

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ALABAMA**

(Southern Division)

Randal Fowler and Rickie McConnico,)	
individually and on behalf of similarly)	
situated persons,)	Civil Action No.
)	
Plaintiffs,)	
)	
v.)	
)	
Bluestone Coke, LLC,)	
Bluestone Coal, Corp., and)	
Bluestone Resources, Inc.)	
)	
Defendants.)	

COMPLAINT

The Plaintiffs Randal Fowler and Rickie McConnico, individually and on behalf of a class of persons defined below complain against Defendants Bluestone Coke, LLC (“Bluestone Coke”), Bluestone Coal Corporation (“Bluestone Coal”), and Bluestone Resources, Inc. (“Bluestone Resources”) as follows:

PARTIES

1. Plaintiffs are laid off employees of the Defendants and reside in this judicial district.
2. Bluestone Coke is a corporation whose principal place of business is in Birmingham, Alabama and a wholly owned subsidiary of Bluestone Resources.
3. Bluestone Coal is a corporation whose principal place of business is in Roanoke, Virginia and a wholly owned subsidiary of Bluestone Resources.
4. Bluestone Resources is a corporation whose principal place of business is in Daniels, West Virginia.

5. Bluestone Resources regularly conducts business in the State of Alabama through its subsidiary Bluestone Coke.
6. Bluestone Coal regularly conducts business in the State of Alabama through its affiliate Bluestone Coke. Coal ships product to Bluestone Coke for processing into coke.

JURISDICTION AND VENUE

7. Plaintiffs repeat and re-allege paragraphs 1 through 2 as if fully set out herein.
8. Plaintiffs bring this action pursuant to the Worker Adjustment and Retraining Notification (“WARN”) Act, 29 U.S.C. § 2101, et seq. This Court has jurisdiction over this matter pursuant to 29 U.S.C. § 2104(a)(5).

FACTS

9. Bluestone Coke operated a plant in Birmingham, Alabama where it employed at least 100 employees. Bluestone Coke is an employer as defined by 29 U.S.C. § 2101 and 20 C.F.R. § 6393.
10. On or about October 24, 2021, Bluestone Coke announced that it was temporarily idling operations at its Birmingham, Alabama facility.
11. On or about October 24, 2021, Bluestone Coke laid off at least 20 employees from its Birmingham, Alabama facility.
12. On or about November 12, 2021, Bluestone Coke laid off at least 60 employees from its Birmingham, Alabama facility and ceased all production.
13. In total, Bluestone Coke laid off over 80 employees within a 30-day period. This was at least 33 percent of the employees at the Birmingham, Alabama facility.

14. On November 12, 2021, Bluestone stopped all production at the Birmingham plant. Bluestone has not resumed operations at the Birmingham plant after ceasing production on November 12, 2021.
15. The Company did not provide written notice to the affected employees 60 days before laying off those employees.
16. The Company did not at any time provide written notice of the layoff to the affected employees.
17. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC (“USW”), individually and on behalf of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 12014, is party to a collective bargaining agreement with Bluestone Coke.
18. USW and Local 12014 exclusively represent Bluestone Coke employees belonging to the bargaining unit defined in the CBA.
19. On November 15, 2021, the Company sent a letter to Daniel Flippo, Director for District 9 of the USW. In this letter, the Company stated that it was working through the permitting process and anticipated that the plant would be back in operation in early 2022.
20. As of the date of this filing, no laid-off employees have been recalled to employment at Bluestone’s Birmingham, Alabama facility.
21. The layoff and/or plant closure was not caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required.
22. The mass layoff and/or plant closure was not due to any form of natural disaster.

Bluestone Coke Interdependent Relationship with Bluestone Coal and Bluestone Resources

23. Bluestone Coke and Bluestone Coal are both owned by Bluestone Resources. Bluestone Coke and Bluestone Coal have common ownership.
24. Bluestone Coke, Bluestone Coal, and Bluestone Resources have common directors and officers. James C. (Jay) Justice III is the CEO of Bluestone Resources, Bluestone Coal and Bluestone Coke.
25. Bluestone Coal and Bluestone Resources exercise control over the operations at Bluestone Coke. Prior to the layoff and/or plant closure, the employee overseeing Bluestone Coke's operations worked out of Bluestone Coal's office.
26. Bluestone Coke and Bluestone Coal have the same personnel policies which emanate from the same source. For example, all employee benefits made available to the Plaintiffs and class members were administered by Bluestone Coal's director of Benefits administration Connie Vance. Steve Ball was an Executive Vice President of Bluestone Coal at the time of the layoff and/or plant closure. Mr. Ball made decisions regarding the operation of the coke plant in Birmingham and oversaw bargaining with the Union that represented employees at the coke facility.
27. The operations of Bluestone Coke are dependent upon the operations of Bluestone Coal.
28. Bluestone Coke is vertically integrated with Bluestone Coal.
29. Bluestone Coke, Bluestone Coal, and Bluestone Resources are a single employer under the WARN Act.

CLASS ACTION ALLEGATIONS

30. The Plaintiffs pray that this Court will certify this action as a class action as provided by Federal Rules of Civil Procedure Rule 23 (b)(3) and reallege and incorporate by reference the allegations and counts of this Complaint on behalf of all those hereinafter described belonging to the class.

31. The Plaintiffs bring this action on behalf of themselves individually and as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of the following class:

All persons employed on a full time basis at Bluestone Coke and who were laid off between August 15, 2021 and November 15, 2021.

32. The Plaintiffs aver that the class consists of more than 80 individuals and thus making joinder of all members as parties Plaintiff is impracticable. The number of class members and their addresses can be ascertained from the books and records of Bluestone Coke through discovery. Each class member was employed by Bluestone Coke at the time of the plant idling.

33. The Plaintiffs further aver that there are questions of law and fact common to the Class relating to Bluestone Coke's failure to give timely notice pursuant to the WARN Act. The common or similar issues of fact and law include, but are not limited to, the following:

- a. Whether and to what extent Bluestone Coke provided statutorily required notice to the class prior to their termination and/or layoff;
- b. Whether Bluestone Coke's actions violated the WARN Act;

- c. Whether Plaintiffs and the other members of the class have sustained damages and the appropriate measure of those damages, including penalties to which the Plaintiffs may be entitled under the WARN Act, including attorney's fees.
34. The Plaintiffs claims are typical of the claims of class members. Plaintiffs are full time employees during the relevant period who were laid off and were not provided notice required under the WARN Act.
35. The Plaintiffs do not have individualized claims against the Defendants that are inconsistent with the claims asserted on behalf of the proposed class. Plaintiffs do not have any conflicts of interest that would render them unable to adequately represent the interests of class members. Plaintiffs have retained counsel experienced in labor and employment litigation and who are familiar with the Defendants' operations.
36. Issues common to the class predominate over any individualized issues. The overriding issue in this case is whether the Defendants gave notice under the WARN Act to the putative class and if not, whether the Defendants failure to provide such notice is excused. The facts underlying these issues are the same for all class members. Moreover, because the WARN Act provides the same relief (i.e. 60 days back pay) to all the putative class members who were not provided notice, the calculation of damages is formulaic and does not present individualized issues.
37. The class action proceedings will provide a practical basis for the termination of all interests of the parties, prevent inconsistent adjudications, maximize judicial economy, and is superior to all other methods of fair and efficient adjudication of the controversy.

COUNT I

VIOLATION OF WARN ACT

38. The Defendants employed the Plaintiffs and putative class members as full-time employees 90 days prior to the layoff on November 12, 2021. In the three (3) month period preceding the November 12, 2021 layoff, the Defendants employed over one-hundred (100) full time employees.
39. On November 12, 2021, the Defendants ceased operations of its coke plant in Birmingham AL and informed the Plaintiffs that the layoff was temporary while the facility underwent improvements. The November 12, 2021 layoff/plant closure and a prior layoff on October 24, 2021 involved more than fifty (50) employees and a third of the workforce. The Defendants have not as of this date resumed operation of the coke plant
40. Defendants violated the WARN Act (29 U.S.C. § 2101, et seq.) by failing to provide written notice to its employees 60 calendar days prior to laying off those employees.
41. Bluestone Coke's failure to provide timely notice resulted in damages to the Plaintiffs in addition to entitling the Plaintiffs to payment of penalties, attorney's fees, and the recovery of damages as provided under the WARN Act.

WHEREFORE, premises considered, the plaintiffs and other class members pray that this Honorable Court will:

- (a) Declare this action to be a proper class action and certify the plaintiffs as representative of the class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Requiring Defendants to pay each member of the Class backpay for each day of the Defendants' violation;

- (c) Requiring Defendants to pay each member of the Class benefits under an employee benefit plan described in section 1002(3) of this title, including the cost of medical expenses incurred during the employment loss which would have been covered under an employee benefit plan if the employment loss had not occurred.
- (d) Plaintiffs demand an equitable accounting, imposition of a constructed trust and resulting restitution via disgorgement to the Class of the funds unjustly retained by Defendants.
- (e) Plaintiffs further pray for such other relief and benefits as the cause of justice may require, including, but not limited to, an award of costs, attorneys' fees and expenses.

Respectfully submitted this 19th day of October, 2023.

/s/ Richard P. Rouco
Counsel for Plaintiffs

OF COUNSEL

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Bluestone Coal Corporation
302 S. Jefferson St.
Roanoke, VA 24011

Bluestone Resources Inc.
216 Lake Drive
Daniels, WV 25832

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bluestone Coke Failed to Provide Coal Plant Workers Advance Notice Before Layoffs, Class Action Says](#)
