.

23. Suddenly and without warning, the handles of plastic grocery failed to remain secure in wife plaintiff's fingers due to the weight of the items in the bag, which caused the handles to tear into her fingers and cause severe injuries.

24. At all relevant times, wife plaintiff was using the plastic grocery bag in a manner prescribed by defendants and for the foreseeable and intended purpose for which it was designed, manufactured, distributed and sold by defendants.

25. As a direct and proximate result of the negligence and carelessness of defendants, wife plaintiff sustained the following injuries, some or all of which are may be permanent:

- a) Surgery to repair right ring finger fracture;
- b) Right ring finger chronic mallet with persistent pain;
- c) Arthrex Nano suture anchors to repair distal terminal extension tendon;
- d) Infection over DIP joint to right ring finger post-operative;
- e) Swelling and redness over MCP joint post-operative;
- f) Two (2) subsequent surgical procedures to address mallet finger deformity;
- g) Bruises, contusions and other injuries in or about nerves, muscles, bones, tendons, ligaments, tissues and vessels of the body; and
- h) Nervousness, emotional tension, anxiety and depression.

26. As a direct and proximate result of the negligence and carelessness of defendants, wife plaintiff has suffered the following damages, some or all of which are or may be continuing:

- a) She has endured great pain, suffering, inconvenience, embarrassment, mental anguish, and emotional and psychological trauma;
- b) She has been and will be required to expend large sums of money for medical treatment and care, hospitalization, medical supplies, surgical appliances, rehabilitation and therapeutic treatment, medicines, and other attendant services;
- c) Her general health, strength and vitality have been impaired;

- d) She has sustained and will continue to sustain lost earnings and her earning capacity has been and may be permanently impaired; and
- e) She has been and will in the future be unable to enjoy various pleasures of life that she previously enjoyed.

COUNT I

Karen Vavro v. Walmart Inc.

Negligence

27. All preceding paragraphs of this Complaint are incorporated herein by reference.

28. Defendant Walmart, having undertaken to design, manufacture, assemble, produce, distribute, sell, supply and otherwise place into the general stream of commerce the at issue plastic grocery bag, owe and owed an affirmative duty to the users of said bags to exercise reasonable care in the designing, manufacturing, assembling, producing, distributing, selling and supplying of the at issue bag.

29. Defendant Walmart owed an affirmative duty to the users of said bags to exercise reasonable care in the designing, manufacturing, assembling, producing, distributing, selling and supplying of a safe and danger-free product incapable of causing injuries to users of said products, such as wife plaintiff.

30. Defendant Walmart owed an affirmative duty to the users of said bags, to fully inspect and test said bags for defects, and to redesign or otherwise correct any such defects.

31. Defendant Walmart knew or should have known the exact purpose for which the bags were to be used.

32. Further, defendant Walmart, by and through its agents, servants, representatives, workmen and/or employees, owed a duty to customers such as wife plaintiff to place a limited

amount of items and/or total weight in the plastic bags such that the plastic bags would not become dangerously heavy for customers to carry placing them at further risk of injury.

33. Wife plaintiff's injuries and damages were a direct and proximate result of the defendant Walmart's negligence and carelessness, by and through its agents, servants, representatives, workmen, and/or employees, in the following particulars:

- a) Failing to adequately train its employees from overfilling a customer's grocery bag;
- b) Failing to maintain adequate policies and procedures to prevent its employees from overfilling a customer's grocery bag;
- c) Failing to design, manufacture, assemble, produce, distribute, sell and/or supply plastic grocery bags in a manner as to render them safe for their intended purpose;
- d) Failing to include into the design, manufacture, assembly and/or production of the plastic grocery bags any safeguard, fail-safe devices or systems and/or safety features which would have prevented the injuries to wife plaintiff;
- e) Failing to provide sufficient warning as to: 1) the reasonable foreseeable defects in the plastic bags; and 2) the reasonably foreseeable dangers intended in the use or operation of the plastic grocery bags;
- f) Failing to test and/or inspect the plastic grocery bag to determine whether the bag could be used for its intended purpose without injuries to those persons who use the bag;
- g) Failing to test and/or inspect the plastic grocery bag when such testing or inspection would have revealed the defective nature of the bag;
- h) Failing to exercise due care under the circumstances and in view of the foreseeable dangers and foreseeable accidents and injuries that could occur as a result of using the plastic grocery bag;
- i) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying plastic grocery bags which were improperly designed, manufactured, assembled, produced, distributed, sold, supplied and/or placed in the general stream of commerce;

- j) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that was unreasonably dangerous;
- k) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that was unsafe and defective;
- l) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that was unsafe for all the intended and foreseeable purposes and uses;
- m) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag in a manner such that the handles failed to remain secure in users' hands and/or fingers causing severe injury;
- n) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag without adequate safeguards and safety measures;
- o) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag in a manner that would have prevented wife plaintiff's injuries;
- p) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that was improper, unsafe and defective for the purpose for which defendant Walmart knew it would be used;
- q) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag without necessary and visible warnings, both written and pictorial; and
- r) Failing to design, manufacture, assemble, produce, distribute, sell and/or supply a plastic grocery bag in a manner that would have prevented it from malfunctioning.

WHEREFORE, wife plaintiff demands judgment against defendant Walmart in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and all other relief permitted by the Court.

COUNT II

Karen Vavro v. Novolex Holdings, LLC, Hilex Poly Co. LLC and Duro Hilex Poly, LLC
Negligence

34. All preceding paragraphs of this Complaint are incorporated herein by reference.

35. Defendant Hilex, having undertaken to design, manufacture, assemble, produce, distribute, sell, supply and otherwise place into the general stream of commerce the at issue plastic grocery bag, owe and owed an affirmative duty to the users of said bags to exercise reasonable care in the designing, manufacturing, assembling, producing, distributing, selling and supplying of the at issue bag.

36. Defendant Hilex owed an affirmative duty to the users of said bags to exercise reasonable care in the designing, manufacturing, assembling, producing, distributing, selling and supplying of a safe and danger-free product incapable of causing injuries to users of said products, such as wife plaintiff.

37. Defendant Hilex owed an affirmative duty to the users of said bags, to fully inspect and test said bags for defects, and to redesign or otherwise correct any such defects.

38. Defendant Hilex knew or should have known the exact purpose for which the bags were to be used.

39. Wife plaintiff's injuries and damages were a direct and proximate result of the defendant Hilex's negligence and carelessness, by and through its agents, servants, representatives, workmen, and/or employees, in the following particulars:

- a) Failing to design, manufacture, assemble, produce, distribute, sell and/or supply plastic grocery bags in a manner as to render them safe for their intended purpose;

- b) Failing to include into the design, manufacture, assembly and/or production of the plastic grocery bags any safeguard, fail-safe devices or systems and/or safety features which would have prevented the injuries to wife plaintiff;
- c) Failing to provide sufficient warning as to: 1) the reasonable foreseeable defects in the plastic bags; and 2) the reasonably foreseeable dangers intended in the use or operation of the plastic grocery bags;
- d) Failing to test and/or inspect the plastic grocery bag to determine whether the bag could be used for its intended purpose without injuries to those persons who use the bag;
- e) Failing to test and/or inspect the plastic grocery bag when such testing or inspection would have revealed the defective nature of the bag;
- f) Failing to exercise due care under the circumstances and in view of the foreseeable dangers and foreseeable accidents and injuries that could occur as a result of using the plastic grocery bag;
- g) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying plastic grocery bags which were improperly designed, manufactured, assembled, produced, distributed, sold, supplied and/or placed in the general stream of commerce;
- h) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that was unreasonably dangerous;
- i) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that was unsafe and defective;
- j) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that was unsafe for all the intended and foreseeable purposes and uses;
- k) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag in a manner such that the handles failed to remain secure in users' hands and/or fingers causing severe injury;
- l) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag without adequate safeguards and safety measures;

- m) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag in a manner that would have prevented wife plaintiff's injuries;
- n) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that was improper, unsafe and defective for the purpose for which defendant Hilex knew it would be used;
- o) Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag without necessary and visible warnings, both written and pictorial; and
- p) Failing to design, manufacture, assemble, produce, distribute, sell and/or supply a plastic grocery bag in a manner that would have prevented it from malfunctioning.

WHEREFORE, wife plaintiff demands judgment against defendant Hilex in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and all other relief permitted by the Court.

COUNT III

Karen Vavro v. All Defendants
Strict Products Liability

- 40. All preceding paragraphs are incorporated herein by reference.
- 41. At all relevant times, defendants were engaged in the business of designing, manufacturing, assembling, producing, distributing, selling, and/or supplying plastic grocery bags.
- 42. The at issue plastic grocery bag was designed, manufactured, produced, assembled, distributed, sold, supplied and/or placed in the general stream of commerce by defendants.
- 43. The plastic grocery bags were expected to and did reach users and consumers, including wife plaintiff, without substantial change in the condition in which they were manufactured, designed, assembled, produced, distributed, sold and/or supplied.

44. The at issue plastic grocery bag was in a defective condition at the time it left the possession and control of defendants and was not substantially changed prior to the time of the at issue incident.

45. Defendants by and through their agents, representatives, servants, workmen and/or employees, breached their duty as the designer, manufacturer, assembler, producer, distributor, seller and/or supplier under § 402A of the Restatement (Second) of Torts by:

- a. Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that was unreasonably dangerous;
- b. Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that was unsafe and defective;
- c. Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that was unsafe for all of the intended and foreseeable purposes and uses;
- d. Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag such that the handles failed to remain secure in users' hands/and or fingers causing severe injury; and
- e. Designing, manufacturing, assembling, producing, distributing, selling and/or supplying a plastic grocery bag that the handles of the bag were caused to injure individuals when heavy items were placed in the bag.

46. The defect or defective condition of the plastic bag was the cause or substantial factor in causing wife plaintiff's injuries.

47. By reason of defendants' failure to conform to their duties and obligations under 402A of the Restatement (Second) of Torts, as aforesaid, wife plaintiff was caused to suffer severe and permanent injuries and damages as previously described above.

WHEREFORE, wife plaintiff demands judgment against defendants in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and all other relief permitted by the Court.

COUNT IV

Karen Vavro v. All Defendants

Breach of Warranty

48. All preceding paragraphs of this Complaint are incorporated herein by reference.

49. Defendants warranted that the subject plastic grocery bag was of a merchantable quality and was fit for the purpose and use for which it was intended.

50. Wife plaintiff relied on the warranties in using the subject bag.

51. By reason of its defective condition, the subject bag, was not safe, of merchantable quality and not fit for its intended use.

52. The defects existed at the time of distribution, sale, supply and/or otherwise placing the at issue bag into the stream of commerce.

53. Defendants breached such warranties by distributing, selling and/or supplying the at issue bag in its dangerous, defective and unsafe condition.

WHEREFORE, wife plaintiff demands judgment against defendants in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and all other relief permitted by the Court.

COUNT V

Phillip Vavro v. All defendants

Loss of Consortium

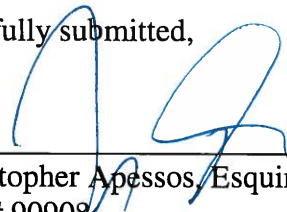
54. All preceding paragraphs of this Complaint are incorporated herein by reference.

55. As a direct and proximate result of the aforementioned incident, husband plaintiff sustained the following damages:

- a. He has been and will continue to be required to expend large sums of money for his wife's medical care, medical supplies, medicine and attendant services; and
- b. He has been deprived of the services, assistance, companionship and society of his wife.

WHEREFORE, husband plaintiff demands judgment against defendants in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and all other relief permitted by the Court.

Respectfully submitted,



G. Christopher Apessos, Esquire
Pa I.D. # 90908

Counsel for Plaintiff

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Pittsburgh, PA 15216

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Facsimile: (412) 561-4291

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VERIFICATION

We, Karen Vavro and Phillip Vavro, being duly sworn according to law, depose and say that the facts contained in the foregoing Complaint in Civil Action are true and correct to the best of our knowledge, information and belief. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



Karen Vavro



Phillip Vavro