

Randall K. Rathbun  
Depew Gillen Rathbun & McInteer LC  
8301 E. 21<sup>st</sup> Street, Suite 450  
Wichita, KS 67206-2936  
Telephone: (316) 262-4000  
[randy@depewgillen.com](mailto:randy@depewgillen.com)

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

DONALD L. KLUVER III, )  
)  
Plaintiff, )  
)  
vs. )  
)  
FASTI-WERK CARL AUG. FASTENRATH )  
GMBH & CO. KG, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No.: 10-1084-RDR-KGS

**COMPLAINT**

COMES NOW the plaintiff, Donald L. Kluver III, and for his cause of action against the defendant, alleges and states as follows:

1. Plaintiff is a citizen of the State of Kansas and currently resides in Harvey County, Kansas.
2. Defendant Fasti-Werk, Carl Aug. Fastenrath GmbH & Co. KG is a German corporation with its headquarters in Elbringhausen, Germany. The defendant's principal office is located at D-42929 Wermelskirchen, Elbringhausen, Germany. Defendant may be served with process pursuant to the Hague Service Convention.

3. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000. The plaintiff is a resident of a different state than the defendant and diversity of citizenship jurisdiction exists between the parties.

4. Defendant is, and for all time periods relevant to this action, has been engaged in the design, manufacture and sale of industrial machinery, including the product marketed as the Hydraulic Universal Folding Machine 225.

5. Defendant designed, manufactured and sold the above Fasti Folder to AGCO Corporation in Hesston, Harvey County, Kansas, and thus placed the subject folding machine into the stream of commerce.

6. On March 25, 2008, plaintiff was an employee of AGCO Corporation, and was properly using the Fasti Folder in the course and scope of his employment.

7. On March 25, 2008, while properly using the Fasti Folder at AGCO Corporation, the plaintiff suffered amputation of fingers because of the failure of the defendant to affix proper guards to the machine. The plaintiff was using the machine in the manner in which it was intended.

8. As a direct and proximate result of defendant's actions, the plaintiff has sustained serious, permanent, and disabling permanent injuries, as well as incurred current and future pecuniary and non-pecuniary damages. Plaintiff has endured and will in the future continue to endure pain and suffering; has incurred and will in the future continue to incur expenses for necessary and reasonable medical treatment; has incurred

and will in the future continue to incur a loss of wages and income; and has been left with permanent, disfiguring, and disabling internal and external injuries.

WHEREFORE, plaintiff prays for a judgment against the defendant in excess of \$75,000, along with his costs, and any other relief which the Court may deem appropriate.

Respectfully submitted,

DEPEW GILLEN RATHBUN & MCINTEER LC

s/Randall K. Rathbun  
Randall K. Rathbun #09765  
*Attorneys for Plaintiff*

#### **DESIGNATION OF PLACE OF TRIAL**

COMES NOW the plaintiff and designates Wichita, Kansas, as the place of the trial of this action.

Respectfully submitted,

DEPEW GILLEN RATHBUN & MCINTEER LC

s/Randall K. Rathbun  
Randall K. Rathbun #09765  
*Attorneys for Plaintiff*

#### **REQUEST FOR JURY TRIAL**

COMES NOW the plaintiff and respectfully requests a trial by jury with regard to the above-captioned action.

Respectfully submitted,

DEPEW GILLEN RATHBUN & MCINTEER LC

s/Randall K. Rathbun

Randall K. Rathbun #09765

*Attorneys for Plaintiff*