

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CITY OF KENOVA, WEST VIRGINIA,
a municipal corporation,

Plaintiff,

v.

Civil Action No. 3:18-cv-1001

WESTERN RIVERS ASSETS, LLC, and
GATE CITY RIVER TRANSPORTATION, LLC,

Defendants.

COMPLAINT

Plaintiff City of Kenova (“Kenova”) brings this action against Defendant Western Rivers Assets, LLC (“Western Rivers Assets”) and Gate City River Transportation, LLC (“Gate City River Transportation”) (collectively, “Owner-Operators”) and alleges the following against Defendants on information and belief:

1. This is a case of admiralty and maritime jurisdiction brought under the Oil Pollution Act of 1990 and for negligence and nuisance brought in connection with the sinking of the towing vessel Gate City (“Vessel”) in the Big Sandy River and the spill of oil and other pollutants resulting therefrom.

I. PARTIES

2. Plaintiff Kenova is a municipal corporation located in Wayne County, West Virginia and a Class III city pursuant to W. Va. Code § 8-1-3(3), having a population of approximately 3,400 and adopting a charter in accordance with the laws of the State of West Virginia.

3. At all times relevant to this action, the Vessel Gate City, a towing vessel, was located in the Big Sandy River within the navigable waters of this judicial district and within the jurisdiction of this Court.

4. Defendant Western Rivers Assets is a Kentucky limited liability company with its principal place of business in Ashland, Kentucky.

5. Defendant Gate City River Transportation is a Kentucky limited liability company with its principal place of business in Catlettsburg, Kentucky.

II. JURISDICTION

6. This Court has jurisdiction over this action under 33 U.S.C. § 2717(b) because the Complaint asserts claims arising under the Oil Pollution Act of 1990, as amended (33 U.S.C. §§ 2701-2720), and under 28 U.S.C. § 1332 because Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds Seventy-five Thousand Dollars (\$75,000).

7. Venue is proper under 33 U.S.C. § 2717(b) because the discharge, injury or damages described in this Complaint occurred in this judicial district, as well as under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this claim occurred in this judicial district.

III. FACTUAL ALLEGATIONS

8. Plaintiff Kenova is a municipality bordered on its western side by the Big Sandy River, a navigable waterway of the United States.

9. At all relevant times, the Vessel Gate City was and is a vessel engaged in navigation on the navigable waters of the United States and within the territorial limits of the State of West Virginia.

10. At all relevant times, Defendant Western Rivers Assets owned and/or operated Defendant Gate City.

11. At all relevant times, Defendant Gate City River Transportation owned and/or operated the Vessel Gate City.

12. On or about January 10, 2018, the Vessel Gate City sank in the waters of the Big Sandy River (“Incident”). The Incident resulted in the discharge of a large quantity of oil and other pollutants into the Big Sandy River, which borders Plaintiff Kenova.

13. As a direct and proximate result of the Incident, Plaintiff Kenova incurred various costs, including, but not limited to, the provision of emergency services and supplying of water to Kenova’s residents.

14. On or about February 2018, a Public Notice was issued. The Public Notice stated:

In accordance with the Oil Pollution Act of 1990 (33 USC 2714(c)), the GATE CITY, owned and/or operated by Western Rivers Assets, LLC has been named as the source of a discharge of oil into the Big Sandy River on or about January 10, 2018. The spill may have impacted the Kenova, WV and Catlettsburg, KY areas, and Western Rivers Assets, LLC, is accepting claims for certain uncompensated damages and removal costs.

15. The Public Notice went on to provide that claims should be sent to Worley Co., P.O. Box 1148, Hammond, LA 70404.

16. On February 15, 2018, Plaintiff Kenova submitted an initial claim totaling One Hundred Thirty-Five Thousand Four Hundred Twelve Dollars and Three Cents (\$135,412.03) to Worley Co. for various costs and damages associated with its response to the spill. The claim included invoices for services and products provided to Kenova during the water emergency, including:

- a. Ceredo Volunteer Fire Department - \$5,037.40
- b. Kenova Volunteer Fire Department - \$15,883.12

- c. Pritchard Volunteer Fire Department - \$1,577.80
- d. England Hill Volunteer Fire Department - \$1,577.80
- e. Ace Services - \$90,000.00
- f. Perfection Rubber & Supply Company - \$235.57
- g. Perfection Rubber & Supply Company - \$531.93
- h. Service Pump and Supply - \$450.00
- i. CI Thornburg, Inc. – \$175.55
- j. CI Thornburg, Inc. - \$3,000.00
- k. CI Thornburg, Inc. - \$1,520.00
- l. Lavalette Public Service District - \$12,086.64
- m. City of Ashland - \$1,802.82; and
- n. Lowe's - \$1,533.40.

17. On February 21, 2018, Plaintiff Kenova submitted a supplemental claim for Fifteen Thousand Five Hundred Thirty-Five Dollars and Forty-Four Cents (\$15,535.44) to Worley Co. for additional costs and damages associated with its response to the spill. The claim included an invoice from West Virginia American Water for services and products provided to Kenova during the water emergency.

18. Plaintiff Kenova has incurred additional costs and damages as a result of the spill, including, but not limited to, costs of emergency services and clean-up operations and products and services in connection therewith, as well as permanent damage to Plaintiff's shoreline and infrastructure.

19. All of the costs and damages set forth in Plaintiff Kenova's claims are a direct and proximate result of the Incident described in this Complaint.

20. More than ninety days have passed since Defendants' receipt of Plaintiff Kenova's claims.

21. Defendants have ignored Plaintiff Kenova's claims, neither denying nor paying them.

COUNT I
(Oil Pollution Act of 1990)

22. Plaintiff Kenova re-alleges and incorporates by reference the allegations contained in this Complaint's preceding paragraphs.

23. Under the Oil Pollution Act of 1990, as amended, 33 U.S.C. § 2702(a), (b), each responsible party for a vessel from which oil is discharged, or which poses the substantial threat of discharge, into or upon the navigable waters or adjoining shorelines of the United States, is strictly liable for all response costs, damages, and/or disbursements specified in the Oil Pollution Act.

24. Defendants are "responsible parties" within the meaning of the Oil Pollution Act of 1990.

25. Under the circumstances set forth in this Complaint, Defendants are liable to Plaintiff Kenova up to the monetary limit of their statutory and regulatory liability, for all response costs, damages, and/or disbursements sustained by Plaintiff as a result of the Incident, including those costs set forth in ¶¶ 16-17 of this Complaint, as well as interest and other costs.

COUNT II
(Oil Pollution Act of 1990)

26. Plaintiff Kenova re-alleges and incorporates by reference the allegations contained in this Complaint's preceding paragraphs.

27. Under the Oil Pollution Act of 1990, as amended, 33 U.S.C. § 2717(f)(2), Plaintiff Kenova is entitled to, and hereby seeks, a declaratory judgment that is binding in any subsequent action or actions against Defendants that Defendants are liable for all costs, damages, and disbursements resulting from the Incident.

**COUNT III
(Negligence)**

28. Plaintiff Kenova re-alleges and incorporates by reference the allegations contained in this Complaint's preceding paragraphs.

29. At all relevant times, Defendants had a duty to Plaintiff Kenova and its residents to maintain the Vessel Gate City in a seaworthy condition and to protect their safety and property from injury during the operation of the Vessel.

30. At all relevant times, Defendants had a duty to Plaintiff Kenova and its residents to ensure that the Vessel Gate City not discharge, leak, or otherwise spread oil and other pollutants into the Big Sandy River.

31. Defendants were negligent and reckless with respect to the duties owed to Plaintiff Kenova and violated those duties by failing to maintain the Vessel Gate City in a seaworthy condition so that it sank and discharged oil and other pollutants into the navigable waters of the United States and onto Plaintiff Kenova's shores.

32. The aforesaid conduct of Defendants was reckless and wanton and constitutes gross disregard of the safety and property of Plaintiff Kenova.

33. As a direct and proximate result of the negligent, reckless, and wanton conduct of Defendants, Plaintiff Kenova has suffered and will continue to suffer damages.

**COUNT IV
(Nuisance)**

34. Plaintiff Kenova re-alleges and incorporates by reference the allegations contained in this Complaint's preceding paragraphs.

35. By sinking the Vessel Gate City and discharging oil and other pollutants into the Big Sandy River and onto Kenova's shores, Defendants created a nuisance to Plaintiff Kenova and its citizens, which were engaged in lawful use of the public waterways of the United States.

36. As a direct and proximate result of the aforesaid public nuisance, Plaintiff Kenova has suffered and will continue to suffer damages.

WHEREFORE, Plaintiff Kenova respectfully requests that the Court enter judgment against Defendants and grant Kenova all the requested relief permissible under law, including, but not limited to:

- a. Payment of all claims set forth in ¶¶ 16-17 of this Complaint;
- b. Payment of additional and future claims made by Plaintiff;
- c. A declaration that Defendants are liable for all costs, damages, and disbursements resulting from the Incident;
- d. Compensatory damages, including interest, in an amount to be determined by a jury;
- e. Punitive damages in an amount to be determined by a jury;
- f. Attorneys' fees, costs, and expenses;
- g. Pre-judgment and post-judgment interest; and
- h. Any further relief the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on any and all claims and on all issues so triable.

Dated: June 6, 2018

/S/ Dennis C. Taylor

Dennis C. Taylor (WV Bar #6965)

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