

STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS
NORTHERN DISTRICT**

SUPERIOR COURT

**JOHN HERMENS and BRENDA HERMENS
12 Eastern Avenue, Amherst, New Hampshire 03031**

V

**TEXTILES COATED INCORPORATED
D/B/A TEXTILES COATED INTERNATIONAL
200 Bouchard Street, Manchester, New Hampshire 03101**

CLASS ACTION COMPLAINT FOR DAMAGE TO PROPERTY INTERESTS

AND REQUEST FOR JURY TRIAL

NOW COME the Plaintiffs, John Hermens and Brenda Hermens, by and through their undersigned attorneys, Gottesman and Hollis, P.A. and The Hannon Law Firm, LLC, complaining of the Defendant herein, respectfully allege to this Court upon information and belief as follows:

I. INTRODUCTION

1. This action is brought as a class action under Rule 16 of the New Hampshire Rules of Civil Procedure.

2. Plaintiffs individually, and as representatives of the Class Members, seek compensatory damages arising out of damage to real property interests caused by chemical releases, discharges and leaks from the Textiles Coated Incorporated site at 105 Route 101A, Amherst, Hillsborough County, New Hampshire (the "TCI Site"). These damages include the loss in value of Plaintiffs' and other Class Members' properties and the cost of remediating the properties owned by Plaintiffs and other members of the Class from the toxic chemicals released from the TCI Site and mitigating the damage including alternative water supplies. Plaintiffs and Class Members' damages also include deferred marketability of their properties, loss of use of the property, loss of use and enjoyment of the property, inconvenience and annoyance and discomfort.

II. PARTIES

Plaintiffs

3. Plaintiffs John and Brenda Hermens jointly own residential real property with a private groundwater well and reside at 12 Eastern Avenue, Amherst, New Hampshire and consumed water there for a cumulative time period of than for more than a year.

Defendant

4. Defendant Textiles Coated Incorporated, (hereinafter "TCI") is and was at all times relevant hereto a corporation organized under the laws of the State of New Hampshire with a principal office address of 200 Bouchard Street, Manchester, New Hampshire. Defendant TCI does business in the State of New Hampshire under the trade name Textiles Coated International which is registered with the New Hampshire Secretary of State. TCI formerly conducted business at 105 Route 101A, Amherst, New Hampshire. Textiles Coated International is a trade name registered to Textiles Coated Incorporated.

III. JURISDICTION AND VENUE

5. The subject matter of this action is in the Northern District of Hillsborough County so that jurisdiction and venue is proper in the Northern District of the Hillsborough County Superior Court.

IV. GENERAL ALLEGATIONS

A. The TCI Site

6. The TCI Site was an industrial site located at 105 Route 101, Amherst, New Hampshire. The Site consists of an office, a manufacturing facility ("TCI Plant") and related buildings. Defendant TCI had continuously operated a manufacturing facility at the TCI Site from approximately 1985 to 2006.

7. Defendant used chemicals containing ammonium perfluorooctanoate (APFO), which is a man-made chemical. APFO is a derivative of Perfluorooctanoic acid (“PFOA”) (APFO and PFOA will hereinafter be referred to as “PFOA”). Both are members of a family of perfluorinated compounds (“PFAS”) which are known to be highly toxic to humans. Due to their chemical structures, PFAS are both biologically and chemically stable in the environment and resistant to environmental degradation. Because they are water soluble, PFAS can migrate readily from soil to groundwater and through groundwater. PFAS remain present in the environment long after they are released.

8. The TCI Plant used a process that made films for use in a variety of industries using PFOA. At all relevant times thereto, the Defendant knew or should have known that the manufacturing process, machinery, towers, building openings and other points at the TCI Plant were sources of releases, emissions, particulate emissions and toxic pollutants that would travel when released and contaminate the properties of Plaintiffs and of Class Members.

9. TCI operated without sufficient pollution controls to limit and eliminate the emissions of toxic PFOA into the air, soil, surface water and groundwater of the Amherst area, and Defendant failed to eliminate the use of PFAS in the manufacturing process. As a result, Defendant released toxic PFAS emissions from the TCI Plant into the air, surface water and groundwater and into the soil and groundwater of the properties of Plaintiffs and of Class Members.

B. Defendant’s Knowledge of Contamination and Failure to Act

10. TCI knew that its manufacturing facility operated without pollution control systems to reduce or eliminate releases of toxic PFOA, and that the TCI Plant released toxic PFOA to the environment. TCI knew or should have known that the releases went uncontrolled beyond its

property boundaries and that the releases would cause harm and injury to Plaintiffs' and Class Members' properties and cause them exposure to toxic PFAS.

11. Defendant negligently failed to test the air, soil, surface water or groundwater wells at or near the TCI Site and to warn the Plaintiffs and the Class Members that the wells, soil, air, surface water and groundwater at or near the TCI Site were likely contaminated with toxic PFAS.

12. Defendant's conduct unnecessarily exposed the Plaintiffs and Class Members to unsafe air, soil and water insofar as they could and should have taken action to reduce or eliminate exposure and warn Plaintiffs and Class Members, thereby shortening the length of time they were exposed to PFAS and the amount their properties were contaminated by PFAS or eliminating that exposure and contamination.

13. Throughout the course of its operation of the TCI Site, Defendant released PFOA into the environment and failed to remediate contamination that has been released from the TCI Site. The releases by Defendant from the TCI Site have traveled through the air and soils and groundwater and physically intruded onto properties of Plaintiffs and of Class Members, contaminating the air, the soil, the household water, the groundwater wells, and other parts of properties of Plaintiffs and the Class Members. PFOA contamination caused by Defendant has migrated through the soil and into the groundwater that Plaintiffs and Class Members have the right to use and possess and have used and possessed for their household water supply.

14. Defendant has sometimes negligently, sometimes suddenly and accidentally, and otherwise acted to cause toxic contaminants to be released from the TCI Plant and the TCI Site which then traveled to and contaminated the properties of Plaintiffs and the Class Members.

15. Upon information and belief, beginning on or about April 15, 2016 NHDES conducted tests on water wells in the vicinity of the TCI Site in order to determine if the wells

were contaminated with PFOA released from the TCI Site. The testing of the wells identified contamination of the groundwater by PFOA.

16. The groundwater and wells include those owned by the Plaintiffs and Class Members which have been contaminated by PFAS released from the TCI Site.

17. Beginning on May 11, 2016, NHDES began recommending that certain residents in the vicinity of the TCI Site use bottled water. Residents were advised not to drink or cook with water from the wells or to consume certain vegetables from their gardens where contaminated water was used.

18. As a direct and proximate result of Defendant's activities on and operation of the TCI Site, PFAS have been released from the TCI Site and contaminated the properties owned by Plaintiffs and the members of the Class and contaminated the air, soil, household water, wells and piping of the Plaintiffs' and Class Members' properties.

19. Testing done by Defendant and NHDES has verified that PFAS released from the TCI Site have contaminated the groundwater supplies possessed and used by Plaintiffs and Class Members for household water.

C. The Toxic Properties of PFAS

20. Exposure to PFAS through consuming water and inhaling air contaminated with PFAS causes PFAS to be absorbed into the human body, resulting in an increased risk of illness, disease or disease process associated with the toxicity of PFAS for those so exposed.

21. Toxicology studies show that PFAS are readily absorbed after oral exposure and accumulate in the human body. There are many health risks associated with exposure to PFAS. For example, exposure to PFOA is associated with increased risk in humans of testicular cancer and kidney cancer, liver function abnormalities, immunotoxicity, endocrine disruption, and of

disorders such as thyroid disease, high cholesterol, ulcerative colitis, and pregnancy-induced hypertension, as well as other conditions.¹ The U.S. E.P.A has also advised that exposure to PFAS may result in developmental effects to fetuses during pregnancy or to breast-fed infants. *Id.* Thus PFAS are known and proven hazardous substances.

D. Defendant's Contamination of Plaintiffs' and Class Members' Persons and Properties

22. The PFAS used by Defendant at the TCI Site were released to air, soil, surface water and groundwater. Defendant's releases of toxic PFAS to air, soil, surface water, and groundwater have migrated from the TCI Site through air and/or groundwater and physically intruded onto the properties of Plaintiffs and Class Members and other properties in the Amherst area, including their air, soil, structures, trees, groundwater wells, household piping and other property owned and used by the Plaintiffs and Class Members. That contamination migrated through soil into the groundwater, contaminating groundwater wells, household water supplies and properties owned and used by Plaintiffs and Class Members.

23. It was reasonably foreseeable by Defendant that PFOA would be released to the air, soil, surface water and groundwater during the manufacturing process at the TCI Site. It was further reasonably foreseeable that Defendant's releases of PFOA would migrate to Plaintiffs' and Class Members' properties and other properties in the vicinity of the TCI Site, and physically intrude onto those properties, contaminating Plaintiffs' and Class Members' air, soil, structures, trees, groundwater wells, household piping and other property owned and used by Plaintiffs and Class Members, invading Plaintiffs' possessory interest in their properties, and contaminating

¹ https://www.epa.gov/sites/production/files/2016-05/documents/drinkingwaterhealthadvisories_pfoa_pfos_5_19_16.final_1.pdf

household water supplies by contaminating water Plaintiffs and Class Members had a right to withdraw and use.

24. It was reasonably foreseeable to Defendant that Plaintiffs and Class Members, as users of groundwater that supplied private wells in the Amherst area, would be exposed to and consume groundwater contaminated by PFAS releases from the TCI Site, would otherwise be exposed to PFAS releases from the TCI Site, and would suffer an increased risk of illness, disease and disease process because of that exposure.

V. DAMAGES TO PLAINTIFFS AND OTHER CLASS MEMBERS

25. Properties owned by the Plaintiffs and the other Class Members have been and are being invaded by toxic PFAS released from the TCI Plant and the TCI Site.

26. Plaintiffs and the other Class Members have been and are exposed to PFAS in the air, groundwater and soil, and household water the source of which are Defendant's releases from the TCI Site. As a result of these releases, Plaintiffs and Class Members have suffered damages and losses including, but not limited to, those identified below.

27. As a result of Defendant's conduct and the resulting contamination, the value and marketability of the property and property rights of Plaintiffs and members of the Class have been and will continue to be diminished. Plaintiffs and members of the Class have suffered the need for and the cost of remediation of their properties. Plaintiffs and members of the Class have also suffered the need for and cost of mitigating the contamination, including the cost of filters and/or the costs of alternative water supplies and the cost of restoring, using and maintaining uncontaminated water supplies and/or the cost of water supplied by a water utility company and associated costs. As a result of the contamination, Plaintiffs and Class Members have suffered loss of use and loss of use and enjoyment of their properties and have also suffered annoyance,

discomfort, and inconvenience as a consequence of the contamination of their properties and household water supplies by Defendant.

VI. DEFINITION OF THE CLASS

28. This action is brought by the Plaintiffs individually on their own behalf and as representatives of the Class defined below.

29. The members of the class are defined as:

All persons who own residential properties in the Town of Amherst, New Hampshire with private groundwater wells within three-fourths mile of the TCI Site, and those properties to the North along and within the area of Boston Post Road on the west, Cross Road through its easternmost intersection with Windsor Drive, and Waterview Drive. *See Appendix A.*

30. Excluded from the Class are any officers, directors, agents, current employees, or representatives of Defendant.

VII. COMPLIANCE WITH RULE 16 REQUIREMENTS

31. The Class satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 16 of the New Hampshire Rules of Civil Procedure.

Numerosity

32. The Members of the Class are so numerous that joinder of all Members is impracticable. The number of class members exceeds one hundred. Members can be easily identified from public records such as property tax records, state well records, and other public records and notified of the pendency of this action by mail or via other public sources.

Typicality

33. The Representative Plaintiffs' claims are typical of the claims of the Members of the Class since the Members of the Class are similarly affected by Defendant's conduct resulting in damage to all Members of the Class.

Adequate Representation

34. The Representative Plaintiffs will fairly and adequately protect the interests of Members of the Class and have retained counsel competent and experienced in tort, class action and environmental litigation.

35. The Representative Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class and have the resources to do so.

36. Neither Plaintiffs nor their counsel have interests adverse to any of the other Plaintiffs or the other Members of the Class.

Predominance of Common Questions

37. Plaintiffs bring this action under Rule 16 because numerous questions of law and fact common to Class Members predominate over any question affecting only individual Members. The answers to these common questions will advance resolution of the litigation as to all Class Members. These common legal and factual issues include:

a. the type or kinds of chemicals that have been and are being released from the TCI Site;

b. the activities of Defendant TCI that have resulted in the contamination of the air, soil, groundwater, household water supplies and properties of the Plaintiffs and the Class Members;

c. the nature and toxicity of the chemicals released from the TCI Plant;

d. whether the value and marketability of the property and property rights of Plaintiffs and the Class Member property owners have been and will continue to be diminished by the interference with property rights caused by the contamination as a result of Defendant's release of toxic chemicals;

- e. whether Plaintiffs and the Class Member property owners have suffered the need for and the cost of mitigation at and remediation of their properties;
- f. whether Plaintiffs and the Class Member property owners have lost use and enjoyment of their properties;
- g. whether Plaintiffs and the Class Members have suffered discomfort, inconvenience and annoyance as a consequence of the contamination of their properties by Defendant;
- h. whether Defendant owed a duty to Plaintiffs and Class Members;
- i. whether Defendant breached a duty owed to Plaintiffs and Class Members;
- j. whether the contamination of Plaintiffs' properties by Defendant's actions and their resulting exposure to toxic PFAS was reasonably foreseeable;
- k. whether Defendant knew or should have known that releases from the TCI Site would be transported to and contaminate the properties of Plaintiffs and Class Members;
- l. whether Defendant's actions constitute a trespass;
- m. whether Defendant's actions constitute a nuisance; and
- n. whether Defendant was unjustly enriched by its actions at the expense of Plaintiffs and the Class Members.

Superiority

38. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Members is impracticable.

39. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final legal and/or equitable relief with respect to the Class as a whole.

40. Furthermore, the expense and burden of individual litigation outweighs the individual damages suffered by individual Class Members, making it impossible for members of the Class to individually redress the wrongs done to them.

41. Class treatment of common questions of law and fact will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

42. There will be no difficulty in the management of this action as a class action.

VIII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF—TRESPASS

43. Plaintiffs incorporate the allegations contained in the preceding paragraphs herein by reference.

44. As a result of the conduct and activities of the Defendant, the releases from the TCI Site have physically intruded onto and wrongfully entered the Plaintiffs' and Class Members' properties and Plaintiffs' and Class Members' neighborhood, interfering with the Plaintiffs' and Class Members' possessory interest in their properties and right of private occupancy without Plaintiffs' or the Class Members' permission.

45. The physical intrusion of Defendant's toxic releases onto the property owned by Plaintiffs and the Class Members and into the Plaintiffs' neighborhood has diminished the value of Plaintiffs' and Class Members' properties and caused damage to the Plaintiffs' and Class Members' properties and property rights.

46. As a direct and proximate result of Defendant's trespass, Plaintiffs and the Class Members have suffered damages and losses identified in paragraph 27 above. Accordingly, Defendant is liable for compensatory damages to Plaintiffs and the Class Members.

SECOND CLAIM FOR RELIEF—NUISANCE

47. Plaintiffs incorporate the allegations contained in the preceding paragraphs herein by reference.

48. The releases of chemicals resulting from Defendant's operation and ownership of the TCI Site have caused a substantial and unreasonable interference with the Plaintiffs' and Class Members' use and enjoyment of their properties.

49. As a direct and proximate result of Defendant's creation of a nuisance, Plaintiffs and the Class Members have suffered special injury and special damages and losses identified in paragraph 27 above. Accordingly, Defendant is liable for compensatory damages to Plaintiffs and the Class Members.

THIRD CLAIM FOR RELIEF—NEGLIGENCE

50. Plaintiffs incorporate the allegations contained in the preceding paragraphs herein by reference.

51. Defendant negligently breached its duty of care by releasing and allowing the release of toxic chemicals from the Site, by failing to take steps to minimize or eliminate the release of toxic chemicals, by its failure to test the air, soils and groundwater at or near the TCI Site order to determine the levels of contaminants, and by failing to timely mitigate or remediate releases from the TCI Plant and Site and the impact and harm to Plaintiffs and Plaintiffs' properties.

52. Defendant owed Plaintiffs and all Class Members a duty of reasonable care commensurate with the risk of the operations at the TCI Site in Amherst, New Hampshire.

53. Given the likelihood of contamination of neighboring properties and exposure to their occupants, Defendant had a duty to investigate the extent to which toxic PFAS released from the TCI Site were likely contaminating the properties and water supplies of the Plaintiffs and Class Members.

54. Defendant negligently breached its duty and negligently failed to warn the Plaintiffs and Class Members of the release of toxic PFAS, the likelihood that their properties' household water supplies were contaminated with PFAS, and that Plaintiffs and Class Members were being exposed to toxic PFAS.

55. Defendant negligently failed to test the air, soils and groundwater at or near the Amherst, New Hampshire plant, exposing Plaintiffs and Class Members to PFC contamination for an extended period of time.

56. As a result of Defendant's negligence, Plaintiffs and the Class Members have suffered damages and losses including, but not limited to, those identified in paragraph 27 above. Accordingly, Defendant is liable for compensatory damages to the Plaintiffs and the Class Members.

FOURTH CLAIM FOR RELIEF – NEGLIGENT FAILURE TO WARN

57. Plaintiffs incorporate the allegations contained in the preceding paragraphs herein by reference.

58. Defendant had a duty to exercise reasonable care and to warn the Plaintiffs and Class Members of the release of toxic PFAS and the likelihood that air, soil, groundwater and household water supplies were contaminated with PFAS emitted from the TCI Site, and that they were being exposed to toxic PFAS.

59. As a direct and proximate result of Defendant's actions, Plaintiffs and the Class Members have been exposed to toxic PFAS released from the TCI Site and suffered damages including those damages identified in paragraph 27 above. Accordingly, Defendant is liable for the compensatory damages to Plaintiffs and the Class Members.

FIFTH CLAIM FOR RELIEF - UNJUST ENRICHMENT

60. Plaintiffs incorporate the allegations contained in the preceding paragraphs herein by reference.

61. Defendant TCI failed to incur expenditures to limit or prevent the release of toxic PFAS into the environment and onto Plaintiffs' and Class Members' properties and Plaintiffs' and

Class Members' neighborhoods, and failed to incur costs to remediate the contaminated soil and groundwater. Defendant TCI has been unjustly enriched by their failure to make expenditures to prevent the persons and properties of Plaintiffs and the Class Members from being contaminated with PFAS.


62. Defendant TCI has received a benefit and it would be unconscionable and contrary to equity for Defendant to retain that benefit. The Court therefore should award as a remedy the expenditures saved and the profits obtained by Defendant TCI at the expense of Plaintiffs and the Class Members.

WHEREFORE, Plaintiffs and the Class Members request the following relief:

- A. An order certifying the Class under Rule 16 of the New Hampshire Superior Court;
- B. That this matter be scheduled for a jury trial;
- C. Judgment against Defendant for compensatory damages on all counts in a fair and just amount as established at trial;
- D. Disgorgement of the profits and savings which were obtained by the unjust enrichment of Defendant through their use of and at the expense of the properties of Plaintiffs and the Class Members;
- E. An award of interest, costs and attorney fees; and
- F. Such other and further relief as may be just.

Respectfully submitted,

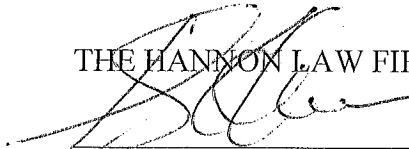
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