

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED SDS

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KANAWHA COUNTY CIRCUIT COURT

MARK STRICKLAND,

Plaintiff,

v.

CIVIL ACTION NO.: 14-C-73

King

FREEDOM INDUSTRIES, INC.,
A West Virginia Corporation, and **WEST VIRGINIA-AMERICAN WATER COMPANY**

Defendants.

COMPLAINT

COMES NOW the Plaintiff, Mark Strickland an individual, and petitions this Court regarding the actions of Defendant, Freedom Industries, Inc., and West Virginia-American Water Company and alleges and states as follows:

I. PARTIES, JURISDICTION & VENUE

1. Mark Strickland is a resident of Cross Lanes, Kanawha County, West Virginia. He was scheduled to have a kidney transplant on January 10, 2014 at CAMC General. Due to the chemical leak caused by Defendant Freedom Industries, Inc., and exacerbated by the negligence of West Virginia-American Water Company, his surgery was canceled, thereby forcing Plaintiff to continue to undergo dialysis, pain and suffering and continued illness due to his renal failure and other medical damages.
2. 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 operated the Etowah River Terminal located on the Elk River, in Kanawha County, West Virginia.

3. 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.
4. Both jurisdiction and venue are proper in the Circuit Court of Kanawha County.

II. NATURE OF ACTION

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

III. FACTUAL ALLEGATIONS

6. Plaintiff restates and realleges each and every allegation herein as if repeated verbatim;
7. On or before January 9, 2014, a chemical leak emanated from Defendant Freedom's plant in Charleston, Kanawha County, West Virginia.
8. The chemical that leaked from Defendant Freedom's facility was 4-Methylcyclohexane methanol, a chemical used in the coal preparation process.

9. 4-Methylcyclohexane methanol is primarily used to separate coal particles.
10. 4-Methylcyclohexane methanol may be fatal if swallowed and enters airways. It is also known to cause skin and eye irritation, drowsiness and/or dizziness.
11. The chemical leak affected West Virginia-American Water Company customers including but not limited hospitals and medical treatment centers in the following counties: Kanawha, Boone, Putnam, Lincoln, Logan, Clay, Roane, Jackson, and Cabell, including the Plaintiff.
12. The 4-methylcyclohexane methanol leaked from Defendant Freedom's Kanawha County facility into the Elk River.
13. Once in the Elk River, the chemical travelled downstream to a West Virginia-American Water Company treatment facility where it entered the public water supply.
14. Following the discovery of chemical leak, residents, medical providers, including the Plaintiff, were urged not to drink, use, bathe with, cook with or do laundry with water from West Virginia-American Water Company in the affected areas.
15. Further, Plaintiff and his doctors and medical providers were unaware of the chemical spill and Plaintiff consumed said water, thereby injuring him. Moreover, the consequences of the spill required CAMC to cancel his operation and thereby causing Plaintiff harm.
16. Due to a determination by various government and non-government officials that the West Virginian-Water Company's water supply had been compromised with 4-methylcyclohexane methanol from Defendant's facility,

the Plaintiff could not: undergo his previously scheduled surgery and also suffered physical affects from the consumption of the water as well as the prolonging of his surgery.

IV. CAUSE OF ACTION

COUNT I NEGLIGENCE

17. Plaintiff restates and realleges each and every allegation herein as if repeated verbatim;
18. The Defendants owes 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.
19. On or before January 9, 2014, Defendant Freedom failed to properly maintain and store its chemicals (specifically 4-methylcyclohexane methanol) in a safe manner and carelessly and recklessly allowed said chemical to enter the Elk River and ultimately the West Virginia-American Water Company water supply, tainting the water delivered to the Plaintiff homes and hospitals.
20. West Virginia-American Water Company 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 Company failed to properly timely and appropriately respond to the emergency and to plan for such a catastrophic and/or to investigate the risk of the cancelation of water supply.

21. As a result of Defendants negligence, Plaintiff suffered damages.

Count II
STRICT LIABILITY

22. Plaintiff restates and realleges each every allegation herein as if repeated verbatim;
23. Some or all of the chemical production and storage activities in which the Defendant was engaged is ultra-hazardous and/or abnormally dangerous.
24. The contamination of the public water supply to hospitals and the Plaintiff resulting delay in surgical procedures were proximately caused, in whole or in part, by these ultra-hazardous and/or abnormally dangerous activities of the Defendant.
25. Defendant is strictly liable for all damages to Plaintiff, 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.

VI. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for judgment as follows:

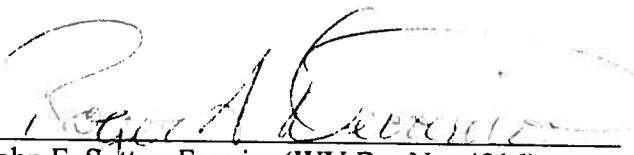
- a. Compensatory damages;
- b. Statutory interest;
- c. Statutory damages;
- d. Punitive damages;

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

PLAINTIFF REQUESTS A TRIAL BY JURY

MARK STRICKLAND

BY COUNSEL,



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