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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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KANAWHA COUNTY CIRCUIT COURT

**J.E., and K.E.¹, individually
and on behalf of their minor child,**

Plaintiffs,

v.

Civil Case No.: 14-c-66
Judge: Kaufman

**FREEDOM INDUSTRIES, INC.,
a West Virginia Corporation; and
WEST VIRGINIA AMERICAN WATER COMPANY,
a West Virginia Corporation**

Defendants

COMPLAINT

Now come the Plaintiffs, J.E. and K.E., individually, and on behalf of their minor child,
and petitions and brings this civil action and hereby make and file their complaint against the
Defendants as follows:

PARTIES, JURISDICTION & VENUE

1. The Plaintiffs, J.E. and K.E., and their minor child, are residents of Charleston, Kanawha County, West Virginia and live in close proximity to the Freedom Industries, Inc. containment unit along the Elk River in Charleston, Kanawha County, West Virginia.
2. Defendant Freedom Industries, Inc. (hereinafter "Defendant Freedom"), is a West Virginia Corporation with its principal place of business located in Charleston, Kanawha County, West Virginia. Defendant Freedom manufactures chemicals and chemical compounds, including 4-Methylcyclohexane Methanol, a toxic chemical used in the

¹ Plaintiffs are proceeding under initials due to one of the Plaintiffs working for a government entity and concern over safety if full name and address information were released publicly.

processing of the coal industry. Defendant Freedom is a full service provider of specialty chemicals for the mining, steel and cement industries.

3. West Virginia American Water supplies drinking water for 300,000 residents across the capital city and the surrounding region.
4. Upon information and belief, West Virginia American Water Company became aware of the spill soon after it occurred and failed to timely and appropriately responds to the emergency. Additionally, Defendant failed to plan and implement proper systems and checks to prevent contaminated water from entering the public water supply, which is used by plaintiff.
5. Both jurisdiction and Venue are proper in the Circuit Court of Kanawha County.

FACTUAL ALLEGATIONS

6. Plaintiff restates and realleges each and every allegation herein as if repeated verbatim;
7. On or before January 9, 2014, Plaintiffs noticed a pungent odor of a liquorish emanating from the Freedom properties. This is the same odor they have smelled on and off for more than a year only now the odor appeared to be much stronger. Plaintiff called a government agency believed to be the West Virginia Department of Environmental Protection (hereinafter referred to as DEP) to make a complaint regarding the smell in the air and left a voice message with a person believed to be a DEP employee. Additionally, Plaintiff had called and voiced concerns with the government agency believed to be the DEP on prior occasions concerning the odor emanating from the facility.
8. The odor continued through January 9, 2014, where there was a chemical leak emanated from Defendant Freedom's plant in Charleston, Kanawha County, West Virginia.

9. The chemical that leaked from Defendant Freedom's facility was 4-Methylcyclohexane methanol, a chemical used in the coal preparation process.
10. Methylcyclohexane methanol is primarily used to separate coal particles.
11. Methylcyclohexane methanol may be fatal if swallowed and enters airways. It is also known to cause skin and eye irritation, drowsiness and/or dizziness.
12. The chemical leak affected individuals and businesses in the following counties: Kanawha, Boone, Putname, Lincoln, Logan, Clay, Roane, Jackson, and Cabell, including the Plaintiffs.
13. The methycyclohexane methanol leaked from Defendant Freedom's Kanawha County facility into the Elk River.
14. Freedom never reported the leak, it was discovered after complaints were made of an liquorish odor was emanating from the Freedom properties.
15. Once in the Elk River, the chemical travelled downstream to a West Virginia American Water treatment facility where it entered the public water supply.
16. Sometime after the apparent discovery of the chemical leak on January 9, 2014, residents and businesses, including the Plaintiffs, were advised not to drink, use, bathe with, cook with or do laundry with water from West Virginia American Water in the affected areas. Prior to learning of this advisory Plaintiffs and their minor child used said water for bathing, drinking, cooking, cleaning and otherwise.
17. Said advisory was issued 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 Freedom's facility.

18. West Virginia American Water knew little about methycyclohexane methanol that was stockpiled so close to a crucial water intake for hundreds of thousands of people.
19. Upon belief and information, West Virginia American Water President Jeff McIntyre was quoted by reporters stating that at the time of the leak, his company hadn't had any contact directly with Freedom Industries, and he wasn't able to identify any previous efforts by the two firms to work together on emergency response planning.

CAUSES OF ACTION

Count I **NEGLIGENCE**

20. Plaintiff restates and realleges each and every allegation herein as if repeated verbatim;
21. The Defendants owe the Plaintiff 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.
22. On or before January 9, 2014, Defendant Freedom failed to properly maintain and store its chemicals (specifically methycyclohexane methanol) in a safe manner and carelessly and recklessly allowed said chemical to enter the Elk River and ultimately the West Virginia American water supply, tainting the water delivered to the Plaintiffs businesses.
23. West Virginia American Water negligently failed to maintain an appropriate emergency response plan particularly for this defendant Freedom, whose plant was upstream from the water supply intake. Additionally, West Virginia American Water failed to previously identify the chemical that was situated close

to their water intake, failed to previously establish a methodology to test for the substance in the water supply and to properly safeguard its water intake from exposure to such chemicals and further to timely and appropriately respond to the emergency.

24. As a result of Defendants negligence, plaintiff suffered injuries and damages including but not limited to exposure to a chemical that is an irritant and its long term impact may cause further injuries and damages.

Count II
STRICT LIABILITY

25. Plaintiffs restate and reallege each every allegation herein as if repeated verbatim;
26. Some or all of the chemical production and storage activities in which the Defendant was engaged is ultra-hazardous and/or abnormally dangerous.
27. 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.
28. Defendant is strictly liable for all damages to Plaintiffs, which are caused by negligence, strict liability and public and private nuisance, which are the natural consequences of these ultra-hazardous and/or abnormally dangerous activities.

Count III
PROPERTY DAMAGES

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

30. Plaintiffs are situated in extremely close proximity and own two pieces of property downstream from Defendant, Freedom.
31. The chemical exposure from Freedom leaked into the river above stream from Plaintiffs, and were of such magnitude and proximity to the plaintiff's real property as to cause damage to said real property, its value, and to cause plaintiff the loss of enjoyment and use of the property upon which plaintiff resides.
32. As a further result, plaintiffs' properties were in contact with, and in close proximity to, Defendant's chemical exposure rendering the property value to decrease and thereby injuring Plaintiffs.
33. That due to the damage to plaintiff's real and personal property caused by the aforementioned exposure, plaintiff has sustained a loss of enjoyment and use of plaintiff's real and personal property with accompanying great mental anguish, discomfort, inconvenience, loss of enjoyment of privacy and peace of mind. That the exposure is intrinsically dangerous and extraordinarily hazardous and that the defendant, has absolute liability for all damage done to the plaintiff's real and personal property as aforesaid and for the loss of enjoyment and use of plaintiff's real and personal property.

Count IV
EQUITABLE RELIEF FOR MEDICAL MONITORING

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

35. Plaintiffs request the establishment of a court-administered and supervised medical monitoring program to oversee and direct medical surveillance and provide for medical examinations and testing of Plaintiffs.
36. Early detection of cancer and other diseases and maladies improve the prospects for cure, treatment, prolongation of life and minimization of pain and disability.
37. Given the significant and extent of the exposure to chemicals, the toxicity of the chemicals, the seriousness of the diseases for which Plaintiffs are at risk, the relative increase in the chance of onset of disease in those exposed, and the value of early diagnosis, such surveillance to monitor the effect of exposure to toxic chemicals is reasonable and necessary.
38. It would be inequitable for Plaintiffs who have been wrongfully exposed to dangerous toxins causing such as cancer or other diseases to have to pay the expenses of medical monitoring when such intervention is clearly reasonable and necessary.

VI. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

- a. Compensatory damages;
- b. Statutory interest;
- c. Statutory damages;
- d. Punitive damages;

- e. Injunctive relief;
- f. Attorney fees and Costs; and
- g. Any other relief that this Court deems just and proper.

PLAINTIFFS REQUEST A TRIAL BY JURY

**J.E., and K.E., individually
and on behalf of their minor child,**

BY COUNSEL,



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