

NO. 15-CI-01623

FILED CLERK'S OFFICE
JEFFERSON COUNTY, KENTUCKY

2015 APR 20 PM 4 17

JEFFERSON CIRCUIT COURT
DIVISION TWELVE (12)
JUDGE SUSAN SCHULTZ GIBSON

CLERK TO

SHERHONDA STEWART BY _____ DC

PLAINTIFF

and

BEVERLY SHEPPARD, et. al.

v. PLAINTIFFS' AMENDED CLASS ACTION COMPLAINT

DERBY INDUSTRIES, LLC

DEFENDANTS

and

GENERAL ELECTRIC CO.

** ** * ** * ** *

Plaintiffs, Sherhonda Stewart and Beverly Sheppard, on behalf of themselves and a class of similarly situated individuals, by counsel, and pursuant to CR 15.01, for their Amended Complaint against Defendants Derby Industries, LLC and General Electric Co., state as follows:

INTRODUCTION

1. This is a class action complaint, pursuant to Kentucky Rule of Civil Procedure 23, seeking monetary damages and injunctive relief from Defendants arising from a six-alarm fire that started on or about April. 3, 2015, at 4000 Buechel Bank Road in Jefferson County, Kentucky, and continued for approximately three days.

2. At all relevant times, Defendant Derby Industries, LLC was the owner, lessee, and/or occupant of a distribution and storage facility located at or near 4000 Buechel Bank Road in Jefferson County, Kentucky. The facility is part of Defendant General Electric's "Appliance Park" and is referred to as the AP-6 Facility. Derby Industries does business in shipping, packaging and logistics. On information and belief, Derby leases the AP-6 distribution center from Co-Defendant General Electric.

3. Derby Industries, LLC (hereinafter "Derby Industries" or "Derby") maintains corporate offices in Louisville, and operates eight distribution and logistics facilities in seven states including Kentucky.

4. On or about the morning of April 3, 2015, the AP-6 building at Appliance Park caught fire.

5. While the cause of the fire is still being investigated, local emergency responders described the event as the largest fire in Jefferson County history. More than 200 firefighters from across the county participated in extinguishing the flames and controlling the damage.

6. The fire continued to burn for two days, sending clouds of thick black smoke into surrounding neighborhoods that could be seen miles away.

7. Particles of soot and ash from the fire fell on hundreds of nearby homes and businesses, causing property damage to real estate, automobiles, plants, wildlife, crops, clothing, furniture, and other items.

8. The fire forced emergency officials to order certain residents within an approximately one-mile radius of the AP-6 property to "Shelter in Place" inside their homes and businesses for approximately 48 hours between Friday morning and Sunday afternoon, to seal off

windows and doors, and to turn off exhaust fans and air conditioners due to the potential for dangerous amounts of hazardous soot and ash entering buildings.

9. The full extent of the people forced to "Shelter in Place" can be ascertained from records of emergency responders, police officers, and others who warned residents to stay inside due to the dangerous fire and the spread of harmful particulate matter, among other sources. On information and belief, the Shelter in Place radius was expanded to as large as two miles from the AP-6 property. At other times it was a half-mile radius, or a one-mile radius.

10. In addition to the "Shelter in Place" order, health officials told people in the general area that they should use caution going outside if they have respiratory problems.

11. Although the Shelter in Place order ended two days after the fire began, the cleanup phase of the disaster continues as of the date of the filing of this complaint, including the cleaning up of soot and ash from the fire in nearby neighborhoods.

PARTIES, JURISDICTION AND VENUE

12. Plaintiff, Sherhonda Stewart, is a resident of Jefferson County and citizen of Kentucky, residing at 4901 Rosalind Drive, Louisville, Kentucky 40218. She was subject to a Shelter in Place order that was not lifted until days after the fire started. She represents all members of the proposed Class and/or subclasses that were subject to a Shelter in Place order. She also experienced property damage from the fire in the form of soot and ash particles that covered the residential property where she lives, causing damage to her property. She brings this action on behalf of herself individually, and on behalf of a class of persons similarly situated as described in the classes below.

13. Plaintiff, Beverly Sheppard, is a resident of Jefferson County and citizen of Kentucky, residing at 6409 Cottagemeadow Drive, Louisville, Kentucky 40218. She was

subject to a Shelter in Place order that was not lifted until days after the fire started. She represents all members of the proposed Class and/or subclasses that were subject to a Shelter in Place order. She also experienced property damage from the fire in the form of soot and ash particles that covered the residential property where she lives, causing damage to her property. She brings this action on behalf of herself individually, and on behalf of a class of persons similarly situated as described in the classes below.

14. Defendant Derby Industries, is incorporated in Delaware with its principal place of business at 4451 Robards Lane, Louisville, Kentucky 40218.

15. Defendant General Electric Company is a New York corporation with its principal place of business in Connecticut, and licensed to do business and actually doing business in Louisville, Kentucky.

16. This Court has subject matter jurisdiction over both the parties and the subject matter because a substantial number of the events giving rise to this complaint, including the fire itself, occurred in Jefferson County. Additionally, Jefferson County is the proper venue for this action because the events giving rise to the Complaint and the damages suffered occurred in this County.

CLASS ALLEGATIONS

17. A class action is the proper form to bring plaintiff's claims under Kentucky Rule of Civil Procedure 23.01. The potential class is so large that joinder of all members would be impracticable. Additionally, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the representative parties will fairly and adequately protect the interests of the class.

18. This action satisfies all of the requirements of Kentucky Rule of Civil Procedure 23, including numerosity, commonality, typicality, adequacy, predominance and superiority.

19. **Numerosity:** the Class is so numerous that joinder of all members is impracticable. While the exact number is not known at this time, it is generally ascertainable by appropriate discovery, including from Defendants, from entities that conducted air monitoring tests of the surrounding vicinity, from emergency officials who supervised the Shelter in Place order, from expert witnesses and other sources, and from the sworn testimony of class members. Another sign that the class meets the numerosity requirement is GE's mailing of a letter to more than 1,000 affected residents offering seeking information about their potential legal claims in the wake of the fire.

20. **Commonality:** the claims made by Plaintiff meet the commonality requirement because they present shared questions of law and fact, and resolving these questions will resolve the classwide litigation. These shared questions predominate over individual questions, and they include, without limitation:

- a) Whether the fire took place at property owned and operated by Defendants on Buechel Bank Road in Louisville.
- b) Whether the fire began and/or was made worse by the negligence of the Defendants.
- c) The number of properties and individuals subject to the Shelter in Place order as determined by local authorities, law enforcement, and emergency agencies.
- d) Whether and to what extent Defendants should be held liable for the damages of Class members, including the inconvenience and anxiety of the Shelter in Place

order, and damage caused by particles of soot and ash that fell on surrounding properties.

- e) The legal relationship between the Defendants.
- f) The extent of the damages caused by Defendants' negligent acts.
- g) The steps taken by Defendants to extinguish the fire, and to clean up the aftermath from the fire.

21. **Typicality:** Plaintiffs' claims are typical of those of the other Class members because Plaintiffs, like every other Class member, were exposed to virtually identical negligence by the Defendants and suffered substantially similar harm in the form of noxious plumes of black smoke, excessive amounts of particulate matter in the air and on the ground, and/or Shelter in Place orders. Another sign that the class meets the typicality requirement is Defendant GE's offer to pay hundreds of area residents a sum of money for property damage and other claims in the wake of the fire.

22. The claims of the Class Representative Plaintiffs are furthermore typical of other Class members because they make the same claims as other class members for nuisance, trespass, negligence, strict liability and punitive damages. Plaintiff has an interest in seeking compensation from Defendants based on the fire.

23. **Adequacy:** Plaintiffs will fairly and adequately represent and protect the interests of the Class in that they have no disabling conflicts of interest that would be antagonistic to those of the other members of the Class. Plaintiffs seek no relief that is antagonistic or adverse to the members of the Class and the infringement of the rights and the damages they have suffered are typical of other Class members.

24. **Superiority:** The class litigation is an appropriate method for fair and efficient adjudication of the claims involved. Class action treatment is superior to all other available methods for the fair and efficient adjudication of the controversy alleged herein; it will permit a large number of class members in Jefferson County, Kentucky, to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort and expense that hundreds of individual actions would require. Class action treatment will permit the adjudication of relatively modest claims by certain class members, who could not individually afford to litigate a complex claim against a large corporate defendant. Further, even for those class members who could afford to litigate such a claim, it would still be economically impractical.

25. The nature of this action and the nature of Kentucky laws available to Plaintiffs and the Class make the use of the class action device a particularly efficient and appropriate procedure to afford relief to Plaintiffs and the Class for the wrongs alleged because Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual Class member with superior financial and legal resources; the costs of individual suits could unreasonably consume the amounts that would be recovered; proof of a common course of conduct to which Plaintiffs were exposed is representative of that experienced by the Class and will establish the right of each member of the Class to recover on the cause of action alleged; and Individual actions would create a risk of inconsistent results and would be unnecessary and duplicative of this litigation.

26. The proposed Classes and/or subclasses are described as follows:

“All persons whose dwellings were within an area approximately two miles from the fire at 4000 Buechel Bank Road, Louisville, Kentucky, and who

were subject to a Shelter In Place Order any time between April 3, 2015 and April 6, 2015.”

“All persons or property owners on whose property or dwelling Defendants committed trespass, nuisance and/or negligent property damage in the form of smoke, soot, ashes or other physical remnants of the fire.”

27. Plaintiffs reserve the right to modify or amend the definition of the proposed Classes and to modify, amend or remove proposed subclasses, before the Court determines whether certification is appropriate and as the parties engage in discovery.

28. Plaintiffs will fairly and adequately protect the interests of the class. The interests of the class representatives are consistent with those of the other members of the class. In addition, the Plaintiffs are represented by experienced and able counsel who have expertise in the areas of environmental law, tort law, trial practice, and class action representation.

29. The class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because of the number and nature of common questions of fact and law, multiple separate lawsuits would not serve the interest of judicial economy.

30. Excluded from the Class are:

a. Defendants and any entities in which Defendants have a controlling interest;

b. Any entities in which Defendants’ officers, directors, or employees are employed and any of the legal representatives, heirs, successors, or assigns of Defendants;

c. The Judge to whom this case is assigned and any member of the Judge’s immediate family and any other judicial officer assigned to this case;

d. All persons or entities that properly execute and timely file a request for exclusion from the Class;

e. Any attorneys representing the Plaintiffs or the Class.

COUNT I – NUISANCE

31. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing allegations as though fully set forth herein.

32. Through their acts and omissions in allowing toxic and hazardous substances to enter upon Plaintiffs' and the Class's dwellings and property, the Defendants have created a nuisance upon such property that injured Plaintiffs and the Class.

33. By allowing toxic and hazardous substances and fumes to enter the air and water, Defendants caused harm to Plaintiffs' and the Class's dwelling and property and forced Plaintiffs and the Class to Shelter in Place with their windows and doors closed, and with heating and air conditioning systems turned off, so that they could not leave their homes.

34. The nuisance has negatively affected the life and health of Plaintiffs and the Class, interfering with the comfortable use and enjoyment of life and property, has diminished Plaintiffs' and the Class's lives, has caused the Plaintiffs and the Class economic injury, and has thereby created a common-law nuisance, liability for which attaches to the Defendants for causing the nuisance.

35. By reason of the foregoing, the Plaintiffs and members of the Class have been damaged by the Defendants.

COUNT II – TRESPASS

36. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing allegations as though fully set forth herein.

37. The Defendants caused toxic and hazardous smoke to escape containment and enter into areas of Jefferson County in Kentucky, including property and dwelling of the Plaintiffs and members of the Class they represent. As a result, the Plaintiffs' dwellings and properties have been invaded by harmful particulate matter which contaminates and causes damage. Those circumstances constitute trespass on the property and into dwelling places and a personal trespass upon the Plaintiffs and members of the Class they represents.

38. Said trespass has adversely impacted Plaintiffs and those similarly situated to them and has proximately harmed them, for reasons of which the Defendants are liable to the Plaintiffs and the members of the Class.

39. By reason of the foregoing, the Plaintiffs and members of the Class have been damaged by the Defendants.

COUNT III – NEGLIGENCE

40. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing allegations as though fully set forth herein.

41. Upon information and belief, at all times while the Defendants owned and/or operated the AP-6 facility at 4000 Buechel Bank Road, Defendants knew or in the exercise of reasonable care should have known that the negligent operation of said facility, could cause damage to the Plaintiffs and the Class members. Defendants further knew that dangerous substances, including soot and ash, toxic and hazardous substances, chemicals, and particulates, were present which were capable of contaminating water, air, and soil.

42. On information and belief, Defendants were at all times relevant the representative, agent, employee, joint venture, or alter ego of each other and in doing the things alleged herein were acting within the scope of each other's authority. Specifically, each

Defendant was but an instrumentality or conduit of the other in the prosecution of a single joint venture, namely the promotion, maintenance, and furtherance of the facility that is the subject of this litigation. Therefore, it would be inequitable for any Defendant to escape liability for an obligation incurred as much for that Defendant's benefit as for the other.

43. In the process of operating their facility, the Defendants created foreseeable risks of harm to the Plaintiffs and the Class, which Defendants knew or in the exercise of reasonable care should have known.

44. The damages sustained by Plaintiffs and the Class are and were proximately caused by the negligence of the Defendants in failing to guard against and prevent the aforementioned foreseeable risks from materializing. The Defendants negligently operated the warehouse facility where the fire occurred and failed to take all due and proper measures to prevent the catastrophe from occurring.

45. As a result of the breach of duties owed to Plaintiffs and the Class, Plaintiffs and the Class were harmed by being forced to shelter in place and having soot, ash, smoke and other remnants harm their property.

46. The Plaintiffs and the Class were foreseeable victims of these negligent acts and omissions, and they sustained damages from the acts and omissions.

47. The Defendants owed the Plaintiffs and the Class duties of care. Those duties of care are defined by common law and statutory rules, codes, and regulations. Defendants breached these duties defined by statute, code, rule, regulation and common law. The Defendants' breach of the duties proximately caused harm to the Plaintiffs and the Class. The Plaintiffs and the Class were damaged as a result, and they in no way contributed to the injuries and damages they sustained.

COUNT IV – STRICT LIABILITY

48. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing allegations as though fully set forth herein.

49. The Defendants were the operators and owners of the AP-6 warehouse facility at 4000 Buechel Bank Road, which contained abnormally dangerous and flammable materials, including materials made of plastic and other substances, which posed an unreasonable risk of burning due to the way they were stored.

50. By virtue of the hazardous and flammable nature of the materials in the warehouse and the way they were stored in violation of local and state guidelines, as described above, the AP-6 warehouse at 4000 Buechel Bank Road was inherently dangerous and subject to catching fire, regardless of the precautions employed by Defendants.

51. The Defendants could not conduct the operation of the warehouse in complete safety, and the Plaintiffs and the Class were at risk of harm.

52. As a direct and proximate result of Defendants' inherently dangerous, extremely hazardous and abnormally dangerous activities, the Plaintiffs and the Class have been damaged as described above.

WHEREFORE, the Plaintiffs and members of Class pray that they be awarded compensatory damages and recover judgment against Defendants for the following:

1. Reasonable and just compensation for injuries to interests in property, shelter in place, and loss of use and enjoyment of property belonging to Plaintiffs and members of the Class within the areas affected by the fire;
2. All expenses and economic losses, including but not limited to lost income and out-of-pocket expenses attendant to shelter in place;
3. Reasonable and just compensation and punitive damages for nuisance, trespass, negligence, and strict liability, in amounts to be determined by a jury, to the utmost amounts allowed by law;
4. Appropriate attorney fees and costs and expenses incurred in connection with the litigation of this matter;

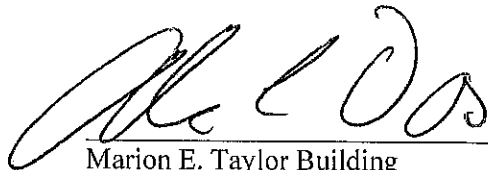
5. For an injunction requiring the Defendants to make safe Plaintiffs' dwelling, property and places of business and employment;
6. That this case be certified as a class action pursuant to applicable Rules of Civil Procedure;
7. Plaintiffs demand a trial by jury; and
8. For such other and further relief as this Court may deem just, proper, and equitable.

Respectfully submitted,

JONES WARD PLC

Jasper D. Ward IV

Alex C. Davis



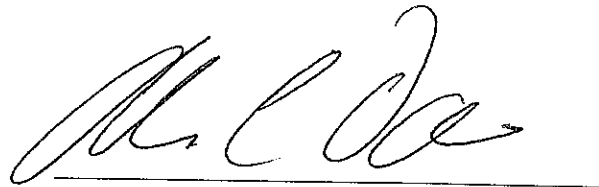
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CERTIFICATE OF SERVICE

It is hereby certified that on the 20th day of April 2015, a true copy of the above was served via facsimile, electronic mail, or U.S. Postal Service to the following:

Derby Industries, LLC
CSC-Lawyers Incorporating Service Co.
421 W. Main St.
Frankfort, KY 40601
Registered Agent for Defendant

General Electric Co.
c/o CT Corporation System
306 W. Main St.
Suite 512
Frankfort KY 40601
Registered Agent for Defendant

A handwritten signature in cursive script, appearing to read 'Alex C. Davis', is written over a horizontal line.

Alex C. Davis