

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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KAWAHA COUNTY CIRCUIT COURT

EJ&K ENTERPRISES, LLC, and
SOUTH HILLS MARKET AND CAFÉ, LLC,
both West Virginia Limited Liability Companies,

Plaintiffs,

v.

CIVIL ACTION NO.: 14-C-44
Honorable Barney

FREEDOM INDUSTRIES, INC.,
A West Virginia Corporation,

Defendant.

CLASS ACTION COMPLAINT

COMES NOW the Plaintiffs, EJ&K Enterprises, LLC, and South Hills Market and Café, LLC, on behalf of themselves and all others similarly situated, and petitions this Court regarding the actions of Defendant, Freedom Industries, Inc., and alleges and states as follows:

I. PARTIES, JURISDICTION & VENUE

1. Plaintiff EJ&K Enterprises is a West Virginia Limited Liability Company. EJ&K Enterprises owns and operates the Bear's Den, a restaurant located at 405 Capitol Street, Charleston, West Virginia. The Bear's Den is open 6 days a week and serves lunch and dinner daily.
2. Plaintiff South Hills Market and Café, LLC, is a West Virginia Limited Liability Company. South Hills Market and Café, LLC, owns and operates the South

Hills Market & Café, a restaurant located at 1010 Bridge Road, Charleston, West Virginia. The South Hills Market and Café is open 6 days a week and serves breakfast, lunch, and dinner daily.

3. Defendant, Freedom Industries, Inc. (hereinafter “Defendant Freedom”), is a full service provider of specialty chemicals for the mining, steel and cement industries. Defendant Freedom was founded in 1986 and is located in Charleston, Kanawha County, West Virginia. Defendant Freedom is a leading producer of freeze conditioning agents, dust control palliatives, flotation reagents, water treatment polymers and other specialty chemicals. Defendant Freedom owns and operates the Etowah River Terminal located on the Elk River, in Kanawha County, West Virginia.
4. Both Jurisdiction and Venue are proper in the Circuit Court of Kanawha County.

II. NATURE OF ACTION

5. Plaintiffs restate and reallege each and every allegation herein as if repeated verbatim;
6. This is a West Virginia only class action to recover lost business profits and other damages for business entities affected by a government close order as a result of a chemical spill into the Elk River emanating from Defendant Freedom’s Etowah River Terminal, which was distributed to all water

customers of West Virginia American Water Company in the counties of Kanawha, Boone, Putnam, Lincoln, Logan, Clay, Roane, Jackson, and Cabell.

7. This is a class action brought on behalf of the following individuals/entities:

Any West Virginia restaurants, restaurant owners, eateries and food service providers which were forced to close their businesses as a result of the chemical spill/chemical contamination that occurred on or before January 9, 2014, emanating from Defendant Freedom's Kanawha County facility.

Excluded from the class are employees, officers and agents of defendants or any subsidiary or affiliate of any defendants, their immediate family members, and any judge who may preside over this matter;

8. Plaintiffs seek to recover, on behalf of themselves and the Class they represent, all damages, lost profits, equitable relief, etc., which directly and proximately resulted from the acts and omissions of the Defendant.

III. FACTUAL ALLEGATIONS

9. Plaintiff restates and realleges each and every allegation herein as if repeated verbatim;
10. On or before January 9, 2014, a chemical leak emanated from Defendant Freedom's plant in Charleston, Kanawha County, West Virginia.

11. The chemical that leaked from Defendant Freedom's facility was 4-Methylcyclohexane methanol, a chemical used in the coal preparation process.
12. Methylcyclohexane methanol is primarily used to separate coal particles.
13. Methylcyclohexane methanol may be fatal if swallowed and enters airways. It is also known to cause skin and eye irritation, drowsiness and/or dizziness.
14. The chemical leak affected individuals and businesses in the following counties: Kanawha, Boone, Putnam, Lincoln, Logan, Clay, Roane, Jackson, and Cabell, including the Plaintiffs.
15. The methylcyclohexane methanol leaked from Defendant Freedom's Kanawha County facility into the Elk River.
16. Once in the Elk River, the chemical travelled downstream to a West Virginia American Water treatment facility where it entered the public water supply.
17. Following the discovery of chemical leak, residents and businesses, including the Plaintiffs, were urged not to drink, use, bathe with, cook with or do laundry with water from West Virginia American Water in the affected areas.

18. Further, the chief Health Officer for the Kanawha-Charleston and the Putnam County Health Departments ordered all food service establishments that receive water service from West Virginia American Water Company closed, including the Plaintiffs.
19. Both Plaintiffs are in the food service industry and both rely on the West Virginia American Water supply in the daily operations of their businesses.
20. Due to a determination by various government and non-government officials that the West Virginia American Water supply had been compromised with methylcyclohexane methanol from Defendant's facility, the Plaintiffs could not: 1) use water to prepare food for their patrons, 2) serve water to their patrons, 3) use water to wash and sanitize dishes, 4) their staff and patrons could not use the restrooms to wash their hands, etc.
21. As a result of the order requiring the Plaintiffs to close their businesses, the Plaintiffs lost considerable profits, goodwill, and other business opportunities.

IV. CAUSES OF ACTION

COUNT I NEGLIGENCE

22. Plaintiff restates and realleges each and every allegation herein as if repeated verbatim;

23. The Defendant owes the Plaintiffs a duty of care to maintain and store its dangerous chemicals in a safe manner and not to expose them and the public water supply to toxic chemicals.
24. On or before January 9, 2014, Defendant Freedom failed to properly maintain and store its chemicals (specifically methylcyclohexane methanol) in a safe manner and carelessly and recklessly allowed said chemicals to enter the Elk River and ultimately the West Virginia American water supply, tainting the water delivered to the Plaintiffs businesses.
25. As a result of Defendant Freedom's actions, Plaintiffs were forced to close their businesses causing significant lost profits, opportunities, and other damages.

Count II
STRICT LIABILITY

26. Plaintiffs restate and reallege each and every allegation herein as if repeated verbatim;
27. Some or all of the chemical production and storage activities in which the Defendant was engaged is ultra-hazardous and/or abnormally dangerous.
28. The contamination of the public water supply and the Plaintiffs resulting business losses were proximately caused, in whole or in part, by these ultra-hazardous and/or abnormally dangerous activities of the Defendant.

29. Defendant is strictly liable for all damages to Plaintiffs, which are the natural consequences of these ultra-hazardous and/or abnormally dangerous activities.

V. THE PROPOSED CLASS

30. Plaintiffs restate and reallege each and every allegation herein as if repeated verbatim;

31. Pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, the Class Representatives bring this action on behalf of themselves and all others in the State of West Virginia similarly situated, said class defined as:

Any West Virginia restaurants, restaurant owners, eateries and food service providers which were forced to close their businesses as a result of the chemical spill/chemical contamination that occurred on or before January 9, 2014, emanating from Defendant Freedom's Kanawha County facility.

Excluded from the class are employees, officers and agents of defendants or any subsidiary or affiliate of any defendant, their immediate family members, and any judge who may preside over this matter;

32. The class is so numerous that joinder of all members is impractical;
33. The Class Representatives claim(s) are typical of the claims of the Class Members. The claims of all class members have a common origin and share a common basis;

34. The Class Representatives will fairly and adequately protect all Class Members and there are no conflicts of interest;
35. The Class Representatives have engaged counsel experienced in class and complex commercial litigation and toxic torts;
36. Questions of law and fact that are common to the Class applicable to their claims against Defendant Freedom include lost business profits and opportunities, damage to their goodwill, and other related damages.
37. A class action is the appropriate method for the fair and efficient adjudication of the controversy, given that:
 - a. Common questions of law and fact predominate over any individual questions that may arise, such that there would be enormous economies to the courts and to the parties in litigating the common issues on a class-wide basis instead of a repetitive individual basis;
 - b. Class treatment is required for optimal deterrence and compensation and for limiting legal expenses incurred by class members;
 - c. Despite the size of individual class member's claims, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this action to be litigated as a class action on a cost-effective basis, especially when compared to repetitive individual litigation;
 - d. No unusual difficulties are likely to be encountered in management of this action as a class action in that all questions of law or fact to be litigated at the liability stage are common to the class; and
 - e. Class certification is fair and efficient because prosecution of separate actions would create risk of inconsistent adjudications with respect to individual members of the class, which as a practical matter may be dispositive of the interests of other members not parties to the

adjudication, or may substantially impair or impede their ability to protect their interests;

38. Accordingly, the proposed class fulfills the requirements of Rule 23 of the West Virginia Rules of Civil Procedure, and the certification of the above-defined class is appropriate under one or more of the provisions of the rule.

VI. PRAYER FOR RELIEF

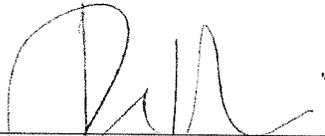
WHEREFORE, the Class Representatives on behalf of the Class Members pray for judgment as follows:

- a. Certification of the proposed Class and appropriate subclasses, if needed;
- b. Compensatory damages;
- c. Statutory interest;
- d. Statutory damages;
- e. Punitive damages;
- f. Injunctive relief;
- g. Attorney fees and Costs; and
- h. Any other relief that this Court deems just and proper.

PLAINTIFFS REQUEST A TRIAL BY JURY

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Market and Café, LLC, both West Virginia
Limited Liability Companies,

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