

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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KANAWHA COUNTY COURT

14-C-76

CIVIL ACTION NO.: Kaufman

**MELISSA JEAN MEDLEY,**

Plaintiff,

v.

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

Defendants.

COMPLAINT

COMES NOW the Plaintiff, Melissa Jean Medley 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. Melissa Jean Medley, plaintiff, is a resident of South Charleston, Kanawha County, West Virginia. On or about Thursday, January 9, 2014 plaintiff was exposed to water that was contaminated through the negligent acts of the defendants herein and as more fully described below. As a result of the exposure to contaminated water, she was admitted to Thomas Memorial Hospital on January 10, 2014 at for chemically induced pneumonitis with tests indicating an abnormal condition to her lung, extreme coughing, and vomiting requiring medical attention and treatment and was otherwise damaged. As of January 13, 2014 plaintiff was still hospitalized at Thomas Memorial Hospital.

2. Defendant, Freedom Industries, Inc. (hereinafter "Defendant Freedom"), is a West Virginia corporation with its principal place of business located at 101 Capital Street, Charleston, Kanawha County, West Virginia and 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. Defendant West Virginia-American Water Company is a West Virginia corporation with principal offices at 1600 Pennsylvania Avenue, Charleston, WV, 25302. West Virginia-American Water Company is a water and sewage utility.
4. Both jurisdiction and venue are proper in the Circuit Court of Kanawha County.

### III. FACTUAL ALLEGATIONS

5. Plaintiff restates and realleges each and every allegation herein as if repeated verbatim;
6. This case arises out of Defendant Freedom's release of the chemical 4-methylcyclohexane methanol from Freedom's facility on Barlow Avenue into the Elk River and its subsequent contamination of Defendant West Virginia-American Water Company's water intake facility, and thus the water supply

for to its customers in Kanawha, Putnam, Boone, Jackson Lincoln Roane, Clay, and Logan counties and the Culloden area of Cabell County. According to the West Virginia Department of Health & Human Resources, 4-methylcyclohexane methanol is a hazardous material that can cause severe burning in throat, severe eye irritation, non-stop vomiting, trouble breathing or severe skin irritation such as skin blistering.

7. While Freedom's release of the chemical 4-methylcyclohexane methanol from Freedom's facility on Barlow Avenue into the Elk River and its subsequent contamination of Defendant West Virginia-American Water Company's water intake facility occurred in the morning of January 9, 2014, residents in the eight counties effected by the contamination were not told until that evening not to drink, cook with or wash with water supplied by the water company.
8. At approximately 6:00 p.m. on January 14, 2014 the Public finally was informed of the danger from Freedom's release of the chemical 4-methylcyclohexane methanol from Freedom's facility on Barlow Avenue into the Elk River and its subsequent contamination of Defendant West Virginia-American Water Company's water intake facility, and were informed through the media that any water supplied by West Virginia American Water in Kanawha, Putnam, Boone, Jackson and Lincoln counties was to be used only for flushing toilets and putting out fires. A couple of hours later, Roane, Clay and Logan counties and the Culloden area of Cabell County were added to the public warning.

9. Hours before the public warnings were issued, West Virginia-American Water Company officials deceptively told a different story, and said their treatment facility - which is near the leak site on the Elk River - could handle the leak from Freedom Industries on Barlow Drive.
10. West Virginia Gov. Earl Ray Tomblin declared a state of emergency in Kanawha, Putnam, Boone, Jackson and Lincoln counties because of Freedom's release of the chemical 4-methylcyclohexane methanol from Freedom's facility on Barlow Avenue into the Elk River and its subsequent contamination of Defendant West Virginia-American Company's water intake facility.
11. As part of the government's warning to residents and/or owners of business in Kanawha, Putnam, Boone, Jackson, Lincoln, Roane, Clay and Logan counties and the Culloden area of Cabell County who are supplied water by defendant West Virginia American Water Company, Governor Tomblin stated, "Please don't drink, don't wash with, don't do anything with the water." Upon information and belief, the ban from using contaminated water supplied by the water company affected approximately 100,000 West Virginia American Water customers, including residences, restaurants, businesses, schools and hospitals.
12. Fearful of the danger of using water supplied by the water company many residents of Kanawha, Putnam, Boone, Jackson, Lincoln, Roane, Clay and Logan counties and the Culloden area of Cabell County flooded grocery stores,

convenience stores to purchase bottled water, incurring expenses they would not otherwise have incurred but for the conduct of defendants.

13. Heightening the fear of residents in Kanawha, Putnam, Boone, Jackson, Lincoln, Roane, Clay and Logan counties and the Culloden area of Cabell County who are supplied water by the water company, State and water company officials were unable to give any estimate on when the water might be safe to drink or use.
14. Because of Freedom's release of the chemical 4-methylcyclohexane methanol from Freedom's facility on Barlow Avenue into the Elk River and its subsequent contamination of Defendant West Virginia-American Water Company's water intake facility, schools in affected counties were closed on Friday January 10, 2014, causing many working parents and other care-givers to have to either stay home from work with their school age children or to pay for child care, in either event causing damage they would not otherwise have incurred.
15. While residents near Freedom's release of the chemical 4-methylcyclohexane methanol from Freedom's facility on Barlow Avenue into the Elk River and its subsequent contamination of Defendant West Virginia-American Water Company's water intake facility could smell a strong odor as a result of the release, West Virginia-American Water Company President Jeff McIntyre initially told the public at a news conference that the water company was confident its plant could handle the treatment of the chemical. These

statements caused residents and businesses in Kanawha, Putnam, Boone, Jackson, Lincoln, Roane, Clay, Logan counties and the Culloden area of Cabell County supplied by the water company to continue using water supplied by West Virginia American Water Company even though it was unsafe to do so.

16. Because of Freedom's release of the chemical 4-methylcyclohexane methanol from Freedom's facility on Barlow Avenue into the Elk River and its subsequent contamination of Defendant West Virginia-American's water intake facility, the Kanawha-Charleston Health Department directed restaurants, bars, day-care centers and all other businesses with a health permit in Kanawha and Putnam counties to, "cease operations immediately. This directive applied to about 1200 health department permits issued in Kanawha County and about 300 in Putnam County, including businesses of Plaintiff, causing Plaintiff and similarly situated businesses to shut down and incur damages.
17. According to Kanawha County Commissioner Kent Carper, "Earlier we were assured there was no harm to the public[.]" Defendant West Virginia-American Water Company's assurances referred to by Commissioner Carper were deceptive.
18. Complaints about the odor of the chemical 4-methylcyclohexane methanol from Freedom's facility on Barlow Avenue into the Elk River to the West Virginia Department of Environmental Protection began as early as 7:30 a.m. on January 9, 2014. According to media reports, Freedom never self-reported

the spill as required by law, and it was left to Department of Environmental Protection's air quality officials who responded to the odor complaints to discover the spill on their own long after the spill began. Indeed, state investigators discovered the chemical 4-methylcyclohexane methanol leaking from the bottom of a storage tank. The leaking chemical 4-methylcyclohexane methanol breached a concrete dike that was supposed to serve as secondary containment around the tank.

19. Because of the seriousness of the leak, the West Virginia Department of Homeland Security contacted the Federal Emergency Management Agency to have more bottled water brought into the area and fifty-one tractor-trailers loaded with water were transported to West Virginia from a Federal Emergency Management Agency facility in Maryland. A C-130 cargo plane with the West Virginia Air National Guard's 130th Airlift Wing was being used to transport the water to Charleston.
20. Less than three hours before the state of emergency was declared by Governor Tomblin, an official statement from West Virginia-American Water Company assured the public that the spill "does not present a health risk to customers."
21. The water company announced an emergency news conference regarding the spill at 5:09 p.m. and Gov. Tomblin officially announced the state of emergency around 6 p.m.

IV. CAUSE OF ACTION

COUNT I

NEGLIGENCE

22. Plaintiff restates and realleges each and every allegation herein as if repeated verbatim;
23. 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.
24. On or before January 9, 2014, Defendant Freedom failed to properly maintain and store its chemicals (specifically 4-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 Company water supply, tainting the water delivered to the Plaintiff homes and hospitals.
25. 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.
26. As a result of Defendants negligence, Plaintiff suffered damages.

Count II

STRICT LIABILITY

27. Plaintiff restates and realleges each every allegation herein as if repeated verbatim;
28. Some or all of the chemical production and storage activities in which the Defendant was engaged is ultra-hazardous and/or abnormally dangerous.
29. 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.
30. 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.

Count III

EQUITABLE RELIEF FOR MEDICAL MONITORING

31. Plaintiff restate and reallege each every allegation herein as if repeated verbatim;
32. Plaintiff 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.

Early detection of cancer and other diseases and maladies improve the prospects for cure, treatment, prolongation of life and minimization of pain and disability.

Given the significant and extent of the exposure to chemicals, the toxicity of the chemicals, the seriousness of the diseases for which Plaintiff 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.

33. It would be inequitable for Plaintiff who have been wrongfully exposed to dangerous toxins causing other diseases to have to pay the expenses of medical monitoring when such intervention is clearly reasonable and necessary.

#### IV. PRAYER FOR RELIEF

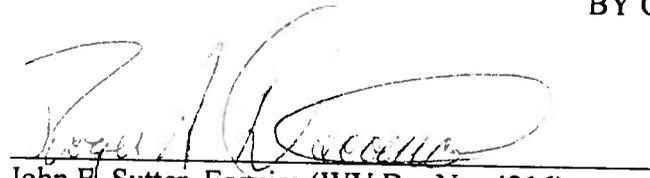
WHEREFORE, the Plaintiff prays for judgment as follows:

- 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

**MELISSA JEAN MEDLEY**

BY COUNSEL,

A handwritten signature in black ink, appearing to read "Roger Decanio", is written over a horizontal line.

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