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CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
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Breach of Contract

Plaintiffs, F. Ned Dikmen, as beneficiary of Trust No. 30613 and Chicago Title Land Trust Company, as Successor Trustee of Trust Number 30613, by and through their attorneys, Scandaglia & Ryan, state as follows for their Complaint against the Defendant, Peoples Gas Light and Coke Company:

This case is about the Defendant's, Peoples Gas Light and Coke Company ("Peoples"), breach of its promise to remediate and obtain a No Further Remediation ("NFR") letter from the Illinois Environmental Protection Agency ("Illinois EPA") for a 1.5 acre parcel of land located at the southwest corner of Division Street and Crosby Street in Chicago (the "Property"), which Peoples once owned and used as a Manufactured Gas Plant. The Property is now owned by the Trust Agreement known as Trust Number 30613 (the "Trust") and Mr. F. Ned Dikmen, as the sole beneficiary of that Trust. On May 22, 2006, Peoples entered into a contract (the "Settlement Agreement") with the Trust Agreement known as Trust No. 30932 and the Trust Agreement

known as Trust No. 30613, holder of property in trust for F. Ned Dikmen (the two Trusts that held title to the Property at that time) whereby it agreed to remediate the Property to meet the Illinois EPA's ("IEPA") environmental cleanup standards for residential use. The remediation was to start on June 1, 2006 and was to be completed no later than six months after the start date. Upon completion of the remediation, Peoples promised to take the necessary steps for the IEPA to issue an NFR for the Property, thereby providing Mr. Dikmen and his successors with the ability to pursue residential development of the Property. At the time the Trusts entered into the Settlement Agreement, Mr. Dikmen directly informed Peoples that he had plans to either sell the Property to a residential developer or develop the Property himself for residential use, and that time was of the essence in completing the remediation and obtaining the NFR. In these conversations, both parties acknowledged that obtaining an NFR from IEPA was essential for selling or redeveloping the Property for residential use.

Despite its knowledge that remediating the Property and obtaining the NFR as quickly as possible was the material purpose of the Settlement Agreement, in June of 2007, Peoples secretly and without Mr. Dikmen's knowledge or consent, voluntarily entered into an administrative order on consent ("AOC") with the United States EPA ("U.S. EPA") covering the Property and other of Peoples' properties under the federal Comprehensive Environmental Response and Compensation Act, 42 U.S.C. §§ 9601 et seq. ("CERCLA" or "Superfund"). As a result of Peoples' voluntary decision to enter into an AOC and place the Property into a federal program (the Superfund Alternative ("SA") Program), Peoples has divested the IEPA of jurisdiction and thereby prevented the IEPA from issuing the NFR letter. As of the date of the filing of this Complaint, which is more than 10 years after Peoples entered into the Settlement Agreement, Peoples has still failed to obtain an NFR from IEPA. The remediation of Mr. Dikmen's Property

is still not completed. Rather than cooperating with Mr. Dikmen in seeking to obtain the contractually promised NFR, Peoples instead affirmatively engaged in conduct that defeated the purpose of the Settlement Agreement. Peoples' breach of the Settlement Agreement has rendered the Property unsuitable for residential development, thereby greatly reducing the value of the Property. As a result of Peoples' breach, Mr. Dikmen has lost several opportunities to sell the Property to interested developers, resulting in the loss of millions of dollars. Additionally, Mr. Dikmen has incurred carrying costs for the Property and has spent significant amounts of his own money paying consultants and attorneys in an effort to try to remove his Property from the federal SA Program and obtain the NFR letter. Accordingly, the Trustee and Mr. Dikmen now bring this suit seeking the recovery of these damages.

#### **THE PARTIES**

1. Plaintiff, F. Ned Dikmen, is the sole beneficiary of Trust No. 30613. Mr. Dikmen is an Illinois resident who resides at 1032 N. LaSalle Street, Chicago, Illinois 60610.

2. Plaintiff Chicago Title Land Trust Company, as Successor Trustee of Trust Number 30613, holds legal title of the Property pursuant to a land trust agreement dated February 14, 1997.

3. Defendant, Peoples Gas Light and Coke Company ("Peoples" or "Defendant"), is an Illinois corporation. On information and belief, Peoples' principal place of business is 200 East Randolph Street, Chicago, Illinois 60601.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction pursuant to 735 ILCS 5/2-209(a)(1) and (2) because this action arises from the Defendant's transaction of business within the State of Illinois.

5. Venue over this matter is proper in Cook County pursuant to 735 ILCS 5/2-101 because Defendant resides in Cook County and the transactions from which this cause of action arose occurred in Cook County.

### **GENERAL ALLEGATIONS**

#### **History of the Property**

6. In the 1980s, Mr. Dikmen purchased the Property at issue in this litigation. The Property consists of 3 parcels totaling 1.5 acres located at 1140 North Kingsbury Street.

7. The three parcels composing the Property were placed into two Illinois land trusts: Parcel 3 was placed in the Trust Agreement known as Trust No. 30932, dated December 15, 1998, and Parcels 1 and 2 were placed in the Trust Agreement known as Trust Number 30613, dated February 14, 1997. On April 16, 2012, Parcel 3 was conveyed from Trust No. 30932 to Trust No. 30613. As of the date of this Complaint, all three of the parcels composing the Property are held by Trust No. 30613.

8. Prior to Mr. Dikmen's purchase, the Property was part of a Manufactured Gas Plant ("MPG") operated by Peoples. Mr. Dikmen's Property was used as a coal storage area, while land located across the street from Mr. Dikmen's Property was used by Peoples for the production of coal gas. The land in this location that was used by Peoples as an MGP has become known as the North Station MGP Site. Mr. Dikmen's Property is sometimes referred to as the LaSalle Chestnut property or parcels of the North Station MGP Site.

9. As a result of Peoples' prior use of the Property, the Property was contaminated with various coal and manufactured gas by-products.

10. Despite the fact that Peoples' contamination of the Property made it unfit for residential use, Mr. Dikmen still made some use of the Property by leasing it to commercial tenants.

**Peoples' Agreement to Remediate the Property**

11. In 2006, Peoples approached Mr. Dikmen and requested access to the Property to remediate the contamination located thereon. As a result of discussions on this topic, Peoples and Trusts No 30932 and 30613, entered into a Settlement and Remediation and Access Agreement (the "Settlement Agreement") on May 22, 2006. (See Exhibit ("Ex.") 1 attached hereto.) The Settlement Agreement defines Mr. Dikmen and the two Trusts as the "Owner" and the Owner and Peoples are defined as the "Parties". (Ex. 1, Opening Paragraph.)

12. At the time, Peoples was facing increasing pressure from the City of Chicago and various citizens to remediate its former MGP sites throughout the City of Chicago, which allegedly posed threats to human health and the environment, including the Chicago River.

13. In the Settlement Agreement, Peoples represented that it had previously conducted a Comprehensive Site Investigation of the Property pursuant to the Site Remediation Program ("SRP") set forth in Title XVII of the Illinois Environmental Protection Act, and that it wanted to proceed with performing an environmental remediation of the Property in order to obtain a Comprehensive No Further Remediation Letter ("Comprehensive NFR Letter") from the IEPA. (Ex. 1, Recitals C and D.)

14. In exchange for access to the Property and in recognition of the fact that they contaminated the Property, Peoples promised to pay for all costs and expenses incurred as a result of the need to conduct remediation and promised to obtain a Comprehensive NFR Letter. (Ex. 1, Recitals B, C, D, E and F; ¶¶ 1-2.)

15. Under the terms of the Agreement, Peoples agreed to perform, at its sole expense, an environmental remediation of the Property consisting of a Remediation Project. Peoples promised the Remediation Project would comply with the requirements of the SRP and would be designed and implemented in a manner that would result in the issuance by the IEPA of a Comprehensive NFR Letter covering the Property. (Ex. 1, ¶ 2.)

16. Peoples further agreed that the Remediation Project would include the creation of a Remediation Objectives Report (“ROR”), using Tier I remediation objectives under 35 Ill. Adm. Code § 742 for Residential use of the Property, and the preparation of a Remedial Action Plan (“RAP”). The ROR and RAP would be submitted to the IEPA for approval. (Ex. 1, ¶ 2.)

17. Peoples promised that field work at the Property would begin on June 1, 2006 and that the remediation would be completed no later than six months after the start date. (Ex. 1, ¶ 3.)

18. As a result of discussions with Mr. Dikmen and his representatives, Peoples was aware of the fact that Mr. Dikmen planned to either sell the property to a residential developer or develop it himself. Peoples therefore agreed that Property would be remediated to IEPA residential standards. (Ex. 1, Recitals H, ¶ 2.)

19. Peoples agreed that, upon completion of the remediation, it would get from the IEPA a Comprehensive NFR letter with respect to the Property, which letter would be consistent with the terms and conditions of the RAP. (Ex. 1, ¶ 4.)

20. Peoples agreed that if the remediation required removal of any existing river bank piling, Peoples would restore the river bank using metal sheet piling in a manner suitable for development and which was acceptable to Mr. Dikmen and the Trustee. (Ex. 1, ¶ 7.)

21. Peoples additionally agreed to provide Mr. Dikmen and the Trusts with copies of and the opportunity to review and provide timely comments on drafts of all significant submittals to the IEPA and other government agencies that related to the remediation of the Property. (Ex. 1, ¶ 13.)

22. Further, Peoples agreed to indemnify Plaintiffs from “any and all loss, cost, expense (including without limitation reasonable attorney’s fees and court costs), injury, damage, claim or cause of action for property damage. . .”, to the extent that such claims are “based upon, arise from or are attributable to: (a) any negligent or willful acts or omissions of Peoples or Consultants during their presence on the Property or the performance of the Remediation . . .” (Ex. 1, ¶ 9.)

23. In exchange, Mr. Dikmen agreed to give Peoples’ remediation contractor, Burns and McDonnell, and its subcontractor access to the Property. (Ex. 1, ¶ 5.)

24. Under the Settlement Agreement, if Peoples failed in any material respect with regard to its obligations under the Settlement Agreement, and did not cure that failure within thirty (30) days of receipt of written notice by Owner (Mr. Dikmen or the Trusts), then Peoples is deemed to have committed a material breach of the Settlement Agreement and Mr. Dikmen or the Trusts may pursue any remedy available to them at law or in equity. If Peoples failed to make “reasonable progress toward obtaining the NFR letter required under paragraph 5” [sic] of the Agreement, then Mr. Dikmen was entitled to send written notice that he intended to seek a comparable NFR letter from IEPA and recover his costs from Peoples. If Peoples failed to make commercially reasonable efforts to resume progress toward receipt of an NFR letter within 30 days of receipt of notice from Mr. Dikmen, then he would be entitled to recover all costs incurred to obtain a comparable NFR letter from the IEPA. (Ex. 1, ¶ 16.)

25. Pursuant to Paragraph 19 of the Settlement Agreement, Peoples agreed that, concurrent with the execution of the Settlement Agreement, the parties would execute and Peoples would record a Memorandum of Settlement Agreement, with the Recorder of Deeds of Cook County, Illinois. (Ex. 1, ¶ 19.)

**Peoples Conducts the Remediation Without IEPA Approval and In a Manner that Damages the Property.**

26. Despite its contractual obligation to conduct the Remediation Project pursuant to a RAP approved by the IEPA, Peoples proceeded to conduct the work for the Remediation Project from August 2006 to March of 2007, prior to obtaining any approval from the IEPA. (Ex. 2, 4/8/15 Letter from IEPA to Ned Dikmen.)

27. The IEPA has stated that it does not have any records describing or approving the cleanup activities that have occurred at the Property. (Ex. 2, 4/8/15 Letter from IEPA to Ned Dikmen.) Peoples' remediation work on the Property was thus completed without obtaining the required approval from the IEPA. (Ex. 2, 4/8/15 Letter from IEPA to Ned Dikmen.)

28. In addition to remediating the Property without IEPA approval, in the course of conducting its remediation, Peoples damaged Mr. Dikmen's Property in several respects, including but not limited to those listed below.

29. First, in excavating soil along the river bank at the north end of the Property, the tie back wall anchors that served to anchor the river wall along the bank were damaged or pulled out of the anchor system. (Ex. 3, 11/22/06 Field Observation Report.) Additionally, the sheet piled river wall was destroyed and replaced with rip-rap rather than being restored using metal sheet piling. Further, the river bank was not reconstructed to the original slope, resulting in the loss of 2,500 to 7,500 square feet of usable land. (Ex. 4, 3/13/07 Report from Civil and Environmental Consultants, Inc.) The treatment of the river wall was specifically mentioned in

the Settlement Agreement, so Peoples' clearly understood the importance of how this issue was addressed. (Ex. 1, ¶ 7.)

**Peoples Voluntarily Places Dikmen's Property in the Superfund Alternative Program.**

30. In or around 2007, without Mr. Dikmen's knowledge or consent, Peoples approached the U.S. EPA and offered to enter into AOCs under the SA Program for several former MGP sites, including Mr. Dikmen's Property. Peoples sought to place the Property and other former MGP sites in Chicago in the SA Program in order to dismiss or prevent pending or threatened federal citizen suits under the Resource Conservation and Recovery Act, which would have required an immediate and potentially more comprehensive cleanup of Peoples' Chicago MGP sites. Peoples also sought to place its former Chicago MGP sites in the Superfund Alternative Program to delay cleanup of the sites.

31. In June of 2007, unbeknownst to Mr. Dikmen and without his prior consent or permission, Peoples voluntarily placed Mr. Dikmen's Property, along with other former MGP sites, into the federal SA Program. (Ex. 5, 7/28/08 letter from IEPA to Peoples).

32. Generally, the U.S. EPA's Superfund program has three options for Superfund sites that need long-term, remedial clean ups: (1) listing the site on the National Priorities List ("NPL"), (2) addressing the site using other clean up options (e.g., other federal or state programs); or (3) using the SA Program. The SA Program uses the same investigation and cleanup process and standards that are used for sites listed on the NPL. In virtually all cases, sites subject to AOCs in the SA Program require years of evaluations and cost analyses, remedial investigations, feasibility studies, evaluations of alternatives, public comments, remediation, testing and review before U.S. EPA finally (if ever) signs off and removes sites from the SA. By contrast, IEPA's SRP is a practical, efficient and commonly used mechanism in Illinois for

applicants to obtain agency oversight of remediation for their contaminated sites. The entire SRP process often takes less than a year from the applicant's initial application until Illinois EPA issues an NFR.

33. To this end, Peoples entered into two AOCs with the U.S. EPA – one on June 5, 2007 and a second on October 31, 2008. The first AOC required Peoples to perform an engineering evaluation/cost analysis. The second AOC required Peoples to perform a Remedial Investigation/Feasibility Study.

34. In connection with the 2007 and 2008 AOC, Peoples placed Mr. Dikmen's Property in the bottom tier of priorities in comparison to its other Chicago MGP sites, thereby further delaying work under the AOC on Mr. Dikmen's Property.

35. Peoples' voluntary and secret placement of Mr. Dikmen's Property into the SA Program and its inclusion of the Property in the AOCs prevented the IEPA from issuing any NFR letter while the Property remained in the SA Program. See 35 Ill. Admin. Code 740.105(a)(4).

36. Peoples voluntarily placed Mr. Dikmen's Property into the SA Program and entered into the AOCs despite the fact that (a) Peoples had purportedly remediated the Property, (b) Peoples had entered the Property into the IEPA's SRP to obtain an NFR, and (c) U.S. EPA had not threatened to place the Property on the NPL or to bring any enforcement actions.

37. Peoples placed Mr. Dikmen's Property and other former MGP sites in Chicago in the SA Program in bad faith in order to dismiss or prevent pending or threatened federal citizen suits under the Resource Conservation and Recovery Act, which would have required an immediate and potentially more comprehensive cleanup of Peoples' Chicago MGP sites.

Peoples also sought to place its former Chicago MGP sites in the SA Program to delay cleanup of the sites.

38. Peoples' voluntary placement of Mr. Dikmen's Property into the SA Program and its voluntary agreement to enter into the AOCs has derailed indefinitely any ability to get the NFR for the Property, which was the very purpose of the Settlement Agreement. As of the filing of this Complaint, there is no indication of when, if ever, Peoples will obtain the contractually required NFR.

39. In September 2014, in contravention of the terms of the Settlement Agreement, Peoples proposed to the U.S. EPA the use of revised background soil remediation objectives for two coal by-products - Polycyclic Aromatic Hydrocarbons ("PAHs") and arsenic -- at all of the MGP sites, including at Mr. Dikmen's Property, that were less stringent than those required by the IEPA. The proposed background soil remediation objectives were "derived from a different statistical methodology" and resulted "in remedial action objectives that are higher (in some instances by one order of magnitude) than those allowed by the IEPA's SRP regulations." (Ex. 2.)

40. This decision by Peoples to cause the implementation of a remediation standard less stringent than that required by the IEPA has further impaired its ability to deliver the Comprehensive NFR letter that Peoples promised to provide Mr. Dikmen. (Ex. 2.)

**Peoples Is Given Notice of the Breaches.**

41. In April 2007, Peoples was given written notice of the damage done to the slope of the Property along the river front and the damage done to the tie backs. (Ex. 6, 4/25/07 Letter from R. Reott to J. Sanders.) Additionally, in August 2014, Peoples was given a notice of breach

letter regarding the damage to the tie backs and the resulting failure of the sea wall along the river. (Ex. 7, 08/14 Letter from J. Jeep to T. Walsh.)

42. On August 6, 2008, counsel for Mr. Dikmen provided written notice to Peoples informing it that it had breached the Settlement Agreement by failing to obtain an NFR and by taking voluntary action with the U.S. EPA that prevented the IEPA from issuing the contractually required NFR letter. (Ex. 8, 8/6/08 Letter from R. Reott to S. Armstrong and S. Matusazk.)

**Mr. Dikmen Loses Opportunities to Sell His Property to Developers.**

43. As a result of discussions with Mr. Dikmen and his representative and prior to entering into the Settlement Agreement, Peoples was well aware of the fact that Mr. Dikmen planned to either sell the Property to a residential developer or to develop the Property himself for residential purposes. In fact, as clearly expressed in the Settlement Agreement, the promise of remediating the Property to residential standards was the material enticement offered to Mr. Dikmen to convince him to enter into the Settlement Agreement. Indeed, the Settlement Agreement expressly requires that the remediation and NFR allow the Property to meet residential standards.

44. In 2007, Mr. Dikmen was approached by a well-known real estate development company that was interested in purchasing the Property. In January 2008, Park National Bank (the then Trustee for the Trusts holding title to the Property) and that real estate development company negotiated a potential Real Estate Purchase Agreement, whereby the real estate development company intended to purchase the Property for \$21,956,675.

45. The real estate development company chose not to proceed with the purchase of the Property because of Peoples' failure to obtain an NFR letter, as a result of its voluntary decision to place the Property into the SA Program.

46. In 2014, Mr. Dikmen was again approached by a second major real estate development company that was interested in purchasing the Property. In October 2014, that company entered into a purchase agreement with Chicago Title and Trust Company (then Trustee of the Trust holding title to the Property). The company intended to purchase the Property for \$9,000,000.

47. Mr. Dikmen told Peoples on numerous occasions of his need to obtain the promised NFR letter quickly, so that these potential purchasers could move forward with their contract to purchase the Property. Nonetheless, Peoples has continued to fail to obtain the required NFR letter and failed to cooperate with Mr. Dikmen to seek the NFR as required by the Settlement Agreement.

48. The second real estate development company was also unable to proceed with the purchase of the Property as a result of Peoples' failure to obtain an NFR letter.

49. Despite interest from various property developers, Mr. Dikmen has been unable to sell the Property while it remains subject to the AOCs in the SA Program and while no NFR letter has issued. The fact that Mr. Dikmen's Property has sat for over 10 years in the SA Program has created a stigma which has harmed the Property's reputation and perception of its desirability.

### **The Tolling Agreement**

50. Aware of the potential for litigation arising out of Peoples' botched remediation of the Property, Peoples and the Plaintiffs entered into a tolling agreement on May 16, 2016 ("the Tolling Agreement"). (Ex. 9, 5/16/16 Tolling Agreement.)

51. Under the Tolling Agreement, the parties acknowledged that they may have certain claims and causes of action against each other based on and generally relating to Peoples' environmental investigation and remediation of the Property and the Settlement Agreement. (Ex. 9, 5/16/16 Tolling Agreement.)

52. The parties indicated their desire to maintain the status quo with respect to any such claims and to toll the running of any statutes of limitations; statutes of repose; laches defenses or any other defenses based on the passage of time that may be applicable to any of the claims based on federal law or the law of any state. (Ex. 9, 5/16/16 Tolling Agreement.)

53. Pursuant to the terms of the Tolling Agreement, the parties agreed that, beginning on May 16, 2016 ("the Effective Date") and until expiration or earlier termination of the Tolling Agreement, "any statute of limitations, statute of repose, laches, or comparable limitation or bar period, found under Illinois law ("Limitation Period"), is tolled and shall not run for any legal action for declaratory judgement or breach of contract regarding the Settlement Agreement. The Tolling Period shall include the date of expiration or earlier termination of [the Tolling Agreement]. None of the calendar dates during the Tolling Period shall be counted or considered for any purpose whatsoever regarding the passage of time when calculating the Limitations Period." (Ex. 9, 5/16/16 Tolling Agreement, ¶ 3.)

54. Either party was entitled to terminate the Tolling Agreement by providing written Notice of Intent to Terminate in the manner described in the Tolling Agreement. (Ex. 9, 5/16/16 Tolling Agreement, ¶¶ 4, 5.)

55. Following receipt of Notice of Intent to Terminate, the Tolling Agreement terminates on the “later to occur of the following dates: (1) in the event one Party has initiated legal action for declaratory judgment or breach of contract regarding the Settlement Agreement, the [Tolling] Agreement shall terminate on the calendar date upon which the defendant files its Answer. . .” (Ex. 9, 5/16/16 Tolling Agreement, ¶ 6.)

56. On August 25, 2017, counsel for the Plaintiffs sent Peoples a Notice of Intent to Terminate. Plaintiffs have waited the number of days required under the Tolling Agreement prior to filing this suit.

### **COUNT I -- BREACH OF CONTRACT**

57. Plaintiffs incorporate the allegations of Paragraphs 1-56 as if fully restated herein.

58. Plaintiffs entered into the Settlement Agreement with Peoples on May 22, 2006.

59. The Settlement Agreement required Peoples to, among other things,

- a. perform, at its sole expense, an environmental remediation of the Property consisting of a Remediation Project, which would comply with the requirements of the SRP and be designed and implement in a manner that would result in the issuance by the IEPA of a Comprehensive NFR Letter covering the Property (Ex. 1, ¶ 2);
- b. include in the Remediation Project the creation of a Remediation Objectives Report (“ROR”), using Tier I remediation objectives under 35 Ill. Adm. Code § 742 for Residential use of the Property (Ex. 1, ¶ 2);
- c. prepare a Remedial Action Plan (“RAP”) (Ex. 1, ¶ 2);
- d. obtain IEPA approval of the ROR and RAP (Ex. 1, ¶ 2);
- e. begin field work at the Property on June 1, 2006 and complete the remediation no later than six months after that date (Ex. 1, ¶ 3);

- f. remediate the Property to residential standards (Ex. 1, Recital H, ¶ 2);
  - g. get a Comprehensive NFR letter with respect to the Property, which letter would be consistent with the terms and conditions of the RAP (Ex. 1, Recital D, I, ¶¶ 2, 4);
  - h. provide Mr. Dikmen and the Trusts with copies of and the opportunity to review and provide timely comments on drafts of all significant submittals to the IEPA and other government agencies that relate to the remediation of the Property (Ex. 1, ¶ 13);
  - i. indemnify Plaintiffs from “any and all loss, cost, expense (including without limitation reasonable attorney’s fees and court costs), injury, damage, claim or cause of action for property damage. . .”, to the extent that such claims are “based upon, arise from or are attributable to: (a) any negligent or willful acts or omissions of Peoples or Consultants during their presence on the Property or the performance of the Remediation . . .” (Ex. 1, ¶ 9); and
  - j. record the Memorandum of Settlement with the Recorder of Deeds of Cook County. (Ex. 1, ¶ 19.)
60. Peoples breached its contractual obligations when it, among other things:
- a. proceeded to conduct remediation work from August 2006 to March of 2007, prior to obtaining any approval from the IEPA. (Ex. 2, 4/8/15 Letter from IEPA to Ned Dikmen);
  - b. failed to complete the remediation in the time allowed under the Settlement Agreement.
  - c. conducted the remediation in a manner that damaged Mr. Dikmen’s Property, including but not limited to the issues described above in Paragraphs 28-29, and refused to indemnify Mr. Dikmen for the losses caused thereby;
  - d. voluntarily placed Mr. Dikmen’s Property into the U.S. EPA SA Program, thereby preventing the IEPA from issuing the NFR letter;
  - e. failed to obtain and failed to cooperate with Mr. Dikmen to obtain the contractually required NFR letter in a commercially reasonable time;

- f. failed to provide Mr. Dikmen with the opportunity to review and provide timely comments on drafts of all significant submittals to the U.S. EPA before the decision was made to place his Property into the SA Program;
- g. failed to record the Memorandum of Settlement with the Recorder of Deeds of Cook County (Ex. 1, ¶ 19); and
- h. proposed to the U.S. EPA the use of revised background soil remediation objectives for two of the coal by-products -- PAHs and arsenic -- at all of the MGP sites, including at Mr. Dikmen's Property, which resulted in remedial action objectives that are higher (in some instances by one order of magnitude) than those allowed by the IEPA's SRP regulations; thereby further impeding the issuance of an NFR letter. (Ex. 2.)

61. Plaintiffs have fully performed all of their obligations under the Settlement Agreement.

62. As a direct and proximate result of Peoples' breach of the Settlement Agreement, Plaintiffs have suffered damages in excess of \$50,000, in an exact amount to be determined at trial, including but not limited to damages arising from damage to the Property, diminution in the value of the Property, lost rental income, lost profits and/or lost opportunity costs, carrying costs and costs associated with Mr. Dikmen's efforts to obtain an NFR letter.

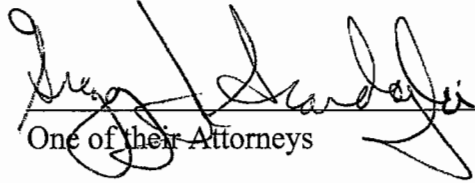
**WHEREFORE**, the Plaintiffs, F. Ned. Dikmen and Chicago Title Land Trust Company, by and through their attorneys, pray that this Court enter judgment on the Complaint in their favor and against Defendant, Peoples Gas Light and Coke Company, in an amount to be proven at trial, plus all of their costs and expenses, pre-judgment interest, and such further relief as the Court deems appropriate.

**PLAINTIFFS DEMAND A TRIAL BY JURY.**

Respectfully submitted,

F. NED DIKMEN AND CHICAGO TITLE LAND  
TRUST COMPANY

By:

  
One of their Attorneys

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