

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

DOUGIE LESTER,
individually and on behalf of all others
similarly situated,

Civ. Action No. 5:17-cv-00740
Honorable Judge Irene C. Berger

Plaintiff,

v.

**PAY CAR MINING, INC.,
BLUESTONE INDUSTRIES, INC.,
BLUESTONE COAL CORP.,
KEYSTONE SERVICE INDUSTRIES, INC.
and MECHEL BLUESTONE, INC.,**

Defendants.

COMPLAINT

The Plaintiff, Dougie Lester, individually and on behalf of all others similarly situated, by and through the undersigned counsel, brings this action arising out of a violation of the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. Section 2101 et seq.

Defendant Pay Car Mining, Inc., on its own and in concert with its affiliates Mechel Bluestone, Inc., Bluestone Industries, Inc., Bluestone Coal Corp., and Keystone Service Industries, Inc., failed to provide their full-time employees with the sixty-days notice required under the WARN Act prior to laying off more than fifty of those workers beginning in October 2012 at the large coal-mining and preparation facility known as the Pay Car Mine located between the towns of Kimball and Keystone in McDowell County, West Virginia.

Plaintiff brings this action, consistent with Federal Rule of Civil Procedure 23, on his own behalf and on behalf of the Defendants' other similarly-situated employees, for statutory damages, interest, costs, and fees, pursuant to the WARN Act.

Parties

1. Plaintiff, Mr. Dougie Lester, was a full-time employee of Mechel Bluestone, Inc. and Pay Car Mining, Inc. for over two years. Mr. Lester worked for those Defendants at the coal-mining and preparation site known as the Pay Car Mine located between the towns of Kimball and Keystone in McDowell County, West Virginia, at the time that he was laid off without prior written notice on or about October 20, 2012. At all times relevant herein, Mr. Lester has resided in Hanover, Wyoming County, West Virginia.

2. Pay Car Mining, Inc. (hereinafter “Pay Car”) is a West Virginia Corporation, with its mailing address at P.O. Box 2178, Beaver, Raleigh County, West Virginia 25813, and its principal place of business at Glade Springs, 216 Lake Drive, Daniels, Raleigh County, West Virginia 25832.

3. Bluestone Industries, Inc. (hereinafter “Bluestone Industries”) is a West Virginia Corporation, with its mailing address at P.O. Box 2178, Beaver, Raleigh County, West Virginia 25813, and its principal place of business at Glade Springs, 216 Lake Drive, Daniels, Raleigh County, West Virginia 25832.

4. Bluestone Coal Corporation (hereinafter “Bluestone Coal Corp.”) is a West Virginia Corporation, with its mailing address at P.O. Box 2178, Beaver, Raleigh County, West Virginia 25813, and its principal place of business at Glade Springs, 216 Lake Drive, Daniels, Raleigh County, West Virginia 25832.

5. Keystone Service Industries, Inc. (hereinafter “KSI”) is a West Virginia corporation, with its mailing address at P.O. Box 2178, Beaver, Raleigh County, West Virginia 25813, and its principal place of business at Glade Springs, 216 Lake Drive, Daniels, Raleigh County, West Virginia 25832.

6. Mechel Bluestone, Inc., (hereinafter “Mechel Bluestone”) is a Delaware corporation, with its mailing address at P.O. Box 2178, Beaver, Raleigh County, West Virginia 25813, and its principal place of business at Glade Springs, 216 Lake Drive, Daniels, Raleigh County, West Virginia 25832.

Jurisdiction and Venue

7. Jurisdiction over this claim is founded on the existence of a federal question. This action arises under the WARN Act, 29 U.S.C. Section 2101, et seq., and jurisdiction is conferred pursuant to 29 U.S.C. Section 2104.

8. Venue is proper in this District pursuant to the WARN Act, 29 U.S.C. Section 2104(a)(5), because the WARN Act violation giving rise to this Complaint is alleged to have occurred in this District and in this Beckley Division, and because the Defendant-employers transact business in said District and Division.

Facts

9. Prior to October 20, 2012, Pay Car Mining, both on its own and jointly with Mechel Bluestone, KSI, Bluestone Coal Corp. and Bluestone Industries, employed 100 or more employees, including Plaintiff, excluding part-time employees, at or in connection with the Pay Car Mine.

10. During the year 2012, the Defendants owned, operated, and controlled several mining facilities that produced and prepared coal in Wyoming and McDowell Counties, West Virginia, including the integrated operations encompassed by the Pay Car Mine.

11. Mechel Bluestone owned, controlled, operated, and maintained the Pay Car Mine, in coordination with Bluestone Industries, Bluestone Coal Corp., and Keystone Service Industries., Inc., through the subsidiary Pay Car Mining at all relevant times.

12. The Pay Car Mine is located near the southern terminus of Burke Mountain, with a mine portal, offices, refuse pond facility, and preparation plant accessible from Bottom Creek Road (County Highway 52/08) between the towns of Kimball and Keystone in McDowell County, West Virginia.

13. At all relevant times, the coal from the underground operations at the Pay Car Mine was processed, beneficiated, and/or prepared for sale at a preparation plant that was controlled and operated by KSI, Bluestone Industries, Bluestone Coal Corp., and/or Mechel Bluestone, and that was located on the surface near the Pay Car Mine.

14. The preparation plant was directly linked to the portal of the Pay Car Mine by a haul road that was permitted by the West Virginia Department of Environmental Protection in the name of Bluestone Coal Corporation, and that was controlled by Bluestone Coal Corporation in concert with other Defendants.

15. The Pay Car Mine constituted a “single site of employment” for purposes of the WARN Act.

16. All of the employees at the Pay Car Mine were engaged in a common operational purpose, under common management, used common equipment, and were under the Defendants’ *de facto* and *de jure* management, maintenance, and control. Representatives of each of the three Defendants routinely ordered, directed, and/or controlled the Plaintiff and other workers throughout the Pay Car Mine on a daily basis.

17. At all times relevant to this action, the Pay Car Mine was under the Defendants’ *de jure* and *de facto* ownership and control as an employer and a mine operator.

18. Upon information and belief, employees of Defendant Bluestone Industries directed the workforce at the Pay Car Mine and participated in implementing the layoff that forms the basis of the instant action.

19. Up until on or about October 20, 2012, there were three shifts of workers at the Pay Car Mine—day or first shift; evening or second shift; and hootowl, midnight, or third shift.

20. On or about October 20, 2012, at or about the beginning of the second shift, the Defendants ordered and carried out a mass layoff at the Pay Car Mine.

21. Neither the Plaintiff nor the others of Defendants' employees at the Pay Car Mine received written notice that the employees would be laid off prior to the occurrence of that layoff in 2012.

Count I - Violation of the WARN Act

29 U.S.C. 2104

22. Plaintiff repeats and re-alleges paragraphs 1 through 16 as though fully set forth herein.

23. Defendant Pay Car Mining individually, and all Defendants jointly, constitute employers as defined by 29 U.S.C. § 2101(a)(1), for purposes of the WARN Act, because Pay Car Mining individually and all Defendants jointly are business enterprises that either employed one hundred (100) employees, excluding part-time employees, or employed one hundred or more employees who in the aggregate worked at least 4,000 hours per week (exclusive of hours of overtime).

24. The Plaintiff is an affected employee as defined by 29 U.S.C. § 2101(a)(5), for purposes of the WARN Act, because he is an employee of one or more of the Defendants who

experienced an employment loss as a consequence of a plant closing or mass layoffs ordered by Defendants as stated in 2012.

25. As employers under the WARN Act, Defendants had an obligation pursuant to 29 U.S.C. § 2102 to provide written notice to the affected employees or to a representative of the affected employees at the Pay Car Mine at least sixty (60) days prior to the planned plant closing or mass layoffs.

26. Plaintiff was laid off by Pay Car Mining, and by Defendants jointly, on or about October 20, 2012, and within a 90-day period encompassing other layoffs at the Pay Car Mine by the Defendants.

27. The October 20, 2012 layoff, either on its own or taken together with layoffs within said 90-day period, constitutes a plant closing and/or mass layoff pursuant to 29 U.S.C. 2104(d).

28. Plaintiff and Defendants' other aggrieved and affected employees experienced an employment loss because they were separated from work, without cause, for a period exceeding 6 months, as a result of the aforementioned layoff, which constituted a plant closing at the Pay Car Mine.

29. Alternatively, the Plaintiff and Defendants' other aggrieved and affected employees at the Pay Car Mine experienced an employment loss as a result of the aforementioned layoff, and as a consequence of which the Plaintiff and Defendants' other affected employees were laid off for a period exceeding 6 months, and which constituted a mass layoff.

30. Defendants failed to provide a written notice to Plaintiff, or to Defendants' other affected employees at the Pay Car Mine, prior to closing the plant or carrying out the mass layoff beginning on or about October 20, 2012.

31. As a result of the plant closing or mass layoff carried out on or about October 20, 2012, among other dates known and unknown within a 90-day period encompassing October 20, 2012, at least approximately 80-90 of Defendants' employees, excluding part-time employees, and including Plaintiff, who collectively comprised more than thirty-three percent (33%) of the employees at the Pay Car Mine, experienced an involuntary, continuous, and ongoing employment loss for a period well in excess of six (6) months, which continues to cause them substantial economic and other harm.

Class Allegations

32. Plaintiff repeats and re-alleges paragraphs 1 through 26 as though fully set forth herein.

33. Pursuant to Rule 23(a)-(b), Plaintiff brings this class action on behalf of the other similarly situated employees (hereinafter "Class Members") who were laid off or terminated, as set forth above, at the Pay Car Mine.

34. The proposed class would be defined as: All full-time employees who were terminated from full-time employment at the Pay Car Mine by Pay Car Mining, Inc., Bluestone Industries, Inc., Bluestone Coal Corporation, Keystone Service Industries, Inc., or Mechel Bluestone, Inc. on or about October 20, 2012.

35. The Class Members are so numerous that joinder of all Class Members is impracticable because it is estimated that Defendants laid off or terminated at least approximately 80-90 of their employees in violation of the WARN Act.

36. There are questions of law or fact common to the Class Members that predominate over any questions affecting only individual Class Members. The principal question in this case is whether the Defendants' failure to provide notice of the 2012 Pay Car layoff constituted a violation of the WARN Act.

37. The claims and defenses of the Plaintiff are typical of the claims or defenses of the Class Members as a whole because the Class Members are similarly affected by Defendants' wrongful conduct in violation of the WARN Act and possess the same remedies at law.

38. The Plaintiff will fairly and adequately protect the interest of the Class Members because Plaintiff has demonstrated his commitment to this claim by preserving his work records, and because Plaintiff is represented by counsel who are competent and experienced, including experienced in bringing class action litigation under the federal WARN Act involving these Bluestone Defendants.

39. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because (a) joinder of all Class Members is impracticable, (b) the Class Members are likely unemployed and not in a position to retain counsel, and (c) each individual Class Member has suffered damages that are merely modest. Therefore, there will be no difficulty in the management of this class action and concentration of the claims in this forum will promote judicial economy.

Damages and Relief Requested

40. Pursuant to Rule 23(a), (b), & (c), and 29 U.S.C. § 2104(a)(5), and other applicable law, Plaintiff requests that the Court certify that Plaintiff and all other similarly-situated workers from Defendants' 2012 layoff, as set forth above, constitute a single class.

41. Plaintiff requests that the Court designate them as class representatives as permitted by 29 U.S.C. § 2104(a)(5).

42. Plaintiff requests that the Court appoint the undersigned attorneys as class counsel.

43. As a result of Defendants' WARN Act violations, Plaintiff requests that the Court order Defendants to pay Plaintiff and all other Class Members up to the maximum amount of statutory damages, including interest compounded at an appropriate rate and frequency, pursuant to 29 U.S.C. Sections 2104(a)(1) & (2).

44. Plaintiff requests that the Court order Defendants to pay Plaintiff's reasonable attorneys' fees, litigation expenses, and other costs that Plaintiff incurs in pursuing this action as authorized by 29 U.S.C. § 2104(a)(6).

45. Plaintiff requests that the Court grant them and all other Class Members any such other relief as it may deem just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY FOR ALL ISSUES SO TRIABLE.

**Plaintiff,
Dougie Lester,
By counsel:**

\s\ Samuel B. Petsonk
Samuel B. Petsonk (WVSB # 12418)
Bren J. Pomponio (WVSB # 7774)
Mountain State Justice, Inc.
1031 Quarrier Street, Suite 200
Charleston, West Virginia 25301
(304) 344-3144
Fax: (304) 344-3145
Email: sam@msjlaw.org
bren@msjlaw.org

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Dougie Lester, individually and on behalf of all others similarly situated.

(b) County of Residence of First Listed Plaintiff Raleigh county (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Samuel B. Petsonk, Esq. Mountain State Justice, Inc., 1031 Quarrier Street, Suite 200 Charleston, West Virginia 25301, 304-344-3144

DEFENDANTS

Pay Car Mining, Inc., Bluestone Coal Corp., Bluestone Industries, Inc., Keystone Service Industries, Inc., and Mechel Bluestone, Inc.

County of Residence of First Listed Defendant Raleigh County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): WARN Act, 29 U.S.C. Section 2104

Brief description of cause: Violation of the Worker Adjustment and Retraining Notification

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/14/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Samuel B. Petsonk

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Numerous Companies Facing WARN Act Violation Class Action Lawsuit](#)
