

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

JOHN NAVELSKI, LINDA NAVELSKI,)	
ERICK ALEXANDER, JACON HUTCHINS,)	
AMBER HUTCHINS, JEANNE HENDERLY,)	Case No. 3:14 - cv- 00445
RICHARD BULLARD and BEVERLY)	
BULLARD on their own behalf and those)	Judge M. Casey Rodgers
others similarly situated,)	
)	Magistrate Judge Charles J. Kahn
Plaintiffs,)	
v.)	
INTERNATIONAL PAPER COMPANY,)	
)	
Defendant.)	
_____ /)	

PLAINTIFFS’ FIRST AMENDED COMPLAINT

Plaintiffs, JOHN NAVELSKI; LINDA NAVELSKI; ERICK ALEXANDER; JACOB HUTCHINS; AMBER HUTCHINS; JEANNE HENDERLY; RICHARD BULLARD; and BEVERLY BULLARD (hereinafter collectively referred to as “Plaintiffs”), by and through the undersigned counsel, bring this class action suit against Defendant, INTERNATIONAL PAPER COMPANY (hereinafter referred to as “Defendant”, “IP” or “International Paper”), and allege:

JURISDICTION AND VENUE

1. This is an action for damages within the jurisdictional limits of this Court, exclusive of fees and costs, pursuant to 28 U.S.C. §1332.
2. Venue is proper in this Court, pursuant to 28 U.S.C. §1391, as all material actions taken and events recited herein occurred in Escambia County, Florida.
3. The Court has personal jurisdiction over the Defendant.

4. The Defendant owns and operates the International Paper Cantonment Mill which is located in Escambia County Florida, at or near 375 Muscogee Road, Cantonment, Florida.

5. Jurisdiction is appropriate in this County as a substantial part of the Defendant's acts or omissions occurred in Escambia County, Florida.

6. To the best of their knowledge, Plaintiffs have fulfilled any and all conditions precedent to the institution of this action.

PARTIES

7. At all times material and relevant herein, Plaintiffs, JOHN NAVELSKI and LINDA NAVELSKI (collectively referred to as "NAVELSKI"), were residents of Escambia County, Florida, and lived and owned the property located at 2706 Silhouette Drive, Cantonment, Florida 32533.

8. At all times material and relevant herein, Plaintiff ERICK ALEXANDER ("ALEXANDER"), was a resident of Escambia County, Florida, and lived and owned the property located at 1911 Joshua Drive, Cantonment, Florida 32533.

9. At all times material and relevant herein, Plaintiffs, JACON HUTCHINS and AMBER HUTCHINS (collectively referred to as "HUTCHINS"), were residents of Escambia County, Florida, and lived and owned the property located at 3020 Ashbury Lane, Cantonment, Florida 32533.

10. At all times material and relevant herein, Plaintiff, JEANNE HENDERLY ("HENDERLY"), was a resident of Escambia County, Florida, and owned and rented out the property located at 9771 Harlington Street, Cantonment, Florida 32533.

11. At all times material and relevant herein, Plaintiffs, RICHARD BULLARD and BEVERLY BULLARD (collectively referred to as "BULLARD"), were residents of Escambia

County, Florida, and lived and owned the property located at 9970 Bristol Park Road, Cantonment, Florida, 32533.

12. At all times material and relevant herein, the Defendant, INTERNATIONAL PAPER COMPANY, is a foreign for-profit corporation.

13. INTERNATIONAL PAPER COMPANY also maintains a place of business at 375 Muscogee Road, Cantonment, Florida 32533 (hereinafter “Cantonment Mill”). At the very least, the Defendant has minimum contacts through its production of industrial packaging, i.e. containerboard, and other mill works at the Cantonment plant located within this District.

14. Based upon information and belief, and at all times material and relevant herein, the Defendant also owns and/or operates a dam structure, that is located on the Defendant’s property, and is located north and south of Kingsfield Road, where Eleven Mile Creek (also known as Elevenmile Creek) intersects Kingsfield Road, in Escambia County, Florida (hereinafter “Kingsfield Road Dam”).

15. For purposes of this lawsuit, the following terms are defined as follows:

(a) “Person” or “Persons” means an individual, marital community, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated organization, governmental entity, and any other type of legal person or entity, and their respective heirs, legatees, predecessors, successors, representatives and assigns.

(b) “Eleven Mile Creek” means the Eleven mile Creek watershed, which is located in Escambia County, Florida, has a 47.97-square-mile (mi²) drainage area that reaches from Cantonment to Perdido Bay and is about 13 miles long.

(c) “Flood Affected Geographic Area” or “Affected Geographic Area” means the entire area located adjacent to Eleven Mile Creek in Escambia County, Florida and the area impacted by water which flows from Eleven Mile Creek, south of International Paper’s Kingsfield Road Dam.

(d) “Levee Failures” or “dam failures” means the actual or alleged breaching, overtopping, seepage, collapse, undermining, weakening or any other alleged failure of Levees regardless of cause, whether caused in whole or part by an alleged defect, error or neglect with respect to the design, construction, maintenance, inspection, and/or operation of the Levees, and all dredging operations necessary in connection therewith or incidental thereto, and/or whether caused in whole or in part by any wind, waves, tide, rainfall, water surge or other force or effect caused by or resulting from flooding that occurred on the dates referenced herein.

(e) “Levees” means any and all levees, embankments, seawalls, jetties, breakwaters, water-basins, floodwalls, floodgates, outfall canals, dams, drainage canals, berms, spoil banks, and other works in relation to such projects, and/or any other flood or water control structure(s), whether man-made or natural.

(f) “Levee Defendant” means the Defendant, INTERNATIONAL PAPER COMPANY.

FACTUAL ALLEGATIONS

16. Defendant owns and operates the Cantonment Mill, an industrial paper mill facility in Escambia County, Florida, specifically located at 375 Muscogee Road, Cantonment, Florida 32533.

17. Eleven Mile Creek runs through the Defendant’s property located at or near 375 Muscogee Road, Cantonment, Florida and continues southward to Perdido Bay.

18. Based upon information and belief, the Defendant also owns a majority of the land and/or water sources adjacent to Eleven Mile Creek, south of the Cantonment Mill to Perdido Bay.

19. In operating the Cantonment Mill, the Defendant uses and operates “holding ponds” and “overflow ponds” for effluent and/or wastewater produced and discharged by its Mill. Prior to 2012, the Defendant discharged its effluent waste into Eleven Mile Creek. However, now, by approximately a 10 mile pipe line, the Defendant transfers its waste and discharges it into the Perdido Bay watershed basin, at the far south end of Eleven Mile Creek.

20. At all times material and relevant herein, the Defendant owned, maintained, and operated the Kingsfield Road Dam on its own land which is located adjacent to and/or immediately upstream from the Plaintiffs’ land and real property.

21. At all times material and relevant herein, the Defendant owned, constructed, maintained, or operated the Kingsfield Road Dam, which includes a levee consisting of earthen and concrete materials north of Kingsfield Road, a pipeline that runs south under a bridge at Kingsfield Road, and connects to a concrete structure south of Kingsfield Road, which empties into Eleven Mile Creek.

22. The Kingsfield Road Dam inhibited the natural flow of water from the north end of Eleven Mile Creek to the south.

23. As the owner of Kingsfield Road Dam, the Defendant must annually review and update its Emergency Action Plan (“EAP”), which establishes procedures and protocols necessary to minimize hazard to life and damage to property in areas that could be affected by a release of water resulting from a dam failure. The EAP also establishes a monitoring system to identify emergency conditions, officials, agencies, organizations, and their respective

responsibilities to implement the Plan, in addition to identifying those areas, facilities, and roads that a dam failure could affect, and a communications notification system to facilitate emergency control, termination, and recovery.

24. Based upon information and belief, and at all times material and relevant herein, the Defendant negligently failed to maintain the Kingsfield Road Dam.

25. Based upon information and belief, and at all times material and relevant herein, notwithstanding continued development, increases in rainfall and storm frequency, increases in river and/or “holding pond” or “overflow pond” levels, and sedimentation and debris buildup in and around the Kingsfield Road Dam and Eleven Mile Creek throughout the years, the Defendant has negligently failed to maintain the Kingsfield Road Dam to counteract and reverse the harmful and adverse effects of the foregoing.

26. On or about April 29, 2014 and April 30, 2014, Northwest Florida, including but not limited to Escambia County, Florida, received rainfall from a weather system.

27. On or about April 29, 2014, and April 30, 2014, the Defendant and/or its agents, employees, servants, and/or licensees operated, managed, maintained, and/or controlled the Kingsfield Road Dam.

28. The Defendants and/or its agents, employees, servants, and/or licensees had a duty to operate, manage, maintain, and control the Kingsfield Road Dam, Eleven Mile Creek north of the Dam, and any “holding ponds,” “overflow ponds,” or other accumulation of water north of the Eleven Mile Creek Dam in a reasonably safe and prudent manner.

29. On or about April 29, 2014, and April 30, 2014, the Plaintiffs lawfully owned their parcels of real property, with a residence on each such property, in Escambia County, State

of Florida, which are located adjacent to and/or immediately downstream from the Kingsfield Road Dam.

30. Based upon information and belief, the residents of the affected areas adjacent to Eleven Mile Creek, including the subdivisions/neighborhoods of Bristol Park and Ashbury Hills, are located in Flood Zone X (unshaded) on the Flood Insurance Rate Map and, therefore, are not located in the Special Flood Hazard Area (SFHA) and require no mandatory flood insurance.

31. Based upon information and belief, and at all times material and relevant herein, due to the severity of the storm and the warnings that proceeded same, the Defendant was obligated to implement and/or activate its EAP.

32. Based upon information and belief, and at all times material and relevant herein, due to the amount of water held by the Kingsfield Road Dam, coupled with the rain fall, the Defendant was obligated to implement and/or activate its EAP.

33. However, based upon information and belief, and at all times material and relevant herein, the Defendant failed to do so and had no established policy or protocol to minimize hazard to life and damage to property in areas that could be affected by a release of water resulting from a dam failure, which included the Plaintiffs' parcels of real property, with a residence on each such property.

34. Based upon information and belief, and at all times material and relevant herein, by failing to take action to counteract the potential hazard of upstream dam and/or levee failure, on account of the rainfall forecasted, upon those areas adjacent to and/or downstream of Eleven Mile Creek and the Kingsfield Road Dam, the "holding ponds," "overflow ponds," and/or all other groundwater and storm water north of the Kingsfield Road Dam accumulated and reached unsafe levels.

35. Additionally, based upon information and belief, and at all times material and relevant herein, the Defendant's failure to take action to counteract the potential hazard of upstream dam and/or levee failure, resulted in an overflow of flood waters that compromised, eroded, and/or broke the Kingsfield Road Dam and ultimately overflowed in and onto the Plaintiffs' parcels of real property, with a residence on each such property.

36. Based upon information and belief, and at all times material and relevant herein, this swell and/or wave was a direct result of the failure of the Defendant's levee that adjoins the Kingsfield Road Dam.

37. At all times material and relevant herein, the Defendant failed to take the appropriate actions to coordinate the safe release and flow of accumulated water north of the dam.

38. Based upon information and belief, and at all times material and relevant herein, when the Defendant failed to take the appropriate actions to coordinate the safe release and flow of accumulated water or otherwise counteract and reverse the harmful effects of continued development, increases in rainfall and storm frequency, increases in river and/or "holding pond" or "overflow pond" levels, and sedimentation and debris buildup in and around the Kingsfield Road Dam and Eleven Mile Creek throughout the years, such caused a break in the Kingsfield Road Dam.

39. Based upon information and belief, and at all times material and relevant herein, the Defendant was negligent in its failure to maintain the Kingsfield Road Dam; failure to properly and safely operate the Kingsfield Road Dam; failure to counteract and reverse the effects of continued development, increases in rainfall and storm frequency, increases in river and/or "holding pond" or "overflow pond" levels, and sedimentation and debris buildup in and

around the Kingsfield Road Dam; failure to maintain the overgrowth in Eleven Mile Creek; failure to warn those downstream of the potential or ultimate failure of the levee system; and failure to follow appropriate EAP protocols.

40. As a proximate result of the Defendant's negligence, the levee system failed, which caused a significant and sudden increase in water into the Eleven Mile Creek, all of which caused and/or contributed to the increase in water levels and the resulting overflow of flood waters.

41. The Defendant's failure to take the appropriate actions caused a break in the aforementioned levee resulting in a massive wall of water/over flow of water into Eleven Mile Creek, which caused flooding to the real property and residences owned by JOHN NAVELSKI; LINDA NAVELSKI; JACOB HUTCHINS; AMBER HUTCHINS; JEANNE HENDERLY; RICHARD BULLARD; and BEVERLY BULLARD.

42. The Defendant's failure to take the appropriate actions caused a break in the aforementioned levee resulting in a massive wall of water/over flow of water into Eleven Mile Creek, which caused flooding to the real property owned by ERICK ALEXANDER and the residences of property owners adjacent to the real property owned by ERICK ALEXANDER.

43. As a direct and proximate result of the foregoing, the Plaintiffs have been caused to be displaced and to suffer losses including damage to their real and personal property; diminished value to their real property; loss of income from their real property; lost wages; loss of enjoyment of their property; and additional expenses related to annoyance and inconvenience.

CLASS ALLEGATIONS

44. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs seek certification of the following class:

All Persons who, as of April 29, 2014, owned real property in the Bristol Park Subdivision or Ashbury Hills Subdivision in Cantonment, Florida (the “Class”).

Excluded from the Class are the Defendant, its parent, subsidiaries affiliates, officers and directors; any Judge to who this action is assigned; and any member of such Judge’s staff or immediate family.

45. The Class is sufficiently numerous that joinder of all affected persons would be impracticable. The exact number of class members can be determined through public records. It is estimated that the Class is comprised of hundreds of persons.

46. Given the significant expense required to prosecute the claims against Defendant, the costs of individual actions may exceed or consume the amount recovered in an individual action. The expense of pursuing individual actions will economically discourage individual members of the Class from bringing their individual claims against Defendant if they are not permitted to pursue those claims as a Class.

47. A class action is a superior method of adjudicating the Class members’ claims because individual actions would unnecessarily burden the Court and may create the risk of inconsistent results.

48. This action is manageable because the evidence proving that Defendant is responsible for the damage to real and personal property is common to the Class.

49. There are numerous questions of law and fact common to the Class. Those questions include, but are not limited to:

- a) The cause or causes of the breaches and/or failures of the Kingsfield Road Dam;
- b) The actions taken by Defendant at the Cantonment Mill;
- c) The legal duties of the Defendant owed to the Plaintiffs and the Class;
- d) Whether the Defendant breached its duties;

- e) Whether the Defendant was negligent in the maintenance of the Kingsfield Road Dam;
- f) Whether the Defendant was negligent when it abandoned the Kingsfield Road Dam;
- g) Whether the Defendant was negligent in its response to the heavy rainfall on April 29 to April 30, 2014;
- h) Whether the Defendant's breach/failures caused the Plaintiffs' and the Class's damages; and
- i) Whether the Defendant may assert certain affirmative defenses applicable to all Plaintiffs and the Class.

50. Plaintiffs' claims are typical of the Class's claims. Plaintiffs have no interests that are antagonistic or adverse to the Class.

51. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs are adequate representatives of the Class and have retained counsel who are experienced in class actions and complex litigation. Accordingly, Plaintiffs will fairly and adequately protect and represent the interests of the Class.

52. Defendant has acted on grounds generally applicable to all the members of the class, including but not limited to: failing to properly operate, manage, maintain, and control Kingsfield Road Dam and any "holding ponds," "overflow ponds," or other accumulation of water north of the Kingsfield Road Dam, thereby making final injunctive relief appropriate on behalf of the Class.

53. Plaintiffs and the Class were injured directly and proximately by Defendant's conduct.

54. Plaintiffs seek certification of a class, alternatively, under Fed. R. Civ. P. 23(b)(2) or 23(b)(3), or a combination thereof.

COUNT I – NEGLIGENCE

55. Plaintiffs, and the Class, re-allege the allegations set forth above as is fully set forth and incorporated herein.

56. At all times material hereto, the Defendant has owned and operated certain land and/or water sources located in Escambia County, State of Florida, including, but not limited to, Eleven Mile Creek and the Kingsfield Road Dam.

57. Defendant is engaged in the management and storage of surface water to the north of the Kingsfield Road Dam in Escambia County, State of Florida.

58. The Defendant and/or its agents, employees, servants, and/or licensees operated, managed, maintained, and controlled the Kingsfield Road Dam, Eleven Mile Creek north of the Dam, and any “holding ponds” and/or “overflow ponds” north of the Kingsfield Road Dam. The Defendant and/or its agents, employees, servants, and/or licensees had a duty to operate, manage, maintain, and control the Kingsfield Road Dam, Eleven Mile Creek north of the Dam, and any “holding ponds,” “overflow ponds,” or other accumulation of water north of the Kingsfield Road Dam in a reasonably safe and prudent manner.

59. Plaintiffs, and the Class, were and are the owners of parcels of real property, with a residence on each such property, in Escambia County, State of Florida, located adjacent to and/or immediately downstream from Eleven Mile Creek and the Kingsfield Road Dam.

60. The Defendant and/or its agents, employees, servants, and/or licensees breached their duty when they failed to properly maintain or operate the Kingsfield Road Dam.

61. The Defendant knew, or should have known, that not taking appropriate actions in preparation for the April 29, 2014 and April 30, 2014 storm and ensuing rainfall including, but not limited to, failing to implement a safe and appropriate release and flow of the accumulated groundwater and storm water north of the Kingsfield Road Dam was hazardous and/or dangerous.

62. At all times material hereto, the Defendant owed a duty to the Plaintiffs, and the Class, to inspect, reasonably maintain, properly repair, and operate the Kingsfield Road Dam.

63. As a direct and proximate result of the foregoing, the Plaintiffs, and the other members of the class, have been caused to be displaced and to sustain monetary loss as a result of damage to their real and personal property.

64. Additionally, or in the alternative, the Defendant was negligent in the conduct of its operation, management, maintenance, and control of the Kingsfield Road Dam, Eleven Mile Creek north of the Dam, and any “holding ponds,” “overflow ponds,” or other accumulation of water north of the Kingsfield Road Dam so as to cause an unusual and excessive increase of water levels which resulted in the overflow of flood waters.

65. If the Defendant had conducted its operations in an ordinarily prudent and safe manner, in the usual course of events, the damage to the Plaintiffs’, and the Class’s, parcels of real property, with a residence on each such property, would not have occurred or would have been lessened. Therefore, the Defendant’s negligence, recklessness, and/or other wrongful conduct were a proximate cause of said damage.

66. As a direct and proximate result of the foregoing, the Plaintiffs, and the other members of the class, have been caused to be displaced and to sustain monetary loss as a result of damage to their real and personal property.

COUNT II - TRESPASS

67. Plaintiffs, and the Class, re-allege the allegations set forth above as is fully set forth and incorporated herein.

68. The Defendant's failure to properly operate, manage, and maintain the Kingsfield Road Dam, Eleven Mile Creek north of the Dam, and any "holding ponds," "overflow ponds," or other accumulation of water north of the Eleven Mile Creek Dam caused a release of flood waters onto the Plaintiffs', and the Class's, property which was an unauthorized trespass.

69. The Defendant's trespass was the proximate cause of damages suffered by the Plaintiffs, and the other members of the class.

COUNT III - NUISANCE

70. Plaintiffs, and the Class, re-allege the allegations set forth above as is fully set forth and incorporated herein.

71. The Defendant's failure to properly operate, manage, and maintain the Kingsfield Road Dam, the adjoining levee, Eleven Mile Creek north of the Dam, and any "holding ponds," "overflow ponds," or other accumulation of water north of the Kingsfield Road Dam in compliance with the law and pertinent regulations constituted a nuisance.

72. The nuisances created by the Defendant proximately caused damages to the Plaintiffs, and the Class, and unreasonably interfered with their use and enjoyment of real and personal property.

73. The Defendant is liable for all damages proximately caused to the Plaintiffs, and the other members of the class, as a result of the nuisances they created.

COUNT IV – STRICT LIABILITY

74. Plaintiffs, and the Class, re-allege the allegations set forth above as is fully set forth and incorporated herein.

75. The Defendant's use of the Kingsfield Road Dam was a non-natural use of the property.

76. The Defendant's use of the Kingsfield Road Dam was an ultra-hazardous activity.

77. The Defendants knew that the potential harm that could result from its use of the Kingsfield Road Dam or the failure of the Kingsfield Road Dam was great.

78. The Defendant knew that if the Kingsfield Road Dam failed, there was a high potential for damage to property owners many miles away.

79. The Defendant's use of the Kingsfield Road Dam was not a matter of common usage.

80. Because of the nature of the Defendant's use of the Kingsfield Road Dam, it is strictly liable for the damages resulting from the Kingsfield Road Dam's failure.

WHEREFORE, the Plaintiffs pray for the following relief from this Court:

- a) Certify the Class identified herein;
- b) Appoint Plaintiffs as Class Representatives;
- c) Appoint Plaintiffs' counsel as Class Counsel;
- d) Enter judgment in Plaintiffs' favor;
- e) Award Plaintiffs and the Class damages for damage to their real and personal property; diminished value to their real property; loss of income from their real property; lost wages; loss of enjoyment of their property; and additional expenses related to annoyance and inconvenience in an amount fair and

reasonable to compensate them for their loss, as determined by a jury at trial,
along with pre and post judgment interest; and

f) Enter such other and further relief as this Court deems just and appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Dated: February 16, 2015.

Respectfully Submitted,

/s/ James L. Kauffman
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