

COMMONWEALTH OF KENTUCKY
35 JUDICIAL DISTRICT
PIKE CIRCUIT COURT
DIVISION NO: _____

CIVIL ACTION NO: _____

PLAINTIFF M AND
PLAINTIFF M'S WIFE, HIS WIFE
AND
PLAINTIFF M'S BUSINESS

PLAINTIFFS

VS.

DEFENDANT K
and
DEFENDANT GAS COMPANY
and
GAS DRILLING COMPANY

DEFENDANTS

COMPLAINT AND JURY DEMAND

Comes the Plaintiffs, Plaintiff M and Plaintiff M's Wife, his wife and PLAINTIFF M'S BUSINESS, and for their claims and causes of action against the Defendants herein state as follows;

JURISDICTION AND VENUE

1. The Court herein has jurisdiction and venue over this matter in that the events alleged herein all occurred in or near - _____, Pike County, Kentucky.
2. The damages claimed herein are in excess of \$ 4,000.00 the jurisdictional limits of this Court.

IDENTIFICATION OF THE PARTIES

3. The Plaintiffs, Plaintiff M and Plaintiff M's Wife are residents of _____, Pikeville, Kentucky 41501. Plaintiff, PLAINTIFF M'S BUSINESS is a Kentucky Limited Liability Company doing business at STREET ADDRESS, Pikeville, Kentucky 41501.

4. The Defendant, DEFENDANT K, is an individual residing _____ Kentucky,

5. The Defendant, DEFENDANT GAS COMPANY, is a Kentucky domiciled corporation authorized to transact business in the Commonwealth of Kentucky and is doing business in, Kentucky with its' principle office located STREET ADDRESS. The agent for service of process is _____

6. The Defendant, GAS DRILLING COMPANY, is an inactive corporate entity authorized to transact business in the Commonwealth of Kentucky as an assumed named corporation of the Defendant DEFENDANT GAS COMPANY, and at all times relevant herein was doing business in Pike County, Kentucky. Its' principal office is located _____ The agent for service of process is _____

GENERAL ALLEGATIONS

7. In November 1996, the Defendant DEFENDANT K signed a right of way agreement regarding the building of an access road to a gas well near Plaintiffs business

said agreement is attached hereto and incorporated by reference as exhibit A. In the process of drilling said wells the Defendants collectively began the process of cutting the access roads on the as shown on Exhibit A.

8. The Defendants, jointly and severally, had a duty to use upmost care in the planning and construction of its well sites and all access roads thereto, so as not to create any dangerous conditions that have the potential to harm the general public and their property interests, including but not limited to the Plaintiffs herein.

10. That the Defendants, collectively, knew or should have known without the use of due care that the access roads and wells sites in and near _____ Kentucky where susceptible to severe water runoff if the natural spring rainfall took place in the area.

11. That on February 22, 2003 mud slides and slips occurred along Defendants, well sites and access roads in and near _____, Kentucky, as a result of rain falling in the area.

12. On information and belief, each of the Defendants named herein were responsible for one or more of the following matters or tasks in connection with the installation of said gas well access roads which was underway prior to and on the day Plaintiff sustained the damages described below, including, but not limited to:

- (a) Preparation, review, and/or approval of construction documents, including but not limited to designs, plans, drawings, and specifications;

- (b) Preparation, review, and/or approval of the design of the gas well access roads, including the gas well access roads and their installation;
- (c) Preparation, review and/or approval of the excavation specifications relating to the gas well access roads
- (d) Designation, review, and/or approval of the specific site location for each of the gas well access roads;
- (e) Excavation, or oversight of the excavation of the gas well access roads and water diversion ditches which failed causing the damages complained of herein;
- (f) Act as either project manager, construction manager, owner's representative, or in other similar capacity, whose duties also include, but are not limited to, obtaining, reviewing, and/or approving all construction designs, plans, drawings, and specifications and exercising due care as to provide for the safety of all persons and adjacent landowners and citizens.
- (g) Conduct or cause there to be conducted, a geotechnical investigation and make recommendations regarding soil conditions in and around the gas well access roads;
- (h) Evaluate site conditions and construction methods in order to ensure the safety of all the citizens of Pike County and their real property.

13. That the Defendants collectively breached all the above duties thereby causing the injuries and damages described herein below.

COUNT 1
STRICT LIABILITY ABNORMALLY DANGEROUS ACTIVITY

14. That the plaintiffs do hereby adopt and reiterate each and every allegation made herein and incorporate the same by reference.

15. That the defendants were engaged in the activity of gas well drilling and access road preparation in a location and area which causes said actions to be an abnormally dangerous activity pursuant to the Restatement 2nd of Torts §520 and defendants' are therefore strictly liable for any and all damages incurred by Plaintiffs.

16. That as a result of the defendant's abnormally dangerous activity, the plaintiffs have been damaged in an amount in excess of the jurisdictional limits of this Court, said damages which include, but are not limited to, real property damage, personal property damage, diminution of value to real property, loss of income and other economic loss, loss of enjoyment of real property, and severe emotional distress.

17. Furthermore, Plaintiff, Plaintiff M was caused to serious pain, suffering, mental anguish, and will continue to suffer such in the future. Further Plaintiff has incurred and may incur future medical expenses and physician expenses. Plaintiff, Plaintiff M, has suffered permanent impairment of his ability to earn money in the future.

That as a direct result of defendants actions the Plaintiff, Plaintiff M's Wife, has been deprived of the care, companionship, society and consortium of the Plaintiff, Plaintiff M.

**COUNT 2
TRESPASS**

18. That the plaintiffs, does hereby adopt and reiterate each and every allegation made herein and incorporate the same by reference.

19. The encroachment of water, mud and debris onto plaintiff's property and business is a trespass resulting in damage to the plaintiff's business.

20. The Defendants, jointly and severally, have failed and/or refused to remove the water, mud and debris and have failed to repair, properly design or construct the access road mentioned herein..

21. As a direct and proximate result of the trespass and the defendants' subsequent failure and/or refusal to remove water, mud and debris and to repair, design or construct the ditching and diversion system, the plaintiffs has been damaged in an amount in excess of the jurisdictional limits of this Court as stated herein above.

**COUNT 3
NEGLIGENCE**

22. That the plaintiffs, does hereby adopt and reiterate each and every allegation made herein and incorporate the same by reference.

23. The Defendants, jointly and severally, have negligently failed and/or refused to remove the water, mud and debris and have negligently failed to repair, negligently failed to properly design or construct access road mentioned herein.

24. As a direct and proximate result of the negligence described above and the

defendants' subsequent failure and/or refusal to remove water, mud and debris and to repair, design or construct the access road mentioned herein, the plaintiffs has been damaged in an amount in excess of the jurisdictional limits of this Court as mentioned herein above in Count 1.

**COUNT 3
PRIVATE NUISANCE**

25. That the plaintiffs, do hereby adopt and reiterate each and every allegation made herein and incorporate the same by reference.

26. That on or about _____, 2003, or soon thereafter, the defendants, as a result of their actions, in performing its gas well drilling operation and building of access road thereto, in such a way as to impact the plaintiffs' business, constituted a private nuisance thereby resulting in the loss of use and enjoyment of the real property of the plaintiffs.

27. That as a result of the defendant's private nuisance, plaintiffs have been damaged in an amount in excess of the jurisdictional limits of this Court, said damages which include, but are not limited to, real property damage, personal property damage, diminution of value to real property, loss of income and other economic loss, loss of enjoyment of real property.

**COUNT 4
PUBLIC NUISANCE**

28. That the plaintiff does hereby adopt and reiterate each and every allegation made herein and incorporate the same by reference.

29. That the actions of the defendants impacted and damaged the Plaintiff's business.

30. Said damage to the water source above Plaintiff's business constitutes a public nuisance. Plaintiffs allege that said impact on their business has caused them special damages other than those to the general public and may therefore maintain a cause of action for such public nuisance.

31. That as a result of defendant's public nuisance, plaintiffs have been damaged in an amount in excess of the jurisdictional limits of this court as stated above in Count 1.

WHEREFORE, Plaintiffs' demand Judgment against each Defendant, in favor of Plaintiffs, for the following elements of damages, in amount(s) to be proven at trial, but in excess of the jurisdiction of the Court, said amount(s) determined as being fair and reasonable by all the evidence:

1. Judgment against the defendants, in an amount in excess of the jurisdictional limits of this Court for the following elements of damage:

- a) Real and personal property damage;
- b) Diminution of value to real property;
- c) Loss of income and other economic loss;
- d) Loss of enjoyment of real property;
- e) Past mental and physical pain, suffering and inconvenience.
- f) Future mental and physical pain, suffering and inconvenience.
- g) Permanent impairment of his ability to earn money.

- h) Future medical expenses, past medical expenses and lost wages
 - i) Plaintiff, Plaintiff M's Wife's loss the care, companionship, society and consortium of the Plaintiff, Plaintiff M.
2. Trial by Jury.
 3. Pre-Judgment and post-judgment interest.
 4. Costs and expenses incurred herein.
 5. Attorney's fees incurred herein.
 6. Any and all other relief to which plaintiffs may appear entitled.

Respectfully submitted,

TIMOTHY D. BELCHER
TIMOTHY D. BELCHER, P.S.C.
P.O. BOX 1195
210 EAST ELKHORN STREET STREET
ELKHORN CITY, KENTUCKY 41522
(606) 754-7150