

CIVIL CASE INFORMATION STATEMENT
In the Circuit Court of Kanawha County, West Virginia

FILED

I. CASE STYLE:

Case #
 Judge:

14-C-47
Stucky

CSM copy

GATHY S. GATSON, CLERK
 KANAWHA COUNTY CIRCUIT COURT

Plaintiff(s)
 SCOTT MILLER, and
 BAR 101, LLC, d/b/a
 BAR 101 and ICHIBAN,
 individually and on behalf
 of all others similarly situated

vs.

Defendant(s)

Days to
Answer

Type of Service

Freedom Industries, Inc.
 C/O Andrew G. Fusco
 2400 Cranberry Square
 2nd Floor
 Morgantown, WV 26508

20

WV Secretary of State

West Virginia-American Water Company
 C/O CT Corporation Sytem
 5400 D Big Tyler Road
 Charleston, WV 25313

20

WV Secretary of State

PLAINTIFF(S): Scott Miller and Bar 101 LLC, DBA Bar 101 and Ichiban DEFENDANT(S): Freedom Industries and West Virginia-American Water Company	CASE NUMBER:
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II. TYPE OF CASE:

<input type="checkbox"/> General Civil	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate
<input type="checkbox"/> Mass Tort Litigation	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Miscellaneous Civil Petition
<input type="checkbox"/> Guardianship/Conservatorship	<input type="checkbox"/> Administrative Agency Appeal	<input checked="" type="checkbox"/> Other (specify): <u>Class Action</u>

III. JURY DEMAND: Yes No

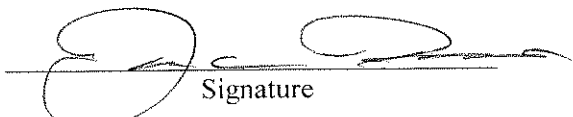
CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): July 2015

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? Yes No
IF YES, PLEASE SPECIFY:

Attorney Name: James C. Peterson (WVSB No. 2880)
 Aaron L. Harrah (WVSB No. 9937)
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Telephone: (304)345-5667
Dated: January 10, 2014

Representing:

- Plaintiffs
- Defendant
- Cross-Complainant
- Cross-Defendant


 Signature

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SCOTT MILLER, and
BAR 101, LLC, d/b/a
BAR 101 and ICHIBAN,
individually and on behalf
of all others similarly situated,

Case No. 14-C-47 FILED
Judge Stucky JAN 10 AM 7:59
CLM Copy
CLERK OF COURT
KANAWHA COUNTY CIRCUIT COURT

Plaintiffs,

v.

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

Defendants.

COMPLAINT

Plaintiffs herein Scott Miller ("Miller"), and Bar 101, llc, d/b/a Bar 101 and Ichiban ("Bar 101"), individually and on behalf of all others similarly situated by their attorneys, James C. Peterson and R. Edison Hill of the law firm of HILL, PETERSON, CARPER, BEE & DEITZLER, P.L.L.C., and Anthony J. Majestro and J. C. Powell of the law firm POWELL & MAJESTRO, P.L.L.C., and Timothy Bailey and Lee Javins of the law firm of BUCCI, BAILEY AND JAVINS, L.C, against defendants, Freedom Industries, Inc., a West Virginia Corporation, and West Virginia American Water Company, a West Virginia Corporation, allege for their Complaint as follows:

PARTIES AND JURISDICTION

1. Plaintiff Miller is a citizen of the State of West Virginia and a resident of Kanawha County.

2. Plaintiff Bar 101 is a West Virginia limited liability company with its principal place of business in this County and this State. Plaintiff Miller is the Member of Bar 101.

3. Miller and Bar 101 bring this action individually and on behalf of all others similarly situated as set forth on the class definition below.

4. Defendant Freedom Industries, Inc. ("Freedom") is a West Virginia Corporation with its principal pace of business in this County and this State.

5. Defendant West Virginia-American Water Company ("WVAWC") is a West Virginia Corporation with its principal pace of business in this County and this State.

6. This Court has venue and personal jurisdiction over this action as the defendants reside in this County and cause of action accrued in this County.

7. This Court has subject matter jurisdiction over this action over the claims set forth in this Complaint, as the claims do not arise out of federal law. The plaintiffs and the Class they seek to represent (hereinafter referred to collectively as "plaintiffs") seek no relief under any federal laws or regulations, assert no federal claims, and withdraw any asserted state claim that is preempted by federal law. The claims herein are brought solely under various state common and state statutory laws. Any claims or possible claims under

any federal law, code, regulation, rule, and/or otherwise are expressly not brought herein and disclaimed. The United States District Court does not have diversity jurisdiction over this case because complete diversity of citizenship is lacking because the defendants, the plaintiffs all are citizens of this State.

STATEMENT OF FACTS

8. In the morning hours of January 9, 2014, Defendant Freedom caused a chemical spill at its facility that was located along the Elk River in Charleston, West Virginia. The chemical 4-methylcyclohexane methanol, leaked from a containment area into the Elk River.

9. Upon information and belief, WVAWC became aware of the spill soon after it occurred and failed to timely and appropriately respond to the emergency.

10. Furthermore, on information and belief, WVAWC failed to plan and implement proper systems and checks to prevent contaminated water from entering the water system.

11. As a result of the chemical spill, the contaminants were introduced into the water system contaminating the WVAWC water supply in at least the following counties: Kanawha, Putnam, Boone, Jackson, Lincoln, Roane, Clay, Logan and the Culloden area of Cabell County.

12. As a result of the actions of the defendants, the pipes, filters, and water systems of the customers in the affected counties have become contaminated.

13. As a further result of the contaminated water supply, Governor Tomblin declared a state of emergency for all customers of WVAWC in the affected counties.

14. In addition to damages suffered from interruption of normal personal pursuits and business activities and opportunities, which include purchase of water and replacement of contaminated water filters and systems, upon information and belief, the 4-methyl cyclohexane methanol leaked into the water supply has caused damage to plaintiffs' personal and real property.

15. All WVAWC customers in the counties were instructed to not use tap water for drinking, cooking, washing, doing laundry, or bathing.

16. Thereafter, health departments in the affected counties closed all restaurants, bars, and other establishments requiring a health department permit and advised other permittees such as hospitals, day care centers, and other institutions to take appropriate measures.

17. Plaintiff Bar 101 was required by the Kanawha County Health Department to close its Bar 101 bar and its Ichiban Restaurant.

18. As a proximate result, Bar 101 has suffered economic losses.

19. Plaintiff Miller has suffered economic loss along with loss of use, annoyance, and inconvenience as a result of his inability to safely drink water, bathe, and cook.

20. The members of the class as defined below have suffered comparable damages.

COUNT I – NEGLIGENCE

Plaintiffs incorporate the allegations set forth above and further state:

21. Defendants' conduct as set forth above constitutes a breach of the common law duties owed to Plaintiffs and the class.

22. As a proximate result of the foregoing the Plaintiffs and the class were damaged.

COUNT II -- PUBLIC NUISANCE

Plaintiffs incorporate the allegations set forth above and further state:

23. Defendants operations constitute an unreasonable interference with the exercise of rights common to the general public, significantly interfering with public health, safety and peace.

24. The release and migration of toxic substances into the area waterways damage or inconvenience an indefinite number of people living along or otherwise using the affected waterways such as to constitute a public nuisance.

25. Defendants' operations were the proximate cause of Plaintiffs special injuries as set forth above.

COUNT III -- PRIVATE NUISANCE

Plaintiffs incorporate the allegations set forth above and further state:

26. The Plaintiffs are entitled to the reasonable use and enjoyment of their property without annoyance and/or disturbance rendering its ordinary use or physical occupation uncomfortable.

27. Defendants' operations and the negligent release of toxic substances which have migrated to the Plaintiffs residences, disturbed their use of the subject property and rendered its physical occupation uncomfortable.

CLASS ACTION ALLEGATIONS

28. This action is brought and may properly be maintained as a class action pursuant to West Virginia Rules of Civil Procedure 23.

29. Plaintiffs bring this action on behalf of themselves and all persons or entities who are customers of WVAWC in the affected areas ("Class").

30. On information and belief, the Class consists of over 100,000 members and are so numerous that joinder of all Class members is impracticable.

31. The claims of the plaintiffs are typical of the claims of the Class, and the plaintiffs will fairly and adequately protect the interests of the Class with respect to the appropriate common issues of fact and law and have hired counsel competent to prosecute the said action for and on behalf of the plaintiffs and the Class.

32. The prosecution of this civil action by all plaintiffs in separate actions would create a risk of varying adjudications with respect to individual members of the Class, could be dispositive of interests of other members of the Class not parties, and/or they may impair or impede their ability to protect their interests, and/or the defendants have acted or refused to act on grounds

generally applicable to the Class making declaratory or injunctive relief appropriate for the whole Class.

33. There are numerous questions of law and fact common to the Class.

34. The interests of the members of the Class, as to common questions of law and fact, in individually controlling the prosecution of separate actions do not outweigh the benefits of a class action as to those issues.

35. The difficulties in management of this Class as a class action are outweighed by the benefits it has with respect to disposing of common issues of law and fact as to the large number of litigants, and it is desirable to concentrate the litigation in one forum for the management of this civil action due to the number of cases that may very well be filed and/or presently pending in other jurisdictions.

36. The questions of law and fact common to the members predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this civil action.

37. The individual named plaintiffs are members of the Class they seek to represent. The members of the Class are so numerous that joinder is impracticable and would involve tens of thousands of litigants and the Class in all other respects are similarly situated as required under Rule 23 of the West Virginia Rules of Civil Procedure and complies with the requirements thereof.

38. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions and tort litigation, and such plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and all others similarly situated, respectfully pray for relief and judgment against defendants as follows:

1. An Order certifying the Class under the appropriate provisions of Rule 23 of the West Virginia Rules of Civil Procedure and appointing plaintiffs and their counsel to represent the Class;
2. Compensatory damages in favor of plaintiffs and the other members of the Class and against defendant for damages as alleged in this Complaint;
3. Compensatory damages, punitive damages, reasonable attorneys' fees, filing fees, and other reasonable costs of this lawsuit;
4. Prejudgment and postjudgment interest;
5. Any other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs, on behalf of themselves and other similarly situated, demand a trial by jury on all appropriate issues.



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