

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
Civil Action No. 08- 5356 CI 19

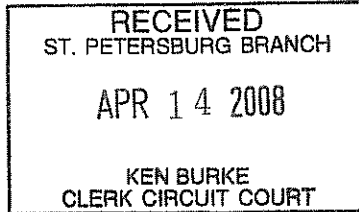
LINDA SWARTOUT and JOHN C. SWARTOUT, individually, and  
on behalf of all others similarly situated,

Plaintiff

vs.

RAYTHEON COMPANY, a foreign  
corporation,

Defendant.



UCN#522008 CA 005356 XX CICI

**CLASS REPRESENTATION COMPLAINT**

Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT, individually, and on  
behalf of a class of persons similarly situated, sues the Defendant, RAYTHEON  
COMPANY, and as grounds therefor, states as follows:

**JURISDICTION AND THE PARTIES**

1. This is an action for an amount in excess of \$15,000 exclusive of attorney fees,  
costs and interest, and jurisdiction properly lies with this court.

2. At all relevant times, Plaintiff, LINDA SWARTOUT and JOHN C.  
SWARTOUT, was and are residents of St. Petersburg, Pinellas County, Florida.

3 At all relevant times, the Defendant, RAYTHEON COMPANY (hereinafter  
"RAYTHEON"), was a Delaware corporation with its principal place of business 870  
Winter Street, Waltham, Massachusetts.

4. At all relevant times, the Defendant is licensed to do business in the State of  
Florida, and owns and/or operates and maintains an electronics manufacturing plant at  
1501 72<sup>nd</sup> Street North, St. Petersburg, Pinellas County, Florida.

5. At all relevant times, the property upon which said manufacturing plant is located was owned by Raytheon Company and its predecessor Raytheon E-Systems, Inc. (Hereinafter "RAYTHEON"). Raytheon E-Systems, Inc. became inactive within the State of Florida in April, 2002, but the principal place of business at the time of withdrawal was c/o Raytheon Company, Waltham, Massachusetts.

**Nature of the Cause of Action**

5. This action is for damages arising from Raytheon's discharge of toxic chemicals into the ground water which has caused the presence of unsafe and undesirable levels of toxic chemicals and waste in the groundwater of the Plaintiffs property and in the Azalea Neighborhood and for the diminution in market value for properties in the affected market area.

6. Plaintiffs reside in the Azalea district of St. Petersburg, Pinellas County, Florida and own the real property at 7325 10<sup>th</sup> Avenue North, St. Petersburg, Florida 33719 near the aforementioned Raytheon plant. Plaintiffs' property contains a private well for irrigation similar to many others in the Azalea neighborhood. Plaintiffs are also exposed to airborne toxins in the neighborhood from the toxic chemicals in the ground water when they are sprayed into the air from the numerous irrigation and sprinkler systems that draw ground water from private wells.

7. Unknown to Plaintiffs until 2008, a toxic plume of industrial waste is coursing through groundwater under the Azalea neighborhood, beneath parks, playgrounds and hundreds of homes in and around the Azalea neighborhood, including Plaintiff's residence. The toxic plume of industrial waste flows from the Defendant's Raytheon plant at 1501 72<sup>nd</sup> Street North.

8. Chemicals found in that toxic plume, all considered to be hazardous to humans, include:

- a) 30 to 60 times the safe level of 1,4-dioxane, high levels of which can cause kidney and liver damage and even death;
- b) unhealthy levels of trichloroethylene (TCE), which consumed in small amounts over long periods of time can cause liver and kidney damage, impaired immune system function, and impaired fetal development in women, and skin exposure can cause skin rashes;
- c) 1200 times the safe level of vinyl chloride, a potent carcinogen, associated with an increased risk of liver, brain and lung cancer.

This plume of toxic chemicals continues to seep into and under the Azalea district and appears to be making its way or has made its way to the tidal waters of Boca Ciega Bay.

9. Raytheon contaminated the lands and ground water with toxic discharges and spills and was aware of the contamination of the groundwater at the plant site at the time. Raytheon failed to test the ground water or the private wells in the surrounding area for presence of these toxic chemicals and has failed to contain and clean up the plume of toxic waste that is polluting the groundwater in and around Plaintiff's residence and the entire Azalea district.

10. Further, Raytheon failed to adequately warn the Plaintiffs and other residents of the Azalea district of the presence of the contaminated ground water in their neighborhood and concealed and covered up the fact that the toxic industrial chemicals were migrating from the Raytheon plant into adjacent neighborhoods, parks and

playgrounds. The toxic chemical plume is continuing to migrate further into the neighborhood.

11. As the result of Defendant's discharge of toxic chemicals onto the lands and into the ground water and its failure to contain and clean up the contamination in the groundwater, Plaintiffs have suffered diminution of their property value. Further they, face the cost of monitoring and testing their ground water and well and possibly the mandatory cleanup of the toxic ground water and they need medical monitoring of their health and face the risk of severe health problems.

### **GENERAL CLASS REPRESENTATION ALLEGATIONS**

12. Pursuant to Florida Rule 1.220(a), (b)(2) and (b)3, Florida Rule of Civil Procedure, the Plaintiffs, LINDA SWARTOUT and JOHN C. SWARTOUT, bring this action on behalf of themselves and all others similarly situated, i.e. the residents and property owners of the Azalea district of St. Petersburg, Florida.

### **Commonality**

13. This cause arises from multiple wrongful and illegal acts of the Defendant, RAYTHEON, which has resulted in the seepage of a toxic plume of industrial waste chemicals in the groundwater of Plaintiff's residence and of the real properties located in the entire Azalea neighborhood in St. Petersburg, Florida.

14. Defendant, RAYTHEON, engaged in a course of conduct which has caused a diminution in market value and a stigma of toxic pollution for the real estate owned by Plaintiffs, LINDA SWARTOUT and JOHN C. SWARTOUT, and other property owners in the Azalea district and to has exposed Plaintiffs and their neighbors to serious health risks related to that contaminated ground water.

15. Raytheon knew, or should have known, that a toxic plume of industrial waste had seeped from the plant to Plaintiff's property and to properties owned by other similarly situated class members who reside in the Azalea district of St. Petersburg.

16. Ever since the toxic plume was discovered by Defendant in the groundwater 17 years ago, Defendant has been on notice of the presence and the spread of toxic contaminants, including 1,4-dioxane, TCE, and vinyl chloride, and that those chemical were considered to be hazardous to humans.

17. At all relevant times, Defendant, RAYTHEON, had a duty to LINDA SWARTOUT and JOHN C. SWARTOUT and similarly situated class members to disclose material facts concerning the presence of toxic contaminants in the water in the Azalea district which seeped from the plant to the neighboring properties and to contain and clean up those contaminants to avoid serious health issues and avoid diminution of their real property.

18. Defendant, RAYTHEON, breached its duty to LINDA SWARTOUT and JOHN C. SWARTOUT and to the class by failing and refusing to test the private well water of the residents in the Azalea neighborhood and failing and refusing to contain and clean up the contamination of those toxic contaminants.

19. Defendant, RAYTHEON, breached its duty to LINDA SWARTOUT and JOHN C. SWARTOUT and to the class by failing and refusing to timely notify and warn them, or adequately warn them, that a toxic plume of industrial waste had escaped the confines of the Raytheon plant and was seeping into their groundwater, private wells, and vapor intrusion into their homes.

20. As the result of Defendant's breach of duty to the Plaintiffs and to similarly situated class member, LINDA SWARTOUT and JOHN C. SWARTOUT and the class have suffered economic losses in diminution to the value of their properties and possible cost of mandatory cleanup of the toxic seepage, and face an unreasonable risk of serious health problems due to exposure to these toxic contaminants.

21. At all times material hereto, Defendant, RAYTHEON, acted by and through its agents, apparent agents, representatives, and employees, each acting in furtherance of Defendant and its interests.

#### Typicality

22. The claims of LINDA SWARTOUT and JOHN C. SWARTOUT are typical of the claims of the class members which she represents, as she has been damaged in the same manner as the class members. The legal theories asserted by LINDA SWARTOUT and JOHN C. SWARTOUT are the same as the legal theories that would be advanced by the class members which she represents.

22. LINDA SWARTOUT and JOHN C. SWARTOUT are residents of the Azalea district of St. Petersburg, Florida and own real property that has been contaminated by toxic industrial waste and/or has suffered diminution in market value, along with the other residents and property owners of the Azalea district.

#### Class Members

24. This cause of action involves one class of persons who have suffered economic loss and diminution in the market value of real estate as a result of Defendant, RAYTHEON's, wrongful and illegal acts in failing to test the groundwater surrounding its plant, failing to test the private wells of the surrounding property owners, failing to

contain the seepage of contaminants, failing to clean up the contamination, and violating Florida laws and the requirements of the Florida Department of Environmental Protection. There are approximately 1,500 class members who reside and/or own property in the Azalea neighborhood, with approximately 900 homes from 5th Avenue North to 22nd Avenue North, and from the Pinellas Trail to Russell Drive North in St. Petersburg, Florida. Plaintiff resides in that neighborhood.

#### **Adequacy of Representation**

25. LINDA SWARTOUT and JOHN C. SWARTOUT are adequate representatives of the class, and will fairly and adequately protect the interests of the class. LINDA SWARTOUT and JOHN C. SWARTOUT are members of the aforementioned class and are committed to the vigorous prosecution of this action, and have retained competent counsel, who is experienced in litigation of this nature to represent them. There is no hostility of interests between or among LINDA SWARTOUT and JOHN C. SWARTOUT and the class members. LINDA SWARTOUT and JOHN C. SWARTOUT anticipate no difficulty in the management of this litigation as a class action.

26. To prosecute this action, LINDA SWARTOUT and JOHN C. SWARTOUT have chosen the law firm of Saunders & Walker P.A. This firm is nationally recognized in class action litigation and has appeared in many class actions, consolidated proceedings, and federal multidistrict litigations in a number of state and federal courts. Additionally, this law firm has the legal and financial resources to meet the substantial costs and legal issues associated with this type of litigation.

#### **Requirements of Rule 1.220**

27. This action is maintainable under Rule 1.220(a), (b)(1)(A), (b)(1)(B), and (b)(3), Florida Rules of Civil Procedure. As a result of RAYTHEON's wrongful conduct, and the uniformity of manner of injury and legal issues, a class action is superior to other available methods for the fair and efficient adjudication of this litigation.. Individual joinder of all members of the class is impracticable, if not impossible. Furthermore, the burden of this Court in handling approximately 900 individual cases arising from the same nucleus of operative facts would be excessive and burdensome. Individual litigation would also increase the expense of the litigation to all parties and to the Court system. A class action will concentrate all of the litigation into one forum with no unusual manageability problems, particularly whereas here, RAYTHEON's liability and the nature of much of the class members' damages may be readily proven through common class-wide proofs.

28. RAYTHEON, its officers, directors, subsidiaries or any other person or entity related to, affiliated with, or employed by RAYTHEON are excluded from the indicated class.

29. There are numerous questions of law and fact that are common to the claims of LINDA SWARTOUT and JOHN C. SWARTOUT and the members of the class.

Among these common questions of law and fact are the following:

a) Whether RAYTHEON had a duty to contain and clean up the toxic plume of industrial waste that was seeping from its plant and to warn the surrounding residents, Plaintiff and class members of the presence of those toxic contaminants;

b) Whether RAYTHEON acts or omissions caused LINDA SWARTOUT and JOHN C. SWARTOUT and class members to incur economic damage, diminution in



market value of their property, medical monitoring expenses and unreasonable risk of health problems and bodily harm.

30. The damage caused to LINDA SWARTOUT and JOHN C. SWARTOUT, as well as the damage of each of the class members, was directly and proximately caused by the acts of RAYTHEON or those under the direction, control, and supervision of RAYTHEON.

31. As a direct and proximate result of RAYTHEON's wrongful acts, the Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT and members of the class have been damaged.

**COUNT I**  
**(Negligence)**

32. Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT , adopts and realleges each and every allegation contained in paragraphs 1 through 31 into County I of this complaint as though fully set forth herein.

Defendant knew or should have known, and was on notice that, a plume of toxic chemicals from industrial waste from the plant had escaped from the plant facility and seeped into the groundwater of the surrounding Azalea neighborhood.

35. Defendant had a duty to the community and particularly to the Plaintiff and the class members to maintain it plant facility to not create or continue hazardous conditions to the properties located in the surrounding community.

36. At all relevant times, Defendant breached its duty to the Plaintiff and the other class members by:

- a) failing and refusing to contain the leak of contaminants at the plant site;

b) failing to test the groundwater and private wells of the residents in the Azalea neighborhood;

c) failing to clean up the contamination of those toxic contaminants;

d) failing to timely notify and warn Plaintiff and class members of the presence of the contaminants in their ground water and private wells.

37. As the direct and proximate result of Defendant's negligent breach of duty to the Azalea residents, Plaintiff and other class members purchased homes and property in the contaminated area, drilled private wells for irrigation in the contaminated area, and allowed their children and pets to play in and be exposed to the toxic chemicals contained in the groundwater and private wells.

38. As a further proximate result of Defendant's negligent acts and omissions, Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT, and the class members suffered economic damages, including diminution of their property values, possible cost of mandatory cleanup of those toxic chemicals from their ground water .

39. As a further proximate result of Defendant's negligent acts and omissions, Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT, and the class members suffered unreasonable risk of serious health problems associated with the ingestion and/or exposure to those toxic chemicals.

WHEREFORE, Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT and the class members, demand certification of this cause as a class action, judgment for damages against the Defendant, RAYTHEON COMPANY, and a trial by jury.

**COUNT II**  
**(Statutory Strict Liability Under F.S. 376.205)**

40. Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT , adopts and realleges each and every allegation contained in paragraphs 1 through 31 into Count II of this complaint as though fully set forth herein.

42. Defendant, Raytheon discharged pollution into the lands and the ground waters and created a plume of toxic chemicals that flowed into plaintiff and class members' property.

43. Defendant had a statutory duty to the community and particularly to the Plaintiff and the class members to maintain its plant facility to not create or continue hazardous conditions to the properties located in the surrounding community.

44. At all relevant times, Defendant breached its statutory duty to the Plaintiff and the other class members by violating **Florida Statute 376** entitled **Pollution Discharge Prevention and Removal**. This action is also specifically brought pursuant to **Florida Statute 376.011-376.21 and Florida Statute 376.205.**

45. As the direct and proximate result of Defendant's breach of statutory duty to the Azalea residents, Plaintiff and other class members purchased homes and property in the contaminated area, drilled private wells for irrigation in the contaminated area, and allowed their children and pets to play in and be exposed to the toxic chemicals contained in the groundwater and private wells.

46. As a further proximate result of Defendant's breach of statutory duty to the Plaintiff and class members, Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT and the class members suffered economic damages, including diminution of their property values, possible cost of mandatory cleanup of those toxic chemicals from their ground water.

39. As a further proximate result of Defendant's breach of statutory duty to the Plaintiff and class members, Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT and the class members suffered unreasonable risk of serious health problems associated with the ingestion and/or exposure to those toxic chemicals.

**COUNT III**  
**(Strict Liability for abnormally hazardous activity)**

40. Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT , adopts and realleges each and every allegation contained in paragraphs 1 through 31 into Count III of this complaint as though fully set forth herein.

42. Defendant knew or should have known, and was on notice that, a plume of toxic chemicals from industrial waste from the plant used by Defendant's predecessor, had escaped from the plant facility and seeped into the groundwater of the surrounding Azalea neighborhood.

43. Defendant's maintenance of industrial toxic chemicals in the Azalea residential neighborhood was an abnormally hazardous activity giving rise to strict liability for harm. Defendant's activity was abnormally hazardous because it involved:

(a.) The existence of a high degree of risk of harm to another person or to the real or personal property thereof.

(b.) The likelihood that the harm that results will be great.

(c.) The inability to eliminate the risk by the exercise of reasonable care.

(d.) The extent to which the activity is not a matter of common usage.

(e.) The inappropriateness of the activity to the place where it is carried on.

(f.) The extent to which the value of the activity to the community is outweighed by the dangerousness of the activity.

45. As the direct and proximate result of Defendant's conduct of the abnormally hazardous activity Plaintiffs and other class members purchased homes and property in the contaminated area, drilled private wells for irrigation in the contaminated area, and allowed their children and pets to play in and be exposed to the toxic chemicals contained in the groundwater and private wells.

46. As a further proximate result of Defendant's abnormally hazardous activity Plaintiffs and class members, Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT, and the class members suffered economic damages, including diminution of their property values, possible cost of mandatory cleanup of those toxic chemicals from their ground water .

39. As a further proximate result of Defendant's abnormally hazardous activity Plaintiff and class members, Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT and the class members suffered unreasonable risk of serious health problems associated with the ingestion and/or exposure to those toxic chemicals.

**COUNT IV**  
**(Strict Liability for Nuisance and Trespass)**

40. Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT, adopts and realleges each and every allegation contained in paragraphs 1 through 31 into Count IV of this complaint as though fully set forth herein.

41. Defendant, RAYTHEON, discharged or allowed to be discharged noxious and dangerous toxic chemicals in the ground so that they flowed through the groundwater to and through plaintiffs' property and well

43. Defendant's maintenance of industrial toxic chemicals in the Azalea residential neighborhood was an nuisance and a trespass and interfered with Plaintiffs use and enjoyment of their property and caused a loss in market value of their property and will cause plaintiffs substantial expense to test and remediate the contamination of their property.

45. As the direct and proximate result of Defendant's conduct of the abnormally hazardous activity Plaintiffs and other class members purchased homes and property in the contaminated area, drilled private wells for irrigation in the contaminated area, and allowed their children and pets to play in and be exposed to the toxic chemicals contained in the groundwater and private wells.

46. As a further proximate result of Defendant's abnormally hazardous activity Plaintiffs and class members, Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT, and the class members suffered economic damages, including diminution of their property values, possible cost of mandatory cleanup of those toxic chemicals from their ground water .

39. As a further proximate result of Defendant's abnormally hazardous activity Plaintiff and class members, Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT and the class members suffered unreasonable risk of serious health problems associated with the ingestion and/or exposure to those toxic chemicals.

**COUNT V**  
**(Medical Monitoring)**

40. Plaintiff, LINDA SWARTOUT and JOHN C. SWARTOUT adopts and realleges each and every allegation contained in paragraphs 1 through 31 into Count V of this complaint as though fully set forth herein.

As a consequence of Raytheon's release of the heretofore mentioned toxic chemicals into the ground water and environment Plaintiffs and class members are in need of and should be entitled to medical monitoring paid for by the Raytheon. Plaintiffs have suffered::

- (1) exposure greater than normal background levels to the toxic substances,
- (2) The substances discharged by Raytheon have been proven to be hazardous substances,
- (3) the toxic discharge was caused by the Raytheon's negligence,
- (4) as a proximate result of the exposure, plaintiffs have a significantly increased risk of contracting serious latent diseases,
- (5) a monitoring procedure exists that makes the early detection of the diseases possible,
- (6) the prescribed monitoring regime is different from that normally recommended in the absence of the exposure, and
- (7) the prescribed monitoring regime is reasonably necessary according to contemporary scientific principles.

WHEREFORE, It is respectfully requested that this court order Raytheon to provide for medical monitoring for plaintiffs and class members.

**DEMAND FOR JURY TRIAL**

Plaintiff, LINDA SWARTOUT, individually and on behalf of the class members, demands certification of this cause as a class action, judgment for damages, medical

monitoring, costs, and for attorney fees pursuant to Florida Statute 376.205 against the Defendant, RAYTHEON COMPANY, and a trial by jury.

A handwritten signature in cursive script, appearing to read "Joseph H. Saunders", written over a horizontal line.

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