

NO. B170227-C

ORANGEFIELD WATER SUPPLY
CORPORATION,
Plaintiff,

v.

KOCH PIPELINE COMPANY, L.P.,
MARLIN SERVICES, LLC, AND
CHALLENGER DRILLING, INC.,
Defendant.

IN THE DISTRICT COURT

OF ORANGE COUNTY, TEXAS

163rd JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

1. Discovery in this case should proceed under Level 3 of the Discovery Rules as provided in the Texas Rules of Civil Procedure ("TRCP").

2. Plaintiff is Orangefield Water Supply Corporation ("OWSC"). OWSC is a nonprofit, nonstock, member-owned water and sewer supply corporation organized and operating under the laws of the State of Texas, including Chapter 67 of the Texas Water Code. It is committed to providing safe, high quality water and sanitary sewer services to residents of the greater Orangefield community and conducts its business solely in Orange County, Texas.

3. Defendant Koch Pipeline Company, L.P. ("Koch") is a for-profit business entity, being a Delaware limited partnership. Koch regularly and systematically transacts business in Texas. Koch's Registered Office in Texas is 1999 Bryan Street, Suite 900, Dallas, Texas, 75201. Its Registered Agent in Texas at that address is CT Corporation System, which may be served through any means permitted by law.

4. Defendant Marlin Services, LLC ("Marlin") is a for-profit business entity, being a Louisiana limited liability company. Marlin regularly and systematically transacts business in Texas. Marlin's principal office in Texas is located in Winnie, Texas. Marlin's Registered Office in Texas is 1999 Bryan Street, Suite 900, Dallas, Texas, 75201. Its Registered Agent in Texas at

that address is CT Corporation System, which may be served through any means permitted by law.

5. Defendant Challenger Drilling, Inc. (“Challenger”) is a for-profit business entity, being a Texas business corporation. Challenger regularly and systematically transacts business in Texas. Challenger’s principal office in Texas is located in Tomball, Texas. Challenger’s Registered Office in Texas is 14102 Pine Meadow Lane, Tomball, Texas, 77377. Its Registered Agent in Texas at that address is Susan Lutz, who may be served through any means permitted by law.

6. All or a substantial portion of the events or actions made the basis of this lawsuit occurred and continue to occur in whole or in material part in this County. Therefore, venue is proper in this County.

7. The amount in controversy exceeds the minimum jurisdictional requirements of this Court, and this Court has no maximum jurisdictional limits for money claims. The claim for monetary relief is one for which this Court has subject matter jurisdiction and over which no other court possesses exclusive subject matter jurisdiction sufficient to divest this Court of subject matter jurisdiction. Therefore, this Court is a court of proper subject matter jurisdiction.

8. OWSC seeks only monetary relief from Koch, Marlin, and Challenger (collectively the “Defendants”) at this time, in an amount greater than \$1,000,000. Therefore, the provisions of the TRCP regarding Expedited Actions do not apply. *See*, TRCP 47 & 169.

9. OWSC provides potable water and sanitary sewer collection and treatment services to its customers, by means of a system of pipelines, pumps, elevated storage tanks, vacuum stations, wastewater treatment plant, and other components. Its water supply and sewer collection lines are laid underground and provide these essential services to residents of the Orangefield community located in Orange County, Texas.

10. As a part of its wastewater collection system, OWSC has vacuum system main lines. One of those lines runs in a generally north-south direction within the highway right of way of FM 1442 in Orange County, Texas, including a segment located between Nobles Street and Parkwood Street both of which connect to FM 1442. OWSC had obtained the necessary permits and approvals to install and operate the line to provide essential sanitary sewer services to the Orangefield community.

11. Koch was in the process of installing a natural gas or other petrochemical pipeline across Orange County, Texas, including in the OWSC service area. Marlin was its general contractor for the project, and Challenger was a subcontractor that holds itself out as being a specialist in making non-open trench bores under roads, waterways, and other pipelines.

12. Earlier this year, while installing Koch's pipeline and while acting without exercising ordinary prudence, the Defendants damaged OWSC's line. The damage caused OWSC's line to fail. Although Defendants made preliminary efforts to correct the situation they had caused, they ultimately ceased activity without effecting repairs and moved on with their pipeline laying activity.

13. In order to maintain sewer service to its customers, OWSC was forced to engage a vacuum truck contractor to remove the contents of sewer "pods" for about 100 homes in the affected area, at great daily expense. OWSC also encountered costs in multiple other ways, such as staff overtime, damage to its downstream vacuum station, and engineering consultant costs. OWSC also hired a contractor on an emergency basis to construct a temporary workaround to get the system back into operation and to avoid the continued financial and staffing burden caused by the outage proximately caused by Defendants' negligence.

14. The damaged line originally had been laid under a segment of approximately 10 pipelines that cross FM 1442 at the location in question. However, the temporary line had to be installed over those pipelines because the required vertical clearance to pass under the pipelines had increased. The increased depth, in turn, means that if it was installed to the new minimum depth, the vacuum line will not function properly within OWSC's wastewater collection system. In addition, the vacuum line is not supposed to cross over the top of the pipelines.

15. Because the temporary line fails to meet all operational and regulatory requirements, and reinstalling a replacement line on a permanent basis under the pipelines also will not work properly, OWSC is required to construct new collection facilities in the vicinity of the damaged line, and must also replace the existing system components that were damaged. The cost of doing these things presently is estimated to exceed \$2 Million, and may be as high as \$5 Million.

16. The Defendants' failure to use ordinary care, severally and jointly, in their operations, has proximately caused damage to OWSC for which OWSC seeks recovery by this lawsuit.

17. All conditions precedent to the relief sought in this lawsuit have been fulfilled or have been performed.

18. PRAYER FOR RELIEF. After due proceedings, OWSC prays for the following relief against the Defendants, jointly and severally:

- A. Actual, special and consequential damages;
- B. Pre-judgment interest as provided by law;
- C. Costs of court;

- D. Post-judgment interest as provided by law; and
- E. General and equitable relief.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

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