

STATE OF NEW YORK :  
SUPREME COURT : COUNTY OF ERIE

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RONALD LEWIS, DIANA LEWIS,  
STEPHEN WOLOSZYN, JR.,  
DIANE WOLOSZYN, JEANETTE C. TITUS,  
WAYNE WEAVER, RUTH WEAVER,  
ROBERT NOEL and ROSE NOEL

Plaintiffs,

vs.

A.J. LEASING COMPANY, INCORPORATED,  
MEDINA WELL SERVICING LTD.,  
ASPHALT LINE OIL CORP.  
CHARLES POWELL

Defendants.

64729

COMPLAINT

Index No. I1999

APR 24 1 54 PM '01  
COTRARIUS COUNTY  
CLERK

CIV FILED

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Plaintiffs by their attorneys, ALLEN & LIPPES, as and for their complaint against  
Defendants allege the following on information and belief:

**PARTIES**

1. Plaintiffs, Ronald Lewis and Diana Lewis, currently reside at 11800  
Weaver Road, Delevan, New York 14042.
2. Plaintiffs, Stephen Woloszyn, Jr. and Diane Woloszyn, currently reside at  
11658 Weaver Road, Delevan, New York.
3. Plaintiffs, Jeanette C. Titus, currently resides at 11629 Weaver Road,  
Delevan, New York 14042.
4. Plaintiffs, Wayne Weaver and Ruth Weaver, currently reside at 11683  
Weaver Road, Delevan, New York 14042.

5. Plaintiffs, Robert Noel and Rose Noel, currently reside at 11719 Weaver Road, Delevan, New York 14042.

6. Defendant, A.J. Leasing Company, Incorporated, is incorporated in the State of New York.

7. Defendant, Medina Well Servicing Ltd., is incorporated in the State of New York.

8. Defendant, Asphalt Line Oil Corporation is located at 11800 Route 16, Delevan, New York 14042 and is incorporated and organized under the laws of the State of New York.

9. Defendant, Dale Fox, has offices at 652 Derick Road, Bradford, PA 16701.

10. Defendant, Charles Powell, resides at 11747 Bixby Hill Road, Arcade, New York 14009.

#### GENERAL ALLEGATIONS

11. On or about November 20, 1996, A.J. Leasing Company possessed a permit to drill for oil and/or gas on the property owned by Charles Powell located at Bixby Hill Road, Freedom, New York. This well was better known as the Dale Fox Gas Well.

12. Defendant Dale Fox, is the owner and/or president of Asphalt Line Oil Corporation which owned the drilling rig which was used to drill for natural gas and/or oil at the aforementioned site.

13. The contractor for the drilling project on the Bixby Hill Site was Medina Well Services Ltd.

14. Charles Powell owned the property upon which on or about November of 1996 certain drilling activities took place, which were conducted by Dale Fox and/or corporations owned or acting under the direction of Dale Fox, i.e. Medina Well Services Ltd., Asphalt Line Oil Corporation and A.J. Leasing Incorporated.

15. The entire drilling operation was overseen by Dale Fox who owns both the drilling rigs and the oil and gas lease for this property on or about November 20, 1996.

16. The Defendants had struck a high pressure pocket of gas which they were unable to contain at the aforementioned well, causing the gas to blow sideways into the gravel strata, fissures and asphalt lines causing petroleum product to enter underground aquifers, along with nearby wells and ponds.

17. Nearby residents were forced to evacuate their homes and suffer damages when Defendants caused natural gas and/or petroleum product to migrate from the drilling site and onto the neighboring properties.

### **AS AND FOR OUR FIRST CAUSE OF ACTION**

#### **TRESPASS**

18. The Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "17" of the complaint with the same force and effect as of fully set forth herein.

19. By reason of the foregoing, Defendants have caused and allowed toxic and hazardous substances and natural gas to escape from their natural place and to migrate and spread to surrounding areas, sometime on a sudden and accidental manner, contaminating

said areas, and interfering with Plaintiffs' use, enjoyment and possessory interest in their properties.

20. By reason of the foregoing, Defendants have caused and allowed a trespass upon Plaintiffs' properties and have endangered Plaintiffs' property, health and well being.

21. By reason of the foregoing, Plaintiffs' properties and residences and/or areas frequented by the Plaintiffs have been contaminated. Plaintiffs have been caused to endure remedial and clean up activities due to the conduct of Defendants. Their remedial and clean up activities and the contamination of the Plaintiffs' properties have damaged and diminished the value of said properties and have diminished Plaintiffs' ability to use and enjoy their properties and have caused Plaintiffs to suffer economic harm.

22. By reason of the foregoing, Plaintiffs have been damaged by the Defendants and their request for relief is more fully set forth in the *ad damnum* clause of this complaint.

#### **AS AND FOR OUR SECOND CAUSE OF ACTION**

##### **NUISANCE**

23. The Plaintiffs repeat and reallege each and every allegation set forth in paragraphs "1" through "22" inclusive of this complaint with the same force and effect as though set forth in total here.

24. By reason of the foregoing, the Defendants have unreasonably interfered with Plaintiffs' quiet use and enjoyment of their homes and properties and have thereby created and maintained a continuing nuisance in and around the properties of the Plaintiffs. As a direct and approximate result of said nuisance, Plaintiffs have lost the use, value and

enjoyment of their homes and properties and said nuisance has caused Plaintiffs to suffer economic harm and loss of quality of life.

25. By reason of the foregoing, Plaintiffs have been damaged by the Defendants as herein alleged and they request relief as more fully set forth at the ad damnum clause.

**AS AND FOR OUR THIRD CAUSE OF ACTION**

**NEGLIGENCE**

26. Plaintiffs repeat and reallege each and every allegation set forth in paragraph "1" through "25" inclusive of this complaint with the same force and effect as though set forth and total here.

27. At all times hereinafter mentioned, the Defendants knew or in the exercise of reasonable care should have known that the aforementioned substances were of a toxic and hazardous nature capable of causing damage to property coming into contact with them.

28. At all times hereinafter mentioned, the Defendants or agents service and/or employees knew or in the exercise of reasonable care should have known, that the hazardous substances which Defendant caused to migrate onto Plaintiffs' property as a result of their negligence would cause harm to Plaintiffs' property and that Defendants had a duty to protect against such harm.

29. At all times hereinafter mentioned, the Defendants knew or in the exercise of reasonable care should have known, that hazardous substances and the naturally occurring gas and/or oil for which the Defendants were drilling would not be contained



within its natural area but would migrate and spread the surrounding areas in the event of negligent drilling operations.

30. Defendants had a duty to take adequate measures to prevent the escape and spread of said hazardous substances i.e. natural gas and/or crude oil through ground, water and air and into the surrounding areas. The Defendants also had a duty to take all measures reasonably necessary to protect the public, and including the Plaintiffs, from the hazards existing upon and around the drilling site.

31. Nevertheless, the Defendants and their agents, servants and employees negligently, carelessly and improperly conducted drilling operations, failed to take adequate measures to prevent the escape and the spread of hazardous substances, i.e. natural gas and/or oil, at the drilling site and into the ground and water of the surrounding areas., fail to take all measures reasonably necessary to protect the public from the hazard existing upon and around said drilling site; and as a result, hazardous substances have escaped and migrated from the site of their drilling operations and have dispersed into the air, soil and water throughout the surrounding areas sometimes in a sudden and accidental matter.

32. By reason of the foregoing, Plaintiffs' properties and residences and/or areas frequented by the Plaintiffs have been contaminated. Plaintiffs have been caused to endure remedial and clean-up activities due to the conduct of the Defendants, and the contamination of Plaintiffs' properties have damaged and diminished Plaintiffs' properties, and have diminished Plaintiffs' ability to use and enjoy their properties and have caused Plaintiffs to suffer economic harm.

33. The injuries sustained by the Plaintiffs as hereinabove alleged were caused wholly and solely as the consequences of the carelessness, recklessness and negligence of the Defendants in their drilling operations.

34. Some or all the actions of the Defendants as described above, were grossly, recklessly and wantonly negligent, and were done with utter disregard for the consequences to Plaintiffs and other persons; and therefore Plaintiffs are entitled to an award of punitive damages.

35. Plaintiffs in no way contributed to the injuries and damages they sustained as herein alleged.

36. By reason of the foregoing, Plaintiff have been damaged by the Defendants and request relief as more fully set forth in the *ad damnum* clause of this complaint.

**AS AND FOR OUR FOURTH CAUSE OF ACTION**

**ABNORMAL DANGEROUS ACTIVITY**

37. Plaintiffs repeat and reallege each and every allegations set forth in paragraph "1" through "36" inclusive of this complaint with the same force and effect as though set forth in total here.

38. The oil and/or natural gas and other such hazardous substances which Defendants were drilling for as alleged above were and are of a toxic and hazardous nature capable of causing severe injury to persons and property coming into contact with the same and as such were and are ultrahazardous materials and are abnormally dangerous. The drilling for natural gas and/or petroleum products at said drilling site was an ultrahazardous and abnormally activity subjecting persons and property coming into

contact with said petroleum products to a severe risk of injury regardless of degree of caution the Defendants may have exercised in drilling for said hazardous substances. The risk of such activity is not outweighed by any value associated with it to the community.

39. By reason of the foregoing, Defendants are strictly liable in tort for the injuries sustained by the Plaintiffs.

40. By reason of the foregoing, Plaintiffs' properties and residences and/or areas frequented by Plaintiffs have been contaminated. Plaintiffs have been caused to suffer remedial and clean-up activities due to the conduct of Defendants; the presence of contamination of Plaintiffs' property has caused and diminished the value of Plaintiffs' properties and has diminished Plaintiffs' ability to use and enjoy their properties and has caused Plaintiffs to suffer economic harm.

41. By reason of the foregoing, Plaintiffs have been damaged by the Defendants and request relief more fully set forth in the *ad damnum* clause of this complaint.

**AS AND FOR OUR FIFTH CAUSE OF ACTION**  
**VIOLATION OF NAVIGATION AND ENVIRONMENTAL**  
**CONSERVATION LAW**

42. The acts and omissions of Defendants violated applicable safety standards and notice provisions established by federal state and local law, including Article 17, sections 0501 and 1007 of the New York Environmental Conservation Law and Article 12 of the New York Navigation Law.



43. By reason of the foregoing, Defendant is strictly liable for the resulting injuries suffered by the Plaintiffs.

44. By reason of the foregoing, the Plaintiffs have been damaged by the Defendants and request relief as more fully set forth in the *ad damnum* clause of this complaint.

**WHEREFORE**, Plaintiffs demand judgment as follows for each Plaintiff:

1. As and for the First Cause of Action in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).


2. As and for the Second Cause of Action in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

3. As and for the Third Cause of Action in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

4. As and for the Fourth Cause of Action in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

5. As and for the Fifth Cause of Action in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) together with the reasonable costs and disbursements of this action, and for any other further damages allowed by law.

Dated: Buffalo, New York  
October 21, 1999

  
RICHARD J. LIPPES, ESQ., Of Counsel  
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**Attorney(s) for Plaintiffs**