

STATE OF NEW YORK

SUPREME COURT : COUNTY OF CATTARAUGUS

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

Plaintiffs

vs.

Index No. 64729

DALE F. FOX,
MEDINA WELL SERVICING, LTD.,
FAULT LINE OIL CORPORATION,
and CHARLES POWELL,

Defendants

TED BURNS, ESQ.,
Allen & Lippes
1260 Delaware Avenue
Buffalo, New York 14209
For the Plaintiffs

JAMIE HOARE, ESQ.
80 Broad Street, 23rd Floor
New York, New York 10004
For the Defendants

HIMELEIN, J.

VERDICT

Introduction

On November 19, 1996, defendant Fault Line Oil Corporation was drilling a well for oil

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or gas on the property of defendant Dale Fox in Freedom, New York. During the drilling, gas was unexpectedly released at a very high pressure. Fault Line Oil was unable to kill the well until the following day. When neighbors reported gas or gas smells on their property, the area was evacuated until the situation was under control. The plaintiffs in this action are people who lived nearby and now complain of changes to their water supplies and consequential damages as a result of this incident. The parties agreed to a non-jury trial with a high-low verdict of \$500,000/\$250,000.

Liability

The court has no difficulty finding in plaintiffs' favor on the issue of liability. The facts posed by this case seem to fall well within the doctrine of *res ipsa loquitur*. An event such as this does not ordinarily occur without negligence, defendants had exclusive control over the drilling, and none of the plaintiffs contributed to the incident (*see States v. Lourdes Hospital*, 100 NY2d 208, 762 NYS2d 1 [2003]; *Rodriguez v. Serge Elevators Co., Inc.*, 99 NY2d 587, 757 NYS2d 809 [2003]; *Kambat v. St. Francis Hospital*, 89 NY2d 489, 655 NYS2d 844 [1997]; *Morgan v. Solomon*, 305 AD2d 982, 758 NYS2d 458 [4th Dept. 2003]; *Kuhns v. Millard Fillmore Hospitals*, 296 AD2d 839, 714 NYS2d 787 [4th Dept. 2002]; *Di Roma v. Mutual of America Life Insurance Co.*, ___ AD3d ___, ___ NYS2d ___, 2005 WL 756858 [1st Dept. 2005]). This determination makes it unnecessary to reach the other causes of action alleged by plaintiffs.

Damages

Before turning to the individual plaintiffs, the court notes its rejection of the opinion of Joseph Whittington that all of the plaintiffs' properties are now worth zero. The court

also rejects the opinion of Ian Miller that plaintiffs' properties suffered, at most, a diminution in value of \$7,200.

Additionally, because this was a non-jury trial with a high-low agreement and a stipulation that there would be no appeal, the court will award general damages figures without breaking them down into any more detail than past and future damages.

Donald and Diana Lewis

The Lewis' live on a 98 acre parcel upon which they built a three bedroom home. They drilled a well in 1989 and had no problems with water until this incident, when the water in their well turned black and bubbly and their pond looked "like a geyser." The family stayed out of the house for a few days but when they returned, they could only use the water to flush toilets. They installed a new water system but the water still smells. Mr. Lewis, but not his wife, uses the water to cook or make coffee but neither will drink it. The Lewis suffered past damages of \$30,000.

Stephen and Diane Woloszyn

Mr. Woloszyn started working on his parents' farm when he graduated from high school in 1973. His father had purchased the farm in 1957. Mr. Woloszyn and his wife bought the cows and machinery in 1985 and the real estate in 1995. The Woloszyns used water from a spring in both the dairy operation and in their home. On November 20, 1996, Mr. Woloszyn smelled the gas and observed it escaping a casing at "a couple hundred" pounds of pressure. He immediately shut off the electric and observed that most of his cows were laying down in the barn with their heads on the floor, a very unnatural position for a cow. Mr. Woloszyn let the

adult cows out of the barn without milking them and tried to vent the barn. The cows were returned to the barn in the evening and milked but the milk was dumped. The following morning after the cows were milked, the milk was dumped again.

The next day, most of the herd came down with dysentery and one cow died. Thereafter, milk production dropped and the Woloszyns had to sell some of their cows for beef. Ultimately, they had to buy a number of cows to maintain the herd. Up until this time, they had raised their own replacement cows. Unfortunately, the replacement cows introduced mastitis into the herd, further reducing milk production. Further, approximately 20 calves died after this incident, an extremely high number. Ultimately, the Woloszyns had to borrow \$142,000.

The Woloszyns were also told not to use their water and ran a pipe from Mr. Woloszyn's father's property to their property and have been getting all their water from there. The future of that solution is, of course, unknowable. The court finds that the Woloszyns' have suffered past damages in the amount of \$100,000.

Jeanette Titus

A black silt-like greasy substance went through her house. A new filtration system was installed but Ms. Titus and her family do not drink the water. Further, their water supply is limited now. Ms. Titus has suffered past damages in the amount of \$30,000.

Wayne and Ruth Weaver

The Weavers had no problems with their water until this incident, which left their water cloudy and containing "black speckles." They were forced to rely on bottled water for drinking and cooking until a new filter system was installed. They are now apparently able to use their

water for all purposes. The Weavers suffered \$20,000 in past damages.

Robert and Rose Noel

The Noels purchased their property in 1990 and built their home on the property later that year. Until this incident, they had no problems with their water supply. After November 20, 1996, their water smelled and contained black particles. They did not drink their water until 1998 but even today, the water has a rotten egg smell to it. The Noels have suffered past damages of \$25,000.

Future Damages

There exists a possibility that each plaintiff could be connected to a municipal water source. If that occurs within 120 days of this verdict, each plaintiff's future damages are \$5,000. However, if that is not possible, or defendant does not wish to incur that cost, future damages are as follows:

Lewis	\$ 75,000
Woloszyn	\$150,000
Titus	\$ 50,000
Weaver	\$ 25,000
Noel	\$ 35,000

This verdict should ultimately be reduced to judgment.

Dated: Little Valley, New York
April 19, 2005


HON. LARRY M. HIMELEIN