Attachment No. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ZURICH AMERICAN INSURANCE COMPANY, a New York Corporation, Plaintiff, v. RICHARD ANDREW, JANE ANDREW, LUKE ANDREW, and BRYCE ANDREW, Defendants.	)))))))))))	CASE NO. _____ **COMPLAINT**

COMES NOW Plaintiff, Zurich American Insurance Company ("Plaintiff"), a New York Corporation, and for its causes of action against Defendants, states and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of New York, with its principle place of business located at 1400 American Lane, Schaumburg, Illinois.

2. Defendant, Richard Andrew, is a citizen of the State of Nebraska.

3. Defendant, Jane Andrew, is a citizen of the State of Nebraska.

4. Defendant, Luke Andrew, is a citizen of the State of Nebraska.

5. Defendant, Bryce Andrew, is a citizen of the State of Nebraska.

JURISDICTION AND VENUE

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because Defendants reside in this district, and a substantial portion of the events or omissions giving rise to Plaintiff's claims occurred in this district.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds $75,000.00, exclusive of interest and costs, and because diversity of citizenship exists with respect to Plaintiff and all Defendants.

GENERAL ALLEGATIONS

8. At all times material to this action, Defendants were agents of each other and were acting within the course and scope of their agency relationships, and the negligence of any Defendant is imputed to all Defendants.

9. At all times material to this action, Defendants were engaged in a joint venture and were acting within the course and scope of the joint venture at the time of the event described below.

10. At all times material to this action, Defendants were engaged in a partnership, were carrying on a business for profit, shared profits of the business, and were acting within the course and scope of the partnership at the time of the event described below.

11. At all relevant times, Defendants Luke Andrew and Bryce Andrew were the lessees of property located in the East ½ of the Southwest ¼, Section 15, Township 4, Range 15 (the "Property"), Nemaha County, Nebraska, and were engaged in commercial farming operations for the benefit of all named Defendants in this action.

12. On or about December 10, 2011, Defendants Luke Andrew and Bryce Andrew were engaged in excavation activities on the Property, including the clearing of various vegetation near the northernmost property line of the Property.

13. The excavation was in the area of two pipelines owned and operated by Magellan Midstream Partners, LP ("Magellan"), including a 12" pipeline used to transport a mixture of gasoline and jet fuel as well as an 8" pipeline ("the Pipelines") used to transport diesel fuel.

14. At all times relevant to this action, Magellan owned a right-of-way and easement on the Property in the areas where the pipelines ran and Defendants had actual and constructive knowledge of the right-of-way and easement.

15. At all times relevant to this action, Defendants had actual and constructive notice of the pipelines on the Property and had notice that Magellan owned and operated such pipelines.

16. On or about December 10, 2011, while engaged in excavation activities, Defendants Luke Andrew and Bryce Andrew struck the pipeline, causing the release of approximately 2,167 barrels of mixed gasoline and jet fuel from the 12" pipeline and approximately 643 barrels of diesel fuel from the 8" pipeline onto the Property (The line strikes will hereinafter be referred to as "the Release").

17. As a result of the line strikes and release, Magellan was required by state and federal

law to engage in cleanup and remediation activities related to the Release.

18. At the time of the Release, Magellan was the named insured on a policy of insurance, Policy No. EPC 669256201 ("the Policy"), issued by Plaintiff.

19. Plaintiff has made payment on behalf of Magellan under the Policy and has a contractual and equitable right of subrogation and is subrogated to Magellan's rights of recovery against Defendants for amounts paid on its behalf.

FIRST CLAIM: NEGLIGENCE

20. Paragraphs 1-20 of this Complaint are incorporated as if fully set forth herein.

21. Defendants owed a duty to perform their work on the Property and within the right-of-way and easement owned and operated by Magellan in a reasonable manner, to use reasonable care in constructing improvements on the Property, to comply with the statutory requirements of Neb. Rev. Stat. § 76-2301 et seq., the One Call Notification System ("OCNS"), and to protect the Pipelines on the Property from damage during Defendants' work on the Property.

22. Defendants negligently struck the Pipelines while performing excavation work on the Property.

23. Defendants were negligent in the following particulars:

a. Defendants failed to perform their work on the Property within the right-of-way and easement in a reasonable manner;

b. Defendants failed to use reasonable care in their work on the Property and the Pipelines' right-of-way and easement;

c. Defendants failed to comply with the statutory requirements of the OCNS;

d. Defendants failed to notify Magellan of Defendants' intent to excavate on December 10, 2011 in and over the right-of-way and easement on the Property;

e. Defendants failed to give Magellan the opportunity to exercise its rights under the OCNS.

24. As a direct and proximate result of Defendants' negligence, Plaintiff has paid $3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

25. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling $1,106,893.50.

26. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its first claim in an amount in excess of $4,151,148.69 for Defendants' negligent strike of the Pipelines.

SECOND CLAIM: TRESPASS

27. Paragraphs 1-29 of this Complaint are incorporated as if fully set forth herein.

28. Magellan owned and occupied a valid right-of-way and easement in and to the area of the Property where the Pipelines were located at the time of the Release.

29. Defendants physically invaded Magellan's rights within and to the right-of-way and easement where the Pipelines were located at the time of the Release.

30. Defendants had no right, lawful authority, or express or implied invitation, permission, or license to enter upon and disturb Magellan's rights and interests in and to the right-of-way and easement where Magellan's pipelines were located at the time of the Release.

31. Magellan's interest in and to the right-of-way and easement of the Pipelines were injured during the course of Defendants' trespass.

32. As a result of Defendants' trespass, Plaintiff has paid $3,044,255.19 on behalf of Magellan related to clean up, remediation, and other damages caused by the Release.

33. Clean up, remediation, and other damages are ongoing and Plaintiff continues to incur costs related to the same, with estimated future damages totaling $1,106,893.50.

34. Plaintiff prays that the Court enter judgment against Defendants and award Plaintiff's damages on its second claim in an amount in excess of $4,151,148.69.

WHEREFORE Plaintiff hereby prays for a judgment of this Court in its favor and against Defendants for its damages in an amount to be proven at trial, pre-judgment and post-judgment interest, its costs incurred in prosecuting this action, and such other reasonable sums as this Court deems just and equitable.

JURY DEMAND

Plaintiff, pursuant to Fed. R. Civ. P. 38 and Local Rule 40.1(b) demands a trial by jury on all issues so triable in Omaha, Nebraska.

ZURICH AMERICAN INSURANCE COMPANY,
Plaintiff,

By: /s/ Albert M. Engles

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