

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CLERK
U.S. DISTRICT COURT
2004 OCT 28 AM 9:40

MICHAEL E. MCLAUGHLIN,)
)
Plaintiff,)
)
v.)
)
NEWARK PAPERBOARD)
PRODUCTS,)
)
Defendant.)

Civil Action No. **04 1648**

JURY TRIAL DEMANDED

COMPLAINT

AND NOW, comes Plaintiff, Michael E. McLaughlin ("McLaughlin"), by his attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Christy Criswell Wiegand, Assistant United States Attorney for said District, and makes the following averments:

This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), 38 U.S.C. §§ 4301-4333.

I. JURISDICTION AND VENUE

1. Jurisdiction over the subject matter of this action is vested in this Court pursuant to 38 U.S.C. § 4323(b).

2. Venue is proper in this district and division under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b), because Defendant, Newark Paperboard Products ("Newark") maintains a place of business in this judicial district.

10-28-04 filed via cc

II. PARTIES

3. McLaughlin resides at 8238 Lamor Road, Mercer, Pennsylvania, 16137, within the jurisdiction of this Court.

4. Newark maintains a place of business at 1404 Arlington Drive, Greenville, Pennsylvania, 16125. This location is within the jurisdiction of this Court.

III. CLAIM FOR RELIEF

5. McLaughlin has served as an officer in the Pennsylvania Army National Guard since 1980. Following his commission as a Second Lieutenant, McLaughlin received numerous promotions en route to his current rank of Major.

6. After relocating his family to Mercer, Pennsylvania, McLaughlin began full-time employment with Newark, as the Plant Manager for Newark's Greenville, Pennsylvania plant, in September 1998.

7. During his tenure as Plant Manager, McLaughlin had never been reprimanded or disciplined by Newark.

8. McLaughlin received annual performance-based raises from Newark.

9. As of July 30, 2001, approximately three weeks before Newark terminated him, McLaughlin's plant was the top-performing Newark Paperboard location in a nation-wide quality audit.

10. After giving proper notice to his employer, McLaughlin departed for his annual military training on August 8, 2001, and was scheduled to return to the Greenville plant on August 27, 2001. McLaughlin reported for duty and fulfilled his military obligations.

11. On August 27, 2001, Newark terminated McLaughlin.

12. Under USERRA, McLaughlin was entitled to be reinstated by Newark to the status he enjoyed prior to performing his military obligations with the Pennsylvania Army National Guard.

13. Newark's termination of McLaughlin's employment on August 27, 2001 constituted a violation of USERRA.

14. Newark's violation of USERRA was willful.

15. As a result of Newark's unlawful termination of McLaughlin's employment, he has suffered a substantial loss of earnings and other benefits of employment.

IV. PRAYER FOR RELIEF

Wherefore, McLaughlin requests that the Court enter judgment against Newark, as follows:

16. Declare that Newark's termination of McLaughlin was unlawful and in violation of USERRA;

17. Require that Newark comply fully with the provisions of USERRA by reinstating McLaughlin at the level of seniority, status, and pay he would have enjoyed had he remained continuously employed with Newark, and compensate McLaughlin for his loss of wages and other benefits suffered by reason of Newark's failure to comply with the provisions of this law;

18. Declare that Newark's violation of USERRA was willful;

19. Require that Newark pay McLaughlin as liquidated damages an amount equal to the amount of his lost wages and other benefits suffered by reason of Newark's willful failure to comply with the provisions of USERRA;

20. Enjoin Newark from taking any action against McLaughlin that fails to comply


with the provisions of USERRA;

21. Award McLaughlin prejudgment interest on the amount of lost wages found due;

and

22. Grant such other and further relief as may be just and proper.

Respectfully submitted,


MARY BETH BUCHANAN
United States Attorney
Western District of Pennsylvania

CHRISTY CRISWELL WIEGAND
Assistant U.S. Attorney
Western District of Pennsylvania
U.S. Post Office & Courthouse
700 Grant Street, Suite 400
Pittsburgh, PA 15219
(412) 644-3500

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Michael E. McLaughlin
8238 Lamor Road
Mercer, PA 16137

DEFENDANTS

Newark Paperboard Products

04 1648

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Mercer
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Christy Criswell Wiegand, AUSA
U.S. Attorney's Office, Western District of PA
700 Grant Street, Suite 400, Pittsburgh, PA 15219
(412) 894-7452

ATTORNEYS (IF KNOWN)
Michael W. King, Esquire
Stock and Leader, Susquehanna Commerce Center East
221 W. Philadelphia Street, Suite 600, York, PA 17404
(717) 846-9800

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)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

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 (specify) _____
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL UNLESS DIVERSITY.)

Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Sections 4301-4333.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

Oct. 28, 2004

Christy Criswell Wiegand

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (_____ Erie _____ Johnstown _____ X _____ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in counties of Crawford, Elk, Erie, Forest, McKean, Venango or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in counties of Bedford, Blair, Cambria, Clearfield or Somerset, OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. _____ This case is related to Number _____, Judge _____
2. X This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit, or involves the same issues of fact or it grows out of the same transactions as another suit, or involves the validity or infringement of a patent involved in another suit.

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

1. **CIVIL CATEGORY** (Place x in only applicable category).

1. () Antitrust and Securities Act Cases
2. () Labor-Management Relations
3. () Habeas Corpus
4. () Civil Rights
5. () Patent, Copyright, and Trademark
6. () Eminent Domain
7. (X) All other federal question cases
8. () All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest.
9. () Insurance indemnity, contract, and other diversity cases.
10. () Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.B.A. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct.

Date: Oct. 28, 2004

Christy Crowell Shegandel
ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED