

**DISTRICT COURT
LA PLATA COUNTY, COLORADO**

Court Address:
1060 E. 2nd Avenue, Room 106, Durango, Colorado 81301

DATE FILED: September 7, 2018 7:07 PM
FILING ID: 22B186D15186A
CASE NUMBER: 2018CV30155

Plaintiff(s):

THE LAWRENCE M. COHEN FAMILY TRUST by and through Kristi Householder, Trustee; and

RYAN PATRICK DAVIS d/b/a HERMOSA CREEK GRILL; and

BLANCHE L. TUNE, individually; and

WESTERLY RV PARK, LLC, a Colorado Limited Liability Company; and

BRIAN D. LEIDAL, individually; and

EILEEN K. LEIDAL, individually; and

COLORADO OUTBACK ADVENTURES, LLC, a Colorado Limited Liability Company; and

LEONARD WESSMAN, individually; and

MIGDELINA WESSMAN, individually; and

KEITH HARPER, individually

v.

Defendant(s):

AMERICAN HERITAGE RAILWAYS, INC., a Florida Corporation; and

THE DURANGO & SILVERTON NARROW GAUGE RAILROAD COMPANY, a Colorado Corporation; and

ALLEN C. HARPER, individually

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<p>COMPLAINT AND JURY DEMAND</p>	

Plaintiffs, Kristi N. Householder, as Trustee of the Lawrence M. Cohen Family Trust, Ryan Patrick Davis d/b/a Hermosa Creek Grill, Blanche L. Tune, Westerly RV Park, LLC, Brian D. Leidal and Eileen K. Leidal, Colorado Outback Adventures, LLC, Leonard Wessman and Migdelina Wessman, and Keith Harper, by and through their undersigned counsel, file this Complaint and Jury Demand against Defendants American Heritage Railways, Inc., The Durango & Silverton Narrow Gauge Railroad Company, and Allen C. Harper, individually. In support thereof, Plaintiffs aver and allege as follows:

PRELIMINARY STATEMENT

1. The coal-fired steam locomotives of the Durango & Silverton Narrow Gauge Railroad Company (“D&SNGRC”) and/or American Heritage Railways, Inc. (“AHR”) have been an iconic and historic fixture in Durango and Silverton for decades. Despite their cherished place in these communities, however, the D&SNGRC’s and AHR’s

management has carelessly disregarded the known risk of fire inherent in the operation of its vintage locomotives. While traveling along its route during a historic drought in June of 2018, burning embers from one of the D&SNGRC's and/or AHR's coal-fired steam locomotives sparked a fire that burned for nearly two months, destroying over 54,000 acres of public and private land in southwestern Colorado, also creating the perfect storm for devastating flooding and mudslides, further injuring these Colorado communities.

2. Plaintiffs seek to hold the D&SNGRC, its parent company, AHR, and the companies' principal, Mr. Allen C. Harper, responsible for the harm they suffered as a result of what has come to be known as the "416 Fire." As Mr. Harper has stated, "We are all guardians of history. The best way to preserve history is to make its presentation so interesting and exciting that people will pay a fair price for the experience."¹ Plaintiffs value the history of their communities and the preservation of their environment higher than corporate profit. By filing this lawsuit, Plaintiffs, as guardians of Durango and Silverton history, seek to safeguard the natural beauty of the San Juan National Forest and protect future generations from devastating wildfires that can be avoided through the exercise of due care and diligence. Plaintiffs send a message that while the coal-fired steam locomotives of the D&SNGRC and/or AHR are beloved in these communities and have a place in the future of Durango and Silverton, the management of the D&SNGRC and AHR must be held accountable for its actions and must implement meaningful and lasting changes to ensure that a disaster like the "416 Fire" never happens again.

PARTIES

3. Plaintiffs hereby incorporate paragraphs 1 through 2 above as if each paragraph were set forth herein in its entirety.
4. Kristi Householder is the trustee of the Lawrence M. Cohen Family Trust, which presently holds property located at 13227 CR 250, Durango, CO 81301. At all relevant times, Kristi Householder has been the trustee and beneficiary of the L.M. Cohen Family trust.
5. Plaintiff Ryan Patrick Davis d/b/a Hermosa Creek Grill is a sole proprietor with a business operating at 32223 HWY 550, Durango, CO 81301.
6. Plaintiff Blanch L. Tune is an individual owning property at 696 Irongate Way, Durango, CO 81301.
7. Plaintiff Westerly RV Park, LLC is a Colorado Limited Liability Company with a principal place of business at 6440 County Road 203, Durango, CO 81301.

¹ American Heritage Railways, Inc., *Home*, <http://www.americanheritagerailways.com/> (last visited Sept. 7, 2018).

8. Plaintiffs Brian D. Leidal and Eileen K. Leidal are individuals who own and reside at property located at 13492 CR 250, Durango, CO 81301.
9. Plaintiff Colorado Outback Adventures, LLC (“Colorado Outback Adventures”) is a Colorado Limited Liability Company with a principal place of business at 555 Main Avenue, Durango, CO 81301.
10. Plaintiffs Leonard Wessman and Migdelina Wessman are individuals who own and reside at property located at 991 CR 201, Durango, CO 81301.
11. Plaintiff Keith Harper is an individual who owns and resides at property located at 54 Thompson Lane, Durango, CO 81301.
12. Defendant AHR is a foreign (Florida) corporation with a principal place of business at 479 Main Avenue, Durango, CO 81301.
13. Defendant D&SNGRC is a Colorado corporation with a principal place of business at 479 Main Avenue, Durango, CO 81301.
14. Defendant Allen C. Harper is a Colorado resident living in Durango, Colorado, and is a principal of Defendants AHR and D&SNGRC.
15. Upon information and belief, Defendant AHR owns Defendant D&SNGRC and both Defendant AHR and Defendant D&SNGRC are the owners of the coal-fired steam locomotive in operation on June 1, 2018 which Plaintiffs allege caused 416 Fire (the “Train”).

JURISDICTION AND VENUE

16. Plaintiffs hereby incorporate paragraphs 1 through 15 above as if each paragraph were set forth herein in its entirety.
17. This Court has subject matter jurisdiction over this action pursuant to the Constitution of the State of Colorado, Article VI, Section 9.
18. This Court has personal jurisdiction over Defendants by virtue of Defendants’ operations and presence in Colorado; by their transacting business in and directed at Colorado; by their purposeful availment of the benefits and privileges of Colorado law; and by committing the tortious acts and omissions described herein, with resulting injury, damages, loss, and/or other consequences occurring in the State of Colorado.
19. Venue is proper in La Plata County District Court pursuant to C.R.C.P. 98(c)(1) because Defendants reside and do business in La Plata County, Colorado; and pursuant to

C.R.C.P. 98(c)(5) because the tortious acts and omissions described herein, giving rise to the claims, injuries, and damages asserted herein, occurred in La Plata County, Colorado.

FACTUAL ALLEGATIONS

20. Plaintiffs hereby incorporate paragraphs 1 through 19 above as if each paragraph were set forth herein in its entirety.
21. The Defendants operate various diesel and coal-fired steam locomotives owned by Defendant D&SNGRC and/or AHR that travel approximately forty-five miles one way on three-foot-wide narrow gauge tracks between Durango, Colorado and Silverton, Colorado.
22. At all relevant times hereto, Defendant AHR owned Defendant D&SNGRC and both were managed, in part, by Defendant Allen C. Harper. Upon information and belief, Defendant Allen C. Harper is responsible for various day-to-day decisions associated with both Defendant D&SNGRC and Defendant AHR.
23. Upon information and belief, Defendant AHR and Defendant D&SNGRC share the exact same set of corporate officers and board of directors.
24. Defendant D&SNGRC and Defendant AHR are for-profit enterprises that utilize their locomotives to carry passengers in exchange for monetary consideration.
25. Upon information and belief, Defendant D&SNGRC and/or Defendant AHR utilize two distinct types of locomotives when carrying passengers between Durango and Silverton. While both types of locomotives owned and utilized by Defendant D&SNGRC and/or Defendant AHR are capable of making the trip from Durango to Silverton, the diesel locomotives are not able to haul as many cars or as many fee-paying customers on each trip as the coal-fired steam locomotives.
26. Defendant D&SNGRC's and/or Defendant AHR's coal-fired steam locomotives emit sparks, burning cinders, burning embers, and ash while in operation which can start fires on the land next to the railroad tracks, while the diesel powered locomotives do not.
27. The emission of sparks, burning cinders, burning embers, and ash are more prevalent when the heavier coal-fired steam locomotives are in operation and when those locomotives are working harder to pull cars up steeper grades on the train route.
28. Defendant D&SNGRC and/or Defendant AHR's coal-fired steam locomotives, through the sparks, cinders, and embers they emit, regularly start fires along the tracks they travel between Durango and Silverton.

29. The Defendants are aware of these fires and employ crews to follow each train in a car hauling water, known as a “Pop Car,” tasked with extinguishing the fires started by the locomotives adjacent to the tracks between Durango and Silverton.²
30. Upon information and belief, in early 2018, and before June 1, 2018, Defendants laid-off or otherwise terminated a significant portion of its fire crews (also known as the Maintenance of Way or “MOW” crew) that operated the Pop Cars.
31. Defendants replaced the terminated MOW crews with employees much less experienced in fire mitigation and firefighting techniques.
32. In addition to the Pop Cars, Defendant D&SNGRC and/or Defendant AHR contract with a helicopter service which, from time to time, and at the discretion of Defendants, aids the Pop Cars in extinguishing fires started by Defendant D&SNGRC’s and/or Defendant AHR’s coal-fired steam locomotives.
33. Upon information and belief, Defendant D&SNGRC and/or Defendant AHR own(s) a right-of-way along the length of the railroad track between Durango and Silverton. The right-of-way extends outward from the tracks, at some points extending 300 feet away from the tracks.
34. Much of Defendant D&SNGRC’s and/or Defendant AHR’s right-of-way is covered in brush and trees which require fire mitigation such as tree cutting, brush removal, and clearing to reduce fuel for potential fires.
35. Defendant D&SNGRC and Defendant Harper have stated that Defendant D&SNGRC does not perform fire mitigation, or fuel reduction, every year along the entirety of the route between Durango and Silverton.
36. 2018 marked an abnormal year for dryness or drought throughout Colorado. As of May 29, 2018, the National Integrated Drought Information System (“NIDIS”) had determined that the areas wherein the Defendants operate their locomotives was in a state of “Exceptional Drought,” the highest level drought rating available on their scale.³ This reflects the fact that in the winter of 2017-2018, La Plata County snowfall in the Animas River Basin was less than forty percent (40%) of average, and that snowpack in Southwest Colorado was at three percent (3%) of its historic average as of the week of May 21, 2018.

² See, e.g., Jonathan Romeo, *Durango train faces tough questions going forward*, THE DURANGO HERALD (Jun. 15, 2018), <https://durangoherald.com/articles/228774>.

³ National Integrated Drought Information System, *Summary of Drought for Colorado*, <https://www.drought.gov/drought/states/colorado> (last visited Sept. 7, 2018).

37. On or about May 1, 2018, La Plata County officials had implemented Stage 1 Fire Restrictions. In early May 2018, City of Durango Officials had cancelled the annual firework show coinciding with the City's Fourth of July celebration due to looming fire danger.
38. On or about May 31, 2018, Durango fire officials raised the fire restrictions again due to fire concerns and looming fire danger. On or about June 1, 2018, Stage 2 fire restrictions took effect, causing a ban on all campfires and open flames, together with various other activities that pose a fire danger, even in developed campgrounds and recreation areas. La Plata County Sheriff Sean Smith was quoted, in conjunction with the publication of the Stage 2 Fire Restriction, saying that people will be ticketed for throwing cigarette butts out of their car windows.
39. On May 31, 2018, Durango Fire Protection District Chief Hal Doughty was quoted as saying, "We very well may be sitting together tomorrow facing a fire in this community . . ." in the Durango Herald, a local news publication in La Plata County, Colorado.⁴
40. The Defendants knew or should have known of the heightened Fire Restriction in place on June 1, 2018.
41. High winds were present on June 1, 2018.
42. The Defendants made the decision to operate a Defendant D&SNGRC and/or a Defendant AHR coal-fired steam Train, despite the elevated Fire Restriction in place.
43. In the weeks prior to June 1, 2018, Defendant D&SNGRC's and/or Defendant AHR's Pop Cars extinguished several spot fires started by the locomotives.
44. On or around 9:45 a.m. on June 1, 2018, eyewitnesses observed a plume of smoke rising from an area next to a steeply graded portion of track that the coal-fired steam Train had passed moments earlier.
45. Upon information and belief, it was one or more burning embers, burning cinders, and/or sparks emitting from the coal-fired steam Train that started the fire that resulted in the plume of smoke seen by the eyewitness.
46. This fire, which became known as the "416 Fire," was first reported to emergency dispatch by one or more eyewitnesses at approximately 9:45 a.m. on June 1, 2018.
47. No employees of Defendant D&SNGRC and/or Defendant AHR called in the 416 Fire to emergency dispatch.

⁴ See Jerry McBride, *Tougher fire restrictions take effect Friday in La Plata County*, THE DURANGO HERALD (May 31, 2018), <https://durangoherald.com/articles/226307>.

48. One or more eyewitnesses, who were not affiliated with Defendants, immediately traveled to the plume of smoke with a truck outfitted with a water tank and hose specifically for purposes of putting out the fires that Defendant D&SNGRC's and/or Defendant AHR's trains frequently started, and started trying to put down the fire.
49. The MOW crew in the Pop Car that was following behind the train on June 1, 2018, arrived on the scene at roughly the same time as the good samaritan eye witnesses. However, the MOW crew were unable to put down the fire, because they were insufficiently trained by the Defendants and/or because the firefighting equipment provided on the Pop Car was wholly insufficient to appropriately respond to the fire.
50. Although the Defendants sometimes hired a helicopter with a water bucket to follow behind the Defendant D&SNGRC's and/or Defendant AHR's locomotives to assist with putting out fires started by the locomotives, the Defendants decided not to hire the helicopter to follow the coal-fired steam Train the morning of June 1, 2018.
51. By not hiring the helicopter to follow the coal-fired steam Train or utilizing a water tanker car to travel with the Train on the morning of June 1, 2018, the same morning the heightened fire restrictions were put in place due to the severe drought, and in spite of the high winds, the Defendants saved themselves money.
52. After Defendant D&SNGRC's and/or Defendant AHR's employees in the Pop Cars were unsuccessful in putting out the fire, a helicopter was called in. However, when the helicopter initially arrived it was not carrying a water bucket.
53. Defendant D&SNGRC and/or Defendant AHR were unable to contain or extinguish the 416 Fire once it started. By the time a helicopter returned with a water bucket, the 416 Fire was beyond containment.
54. Coupled with ample fire fuel, exceedingly dry and windy conditions, the steep grade of the burning land, and Defendant D&SNGRC's and/or Defendant AHR's MOW crew's lack of experience and inadequate equipment, the 416 Fire was unable to be put down and it quickly spread.
55. The Defendants made the decision to not perform necessary fire mitigation or reduce fire fuels for years in the steeply graded location where the 416 Fire began.
56. Defendants could have taken several cautionary and prudent measures to limit the potential of fire on June 1, 2018. Defendants took none of these steps despite being aware that using any of these precautions could have prevented a fire like the 416 Fire from starting and quickly getting out of control.

57. Defendants could have performed fire mitigation or reduction of fire fuels along Defendant D&SNGRC's and/or Defendant AHR's right-of-way prior to June 1, 2018. Defendants did not take this step despite being aware that taking this precaution could have prevented a fire like the 416 Fire from starting and quickly getting out of control.
58. Defendants could have employed an experienced and knowledgeable MOW crew on June 1, 2018. Defendants did not take this step despite being aware that taking this precaution could have prevented a fire like the 416 Fire from starting and quickly getting out of control.
59. Defendants could have made the decision to run smaller diesel locomotives on June 1, 2018. Defendants did not take this step despite being aware that taking this precaution could have prevented a fire like the 416 Fire from starting.
60. Defendants could have run multiple coal-fired steam locomotives with each pulling fewer cars or used multiple coal-fired steam locomotives on a single train on June 1, 2018, both meaning less work for the locomotives and less emission of burning embers, cinders, or sparks. Defendants did not take this step despite being aware that taking this precaution could have prevented a fire like the 416 Fire from starting.
61. Defendants could have using a combination of diesel/coal-fired steam locomotives as well as rail busses and motor coaches such as the approach Defendants utilized during the last severe drought in the area in 2002 and, in fact, during operations after the 416 Fire erupted. Defendants did not take this step despite being aware that taking this precaution could have prevented a fire like the 416 Fire from starting.
62. Defendants could have made the decision to follow the Train with a diesel water tanker on June 1, 2018. Defendants did not take this step despite being aware that taking this precaution could have prevented a fire like the 416 Fire from starting and quickly getting out of control.
63. Defendants could have engaged the helicopter they had previously contracted with to help combat any fires the Train started on June 1, 2018. Defendants did not take this step despite being aware that taking this precaution could have prevented a fire like the 416 Fire from starting and quickly getting out of control.
64. Defendants could have made the decision to simply voluntarily cease all operations on June 1, 2018. Defendants did not take this step despite being aware that taking this precaution *would* have prevented a fire like the 416 Fire from starting.

65. The General Manager for Defendant D&SNGRC, John Harper, stated after the 416 Fire began on June 1, 2018, that Defendant D&SNGRC would cease train operations “[d]ue to the current conditions, due to the Stage 2 restrictions. . .”⁵
66. The 416 Fire ravaged over 54,000 acres of private and public land, burning timber, brush, and soil for nearly two months.
67. While active, the 416 Fire directly led to the evacuation of residents located in and around Hermosa, Colorado and those other areas near the 416 Fire, the closure of certain sections of Highway 550, the evacuation of businesses located in and around Hermosa, Colorado and other areas near the 416 Fire, and caused extensive property damage.
68. As a result of the 416 Fire, smoke filled the valleys and landscape in and around Durango, Silverton, and Hermosa, Colorado for extended periods of time.
69. After the 416 Fire had subsided, the soils and organic matter impacted by the 416 Fire became unstable during various rain events.
70. These unstable soils and impacted organic matter resulted in mudslides and flooding throughout the burn areas and those areas near it when subjected to the usual summer-time rains in the burn areas.
71. These mudslides and flooding severely damaged homes and property, resulting in the need for repair and mitigation.
72. These mudslides and flooding also impacted and interrupted business and road access throughout the affected areas, resulting in lost wages, income, sales, and other extensive economic harm.
73. The flooding and mudslides were a direct and foreseeable result of the 416 Fire, and would not have occurred but for the scorched earth left behind by the 416 Fire.
74. The burn area and the mudslides have drastically altered the properties in and around Hermosa, Colorado, causing, in part, direct property damage and a loss of property value due to loss of view or the property damage itself.
75. It is likely that the flooding and mudslides will continue to damage property for the foreseeable future.

⁵ Herald Staff, *Wildfire burns 1,100 acres; about 825 homes evacuated*, THE DURANGO HERALD (June 1, 2018), <https://durangoherald.com/articles/226517>.

76. During the month of June 2018, while the 416 Fire burned, the City of Durango sales taxes were 5.6 percent lower when compared to June 2017. The City of Durango's lodger's tax was down by 13.2 percent when compared to June 2017.
77. Kristi N. Householder is Trustee of Plaintiff L. M. Cohen Family Trust which owns a home at 13227 CR 250 in Durango, CO 81301. On or about July 17, 2018 and July 24, 2018, heavy rains came. The floods and mudslides in the 416 Fire burn areas caused, in part, severe and significant property damage to the home at 13227 CR 250, necessitating repair and, together with loss of view, diminished the value of the property.
78. Plaintiff Ryan Davis d/b/a as Hermosa Creek Grill operates a restaurant located at 32223 US-550, Durango, CO 81301 ("Hermosa Creek Grill"). Hermosa Creek Grill was within the evacuation zone associated with the 416 Fire, and closed its business during the evacuation period. During the evacuation period, Hermosa Creek Grill lost foodstuffs and other inventory to spoil. In addition to evacuating its premises, the Hermosa Creek Grill experienced significant loss of business and other associated damages while the 416 Fire was active. In order to maintain its workforce, Hermosa Creek Grill was forced to pay wages to its employees or face reopening with no personnel to continue its daily operations. Hermosa Creek Grill suffered these losses as a direct result of the 416 Fire.
79. Plaintiff Blanche L. Tune owns property located at 696 Irongate Way, Durango, CO 81301 (the "Tune Property"). The 416 Fire burned approximately five (5) acres of Tune Property. Then, on or about July 17, 2018 and July 24, 2018, heavy rains came. The floods and mudslides in the 416 Fire burn areas caused, in part, severe and significant physical damage to the Tune Property, necessitating repair. The burn area of the 416 Fire and the floods and mudslides have resulted in a loss in value of the Tune Property.
80. Plaintiff Westerly RV Park, LLC owns and operates a recreational vehicle ("RV") park located at 6440 CR 259 in Durango, CO 81301 (the "Westerly RV Park"). Prior to the 416 Fire, the Westerly RV Park was generally occupied by customers and had numerous reservations booked for the month of June 2018. As a result of the 416 Fire, nearly all of the reservations were cancelled, and few, if any, bookings occurred. The Westerly RV Park suffered a complete loss of business during the month of June 2018 due to the 416 Fire and these business revenue damages continued through the summer.
81. Plaintiffs Brian D. Leidal and Eileen K. Leidal own and reside in a home at 13492 CR 250, Durango, CO 81301. On or about July 17, 2018 and July 24, 2018, heavy rains came. The floods and mudslides in the 416 Fire burn areas caused, in part, severe and significant property damage to Plaintiffs' home at 13492 CR 250, necessitating repair and, together with loss of view, diminished the value of the property.
82. Plaintiff Colorado Outback Adventures operates a business in and around Durango and Hermosa, Colorado. Colorado Outback Adventures provides river rafting tours down the Animas River, jeep rentals, jeep tours, Mesa Verde tours, and all-terrain vehicle ("ATV")

rentals in and around Durango, Colorado and Purgatory Ski Resort. Further, Colorado Outback Adventures operates a go-kart track at Purgatory Ski Resort. Throughout June of 2018, the intermittent closures to Highway 550 outside of Hermosa, Colorado, cut Plaintiff Colorado Outback Adventures off from their place of business at Purgatory Ski Resort. The road closures and other impacts from the fire completely eliminated Colorado Outback Adventures' ability to operate their business as normal and severely diminished the customer base and business revenues it would have had across all of its business endeavors but for the 416 Fire. In order to maintain its workforce, Colorado Outback Adventures was forced to pay wages to its employees for little work done in return or face operating after the 416 Fire with no employees. Colorado Outback Adventures suffered these losses as a direct result of the 416 Fire.

83. Plaintiffs Leonard Wessman and Migdelina Wessman own and reside in a home at 991 CR 201, Durango, CO 81301. Plaintiffs Leonard and Migdelina Wessman had to be evacuated for approximately one (1) month and the smoke from the 416 Fire caused, in part, internal damage to their home, necessitating repair and, together with loss of view, diminished the value of the property.
84. Plaintiff Keith Harper owns and resides in a home at 54 Thompson Lane, Durango, CO 81301. On or about July 17, 2018 and July 24, 2018, heavy rains came. The floods and mudslides in the 416 Fire burn areas caused, in part, severe and significant property damage to the home at 54 Thompson Lane, necessitating repair and, together with loss of view, diminished the value of the property.

FIRST CLAIM FOR RELIEF
Liability Pursuant to C.R.S. § 40-30-103
(Against Defendants AHR and/or D&SNGRC)

85. Plaintiffs hereby incorporate paragraphs 1 through 84 above as if each paragraph were set forth herein in its entirety.
86. Under C.R.S. § 40-30-103, "Every railroad company operating its line of road, or any part thereof, within this state shall be liable for all damages by fires that are set out or caused by operating any such line of road, or any part thereof, in this state, whether negligently or otherwise."
87. Under C.R.S. § 40-30-103, all such damages may be recovered by injured parties in any court of competent jurisdiction.
88. An action pursuant to C.R.S. § 40-30-103 must be brought within two years after the injury accrues.
89. Defendants D&SNGRC and AHR are railroad companies operating a line of road in the State of Colorado.

90. Defendants' actions or inactions in operating the D&SNGRC's and/or AHR's line of road in the State of Colorado on June 1, 2018, set out or caused the 416 Fire.
91. Plaintiffs commence this action within the two-year limit prescribed by C.R.S. § 40-30-103.
92. Plaintiffs own property and/or businesses damaged as a result of the 416 Fire, including but not limited to, burn damage, smoke damage, diminished property values, loss of business revenue, economic harm, and/or damages caused by flooding, water, and/or mudslides following the 416 Fire.
93. The 416 Fire and/or resulting flooding, water, and/or mudslides directly and proximately caused Plaintiffs' injuries and damages in amounts to be proven and determined by evidence at trial.

SECOND CLAIM FOR RELIEF

Negligence

(Against Defendants AHR and/or D&SNGRC)

94. Plaintiffs hereby incorporate paragraphs 1 through 93 above as if each paragraph were set forth herein in its entirety.
95. Defendants have a duty to exercise reasonable care and diligence in operating the D&SNGRC's and/or AHR's diesel and coal-fired steam locomotives in the State of Colorado.
96. This duty includes, but is not limited to, instituting and employing proper safety measures on its diesel and coal-fired steam locomotives to contain, or otherwise diminish the effect of, the sparks, burning cinders, burning embers, and ash emitted during the locomotives' operation.
97. This duty includes, but is not limited to, performing routine fire mitigation along the railroad tracks.
98. This duty includes, but is not limited to, maintaining the right-of-way along the railroad tracks to remove brush, shrubbery, trees, and other fire fuels.
99. This duty includes, but is not limited to, taking appropriate precautions to protect surrounding land, property, residences, and community members from fire and damages resulting therefrom.

100. This duty includes, but is not limited to, providing sufficient training and supervision to employees of D&SNGRC and/or AHR.
101. This duty includes, but is not limited to, providing sufficient training and supervision to operators of the Pop Cars that follow the D&SNGRC's and/or AHR's locomotives.
102. The duty includes, but is not limited to, procuring, maintaining, utilizing, and/or otherwise providing appropriate firefighting equipment and proper training to D&SNGRC's and/or AHR's employees on the proper use of such firefighting equipment.
103. Defendants knew or should have known of the extreme drought conditions plaguing southwestern Colorado in May and June of 2018.
104. Defendants knew or should have known of the Fire Restrictions in place in La Plata County, Colorado in May and June of 2018.
105. Defendants knew or should have known that the D&SNGRC's and/or AHR's coal-fired steam locomotives emit sparks, burning cinders, burning embers, and ash during their operation which can land on the ground next to the railroad tracks and spark fires.
106. Defendants knew or should have known that the D&SNGRC's and/or AHR's coal-fired steam locomotives previously caused fires, and as a result, Defendants D&SNGRC and/or AHR employed Pop Cars outfitted with water tanks to follow behind the locomotives to watch for fires and put out any flames.
107. Defendants breached their duty to exercise reasonable care and diligence in operating their coal-fired steam Train in the State of Colorado on June 1, 2018.
108. Defendants breached this duty by operating and maintaining the Train in a manner in which sparks, burning cinders, burning embers, and/or ash from the Train were allowed to contact the ground next to the railroad tracks and spark the 416 Fire.
109. Defendants breached this duty by failing to perform adequate fire mitigation along the railroad tracks.
110. Defendants breached this duty by failing to maintain the right-of-way along the railroad tracks to remove brush, shrubbery, trees, and other fire fuels susceptible of catching fire.
111. Defendants breached this duty by failing to adequately train and supervise the employees of D&SNGRC and/or AHR.

112. Defendants breached this duty by failing to adequately train and supervise the operators of the Pop Car following the D&SNGRC's and/or AHR's diesel and coal-fired steam locomotives.
113. Defendants breached this duty by failing to procure, maintain, and/or otherwise provide appropriate firefighting equipment and proper training to D&SNGRC's and/or AHR's employees on the proper use of such firefighting equipment.
114. Thus, Defendants were negligent.
115. Plaintiffs own property and/or businesses damaged as a result of the 416 Fire, including but not limited to, burn damage, smoke damage, diminished property values, loss of business revenue, economic harm, and/or damages caused by flooding, water, and/or mudslides following the 416 Fire.
116. The 416 Fire and/or resulting flooding, water, and/or mudslides directly and proximately caused Plaintiffs' injuries and damages in amounts to be proven and determined by evidence at trial.

THIRD CLAIM FOR RELIEF
Negligence
(Against Defendant Allen C. Harper)

117. Plaintiffs hereby incorporate paragraphs 1 through 116 above as if each paragraph were set forth herein in its entirety.
118. An officer of a corporation may be held personally liable for his individual acts of negligence, even if those acts are committed on behalf of the corporation.
119. Defendant Harper has a duty to exercise reasonable care and diligence in operating and managing Defendants AHR and D&SNGRC.
120. This duty includes, but is not limited to, responsibly overseeing and managing the operation of the D&SNGRC's and/or AHR's diesel and coal-fired steam locomotives in the State of Colorado.
121. This duty includes, but is not limited to, instituting and employing proper safety measures on the D&SNGRC's and/or AHR's diesel and coal-fired steam locomotives to contain or otherwise diminish the effect of, the sparks, burning cinders, burning embers, and ash emitted during the locomotives' operation.
122. Defendant Harper knew or should have known of the extreme drought conditions plaguing southwestern Colorado in May and June of 2018.

123. Defendant Harper knew or should have known of the Fire Restrictions in place in La Plata County, Colorado in May and June of 2018.
124. Defendant Harper knew or should have known that the D&SNGRC's and/or AHR's coal-fired steam locomotives emit sparks, burning cinders, burning embers, and ash during their operation which can land on the ground next to the railroad tracks and spark fires.
125. Defendant Harper knew or should have known that the D&SNGRC's and/or AHR's coal-fired steam locomotives previously caused fires, and as a result, Defendants AHR and/or Defendants D&SNGRC employed Pop Cars outfitted with water tanks to follow behind the locomotives to watch for fires and put out any flames.
126. Defendant Harper breached his duty to responsibly oversee and manage the operation of the D&SNGRC's and/or AHR's coal-fired steam locomotives on June 1, 2018.
127. Defendant Harper breached this duty by authorizing the Train to operate during extreme drought conditions, despite his knowledge of the locomotive's propensity to emit sparks, burning cinders, burning embers, and ash during its operation which can land on the ground next to the railroad tracks and spark fires.
128. Thus, Defendant Harper was negligent.
129. Plaintiffs own property and/or businesses damaged as a result of the 416 Fire, including but not limited to, burn damage, smoke damage, diminished property values, loss of business revenue, economic harm, and/or damages caused by flooding, water, and/or mudslides following the 416 Fire.
130. The 416 Fire and/or resulting flooding, water, and/or mudslides directly and proximately caused Plaintiffs' injuries and damages in amounts to be proven and determined by evidence at trial.

FOURTH CLAIM FOR RELIEF

Trespass

(Against Defendants AHR and/or D&SNGRC)

131. Plaintiffs hereby incorporate paragraphs 1 through 130 above as if each paragraph were set forth herein in its entirety.
132. By operating the coal-fired steam Train on June 1, 2018, Defendants caused the 416 Fire to enter the real property of Plaintiff Tune, as the locomotive was operated and maintained in a manner that allowed sparks, burning cinders, burning embers, and/or ash

from the locomotive to land on the ground next to the railroad tracks and spark the 416 Fire.

133. As the 416 Fire spread, it entered and damaged Plaintiff Tune's real property.
134. As the 416 Fire spread, it created smoke which crept into people's homes and other structures in proximity to the Fire.
135. The smoke caused by the 416 Fire entered and damaged Plaintiffs Wessmans' real property.
136. As the 416 Fire Spread, it destroyed vegetation and destabilized soils and organic matter, creating conditions that resulted in flooding, water, and/or mudslides.
137. The flooding, water, and/or mudslides entered and damaged Plaintiffs Lawrence M. Cohen Family Trust's, Leidals', Tune's, and Harper's real property.
138. The 416 Fire and/or resulting smoke, flooding, water, and/or mudslides was a physical intrusion without permission upon the real property of Plaintiffs Lawrence M. Cohen Family Trust, Tune, B. Leidal, E. Leidal, L. Wessman, M. Wessman, and Harper, constituting a trespass.
139. Plaintiffs Lawrence M. Cohen Family Trust's, Tune's, B. Leidal's, E. Leidal's, L. Wessman's, M. Wessman's, and Harper's real property was damaged as a result of the 416 Fire and/or resulting smoke, flooding, water, and/or mudslides.
140. Plaintiffs Lawrence M. Cohen Family Trust, Tune, B. Leidal, E. Leidal, L. Wessman, M. Wessman, and Harper have either actual or constructive possession of real property damaged by the 416 Fire and/or resulting smoke, flooding, water, and/or mudslides.
141. The 416 Fire and/or resulting smoke, flooding, water, and/or mudslides directly and proximately caused Plaintiffs Lawrence M. Cohen Family Trust's, Tune's, B. Leidal's, E. Leidal's, L. Wessman's, M. Wessman's, and Harper's injuries and damages in amounts to be proven and determined by evidence at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray this Honorable Court to:

1. Enter judgment in favor of Plaintiffs and against Defendants for all damages and losses incurred by Plaintiffs as a result of the 416 Fire, including the smoke, flooding, water, and/or mudslide damage caused by and following the 416 Fire;
2. Award pre-judgment and post-judgment interest;

3. Award costs, expenses, and attorneys' fees; and
4. Award such other and further relief as this Court deems just and proper.

JURY DEMAND

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted this 7th day of September, 2018.

DUTHIE SAVASTANO & BRUNGARD, PLLC

(Original signature on file)

/s/ Bobby C. Duthie

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**BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.**

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