

COMMONWEALTH OF KENTUCKY
LINCOLN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. 20-CI-_____

FILED ELECTRONICALLY

DAVID DOLEN and LISA DOLEN

PLAINTIFFS

V.

TEXAS EASTERN TRANSMISSION, LP

Serve: CT Corporation System
306 West Main Street
Frankfort, Kentucky 40601

SPECTRA ENERGY OPERATING COMPANY, LLC

Serve: CT Corporation System
306 West Main Street
Frankfort, Kentucky 40601

SPECTRA ENERGY TRANSMISSION RESOURCES, LLC

Serve: CT Corporation System
1999 Bryan Street
Suite 900
Dallas, Texas 75201

SPECTRA ENERGY TRANSMISSION SERVICES, LLC

Serve: CT Corporation System
1999 Bryan Street
Suite 900
Dallas, Texas 75201

SPECTRA ENERGY CORP.

Serve: CT Corporation System
1999 Bryan Street
Suite 900
Dallas, Texas 75201

ENBRIDGE (U.S.), INC.

Serve: CT Corporation System
1999 Bryan Street
Suite 900
Dallas, Texas 75201

and

UNKNOWN DANVILLE COMPRESSOR STATION OPERATOR

DEFENDANTS

COMPLAINT

Come Plaintiffs, David Dolen and Lisa Dolen, by counsel, and for their Complaint against Defendants, Texas Eastern Transmission, LP, Spectra Energy Operating Company, LLC, Spectra Energy Transmission Resources, LLC, Spectra Energy Transmission Services, LLC, Spectra Energy Corp., Enbridge (U.S.), Inc., and Unknown Danville Compressor Station Operator, (collectively “Defendants”), state as follows:

PARTIES

1. Plaintiff, David Dolen, was at all times relevant herein, a citizen and resident of the Commonwealth of Kentucky, 80 Indian Camp Road, Stanford, Lincoln County, Kentucky 40484; he has since moved and remains a Kentucky citizen and resident.

2. Plaintiff, Lisa Dolen, is and was at all times relevant herein, a citizen and resident of the Commonwealth of Kentucky, 80 Indian Camp Road, Stanford, Lincoln County, Kentucky 40484; she has since moved and remains a Kentucky citizen and resident.

3. Plaintiff, Lisa Dolen, is and was on the date relevant herein, the lawful spouse of Plaintiff, David Dolen.

4. Defendant, Texas Eastern Transmission, LP, is a foreign limited partnership with a principal place of business in Houston, Texas, and a registered agent of CT Corporation System, 306 West Main Street, Suite 512, Frankfort Kentucky 40601.

5. Defendant, Spectra Energy Operating Company, LLC, is a foreign limited liability company with a principal place of business in Houston, Texas, and a registered agent of CT Corporation System, 306 West Main Street, Suite 512, Frankfort Kentucky 40601.

6. Defendant, Spectra Energy Transmission Resources LLC, is a limited liability company and General Partner of Defendant, Texas Eastern Transmission, LP, having a principal place of business in Houston, Texas, and a registered agent of CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

7. Defendant, Spectra Energy Transmission Services, LLC, is a limited liability company and General Partner of Defendant, Texas Eastern Transmission, LP, with a principal place of business in Houston, Texas, and a registered agent of CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

8. Defendant, Spectra Energy Corp., is a foreign corporation with a principal place of business in Houston, Texas, and a registered agent of CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

9. Defendant, Enbridge (U.S.), Inc., is a corporation with a principal place of business in Houston, Texas, and a registered agent of CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

10. Defendant, Unknown Danville Compressor Station Operator, is upon information and belief a resident and citizen of the Commonwealth of Kentucky and will be more accurately named once his or her identity is provided in discovery.

JURISDICTION AND VENUE

11. The circumstances giving rise to this Complaint took place in Lincoln County, Kentucky.

12. The amount of damages sustained by Plaintiff are in excess of the minimum jurisdictional limits of the Lincoln County Circuit Court.

13. Lincoln County Circuit Court has jurisdiction over this matter and venue is appropriate in this County.

14. This Court has jurisdiction over this matter because: (1) Plaintiffs are not asserting federal claims and (2) Defendant, Unknown Danville Compressor Station Operator, is upon information and belief a citizen of Kentucky. As Plaintiffs and this Defendant are all residents and citizens of Kentucky, this lawsuit is not subject to removal for diversity jurisdiction, under 28 U.S.C. § 1441(b).

15. Defendant, Unknown Danville Compressor Station Operator, is a necessary party to this matter because it is believed that his/her negligent, grossly negligent, wanton and/or reckless actions contributed to Plaintiffs' injuries.

FACTS

16. At all times relevant hereto, Defendants owned, controlled, operated and/or supervised the Texas Eastern Transmission Pipeline ("the Pipeline") -- a pressurized bi-directional onshore gas pipeline system that is approximately 9,000 miles long, and which moves approximately 20% of all natural gas in the United States.

17. The Pipeline transports gas from the Gulf of Mexico in Texas and Louisiana through Mississippi, Arkansas, Tennessee, Missouri, Kentucky, Illinois, Indiana, Ohio, and Pennsylvania, to the New York City area. Construction of the Pipeline began in the 1940s. There are three (3) lines -

- Lines 10, 15 and 25 -- that run parallel through Central Kentucky, including Lincoln County. There are numerous compressor stations along the entire length of the Pipeline, one of which is located in Danville, Kentucky.

18. A section of the Pipeline failed and exploded in Lincoln County, Kentucky, early in the morning hours of August 1, 2019, creating a crater approximately 50-feet-long, 35-feet-wide and 13-feet-deep; roughly 66 million cubic feet of natural gas was released during the rupture.

19. Personnel at the Danville, Kentucky compressor station, including but not limited to Unknown Danville Compressor Station Operator, eventually closed the Pipeline discharge valve north of the failure site, and other personnel later closed a valve elsewhere on the line.

20. The jet-like fire projection from the Pipeline explosion and failure shot toward the surrounding structures, including Plaintiffs' home, as shown by the scorch marks on the photo below:



21. The Pipeline failure and explosion resulted in flames, fumes, smoke, and ash being shot high in the air, and a fire that burned numerous structures and destroyed the vegetation over several acres of land.

22. The explosion, fire, and ensuing fumes, smoke, and ash resulted in the death of one (1) person and caused severe and permanent bodily and mental injury to several others, including Plaintiffs.

23. Plaintiffs were each hospitalized due to pulmonary complications which have been directly linked to the Pipeline explosion and ensuing heat, fumes, smoke, and ash. Of the two (2) named Plaintiffs, David Dolen suffered the most severe physical injuries, nearly dying and requiring extensive medical treatment and several weeks of hospitalization.

24. The Pipeline failure and explosion occurred due to the reckless, wanton, negligent and/or grossly negligent conduct of Defendants.

25. The Pipeline failure and explosion occurred due to Defendants' wanton and/or reckless disregard for the lives, safety and/or property of others.

26. The Pipeline failure and explosion occurred without any recklessness or negligent conduct by Plaintiffs.

27. The Pipeline failure and explosion was foreseeable and could have been prevented.

28. Upon information and belief, there have been numerous prior catastrophic failures on the Pipeline, including but not limited to:

- a. April 27, 1985 [KY]: the Pipeline exploded in Metcalfe County, Kentucky, killing five (5) and destroying two (2) homes, three (3) trailers, a sawmill, two (2) barns, and numerous vehicles. The resulting crater was approximately 90-feet-long, 38-feet-wide, and 12-feet-deep;

- b. October 26, 1985 [KY]: the Pipeline exploded in Fleming County, Kentucky;
 - c. February 21, 1986 [KY]: the Pipeline exploded in Garrard County, Kentucky, destroying three (3) homes and injuring six (6) people, and forcing the evacuation of many others;
 - d. November 2, 2003 [KY]: the Pipeline exploded in Bath County, Kentucky;
 - e. April 29, 2016: the Pipeline exploded in Greensburg, Pennsylvania, resulting in one (1) person suffering 3rd degree burns to 75% of his body;
 - f. January 21, 2019: the Pipeline exploded in Noble County, Ohio, injuring two (2) people and destroying two (2) homes;
29. The Pipeline failure and explosion that happened in Lincoln County on August 1, 2019, occurred approximately ten (10) miles from the site of the February 21, 1986 explosion.
30. Upon information and belief, the individual who died as the result of the August 1, 2019, failure and explosion was the ninth (9th) person -- and sixth (6th) in Kentucky -- to die as the result of a failure along the Pipeline since 1985.
31. Plaintiffs are among the numerous other individuals in Kentucky who have sustained injuries as the result of failures along the Pipeline.

COUNT I
Negligence

32. Plaintiffs adopt and reiterate each and every allegation stated above as if set out fully in this paragraph and incorporate them by reference.
33. Defendants are and were at the time of the Pipeline explosion, engaged in the ultrahazardous and/or abnormally dangerous activity of transporting natural gas through their pipeline for profit.

34. Defendants owed a duty of care to Plaintiffs and other surrounding landowners of the property through which the Pipeline is situated to construct, operate and maintain their gas distribution system and the Pipeline so as to prevent the escape of gas therefrom, and/or to protect the public and all proximately located individuals, including Plaintiffs, from harm arising from Defendants' use of the Pipeline.

35. Defendants and their agents, ostensible agents, servants, employees, and/or other representatives breached their duty of care to Plaintiffs in multiple respects, including but not limited to:

- a. failing to properly design, construct, mark, and/or install the Pipeline, and failing to ensure the proper design, construction and/or installation of the same;
- b. failing to properly inspect, monitor, assess, evaluate, and/or maintain the Pipeline, its integrity and the surrounding area, and failing to ensure the proper inspection, monitoring, assessment, evaluation, and/or maintenance of the same;
- c. failure to adequately and/or properly secure the area surrounding the Pipeline prior to and during its use;
- d. failing to identify and/or correct hazardous conditions in the Pipeline, its integrity and/or the area surrounding same;
- e. failing to perform necessary repairs on the Pipeline and its appurtenances and equipment;
- f. failing to provide adequate personnel, supervision and oversight of individuals and/or entities utilized in the inspection, repair and/or maintenance of the Pipeline, its integrity and/or the area surrounding same;
- g. failing to operate the Pipeline in a safe manner and in a safe condition;

- h. failing to install, maintain, and/or remove safety devices and systems which protected or should protect the Pipeline, its integrity and/or the area surrounding same;
- i. failing to properly assess, hire, train, and/or supervise their agents/servants/employees/representatives;
- j. failing to have in place an appropriate and/or effective emergency plan or emergency procedures;
- k. failing to properly report and alleviate and/or correct hazardous conditions on the Pipeline;
- l. failing to utilize proper materials, fittings and appurtenances for the Pipeline, and failing to properly test and/or inspect such materials, fittings, and appurtenances, and their installation and construction within the Pipeline;
- m. failing to ensure that all persons operating, repairing and/or maintaining the Pipeline were properly qualified and had adequate training and experience;
- n. failing to adopt and/or enforce adequate procedures, including but not limited to procedures for operations, maintenance, emergencies, and and/or repair of the Pipeline;
- o. failing to have and maintain adequate information and records regarding the Pipeline and its condition,
- p. failing to warn regarding the hazardous conditions of the Pipeline;
- q. failing to provide adequate emergency response training;
- r. failure to properly monitor gas flow and/or take corrective action;
- s. operating the Pipeline at a dangerous pressure level;

- t. failing to have in place an adequate system for providing information necessary for the safe operation, maintenance and repair of the Pipeline;
 - u. failing to ensure that repairs of the Pipeline were performed in a safe manner;
 - v. failing to have an adequate damage prevention program;
 - w. failing to install, maintain or monitor an adequate cathodic protection system, and correct and/or repair corrosion on the Pipeline.
36. The Pipeline explosion was foreseeable and could have been prevented.
37. Defendants' breach of the duty of care owed to Plaintiffs was the direct and proximate cause of physical, emotional and financial injuries suffered by Plaintiffs, including but not limited to:
- a. mental and physical pain and suffering both of a temporary and permanent nature all to their damage in a sum to be determined by a jury sitting in the trial of this matter;
 - b. the expenditure of sums of money for hospital, medical and other rehabilitation expenses and will be caused to expend such sums of money in the future in an amount to be determined by a jury sitting in the trial of this matter; and
 - c. loss of the Plaintiffs' ability to lead and enjoy a normal life, all to their damage, in a sum to be determined by a jury sitting in the trial of this matter

COUNT II
Gross Negligence/Punitive Damages

38. Plaintiffs adopt and reiterate each and every allegation stated above as if set out fully in this paragraph and incorporate them by reference.

39. Defendants acted recklessly, wantonly and/or with extreme indifference or reckless disregard for the consequences of their actions, as well as exhibiting a reckless disregard for the life, safety and health of others, including Plaintiffs, warranting the imposition of punitive damages pursuant to KRS 411.184 and 411.186.

40. Defendants' actions and/or breached duty of care described hereinabove proximately and directly resulted in physical, emotional and financial injuries to Plaintiffs.

COUNT III
Loss of Consortium

41. Plaintiffs adopt and reiterate each and every allegation stated above as if set out fully in this paragraph and incorporate them by reference.

42. By reason of the injuries and damages incurred by Plaintiffs as a result of Defendants' negligence and/or gross negligence, Plaintiffs have each suffered the loss of services, assistance, aid, society, companionship and conjugal relationship which were then, and are still, of great value to each of them.

43. Plaintiffs' damages for loss of consortium are in an amount in excess of the minimum dollar amount necessary to establish the jurisdiction of this court.

44. As a result of Defendants' negligence and/or gross negligence, Defendants are liable to Plaintiffs for compensatory damages for their loss of consortium as set forth herein, and for punitive damages.

COUNT IV
Negligence *Per Se*

45. Plaintiffs adopt and reiterate each and every allegation stated above as if set out fully in this paragraph and incorporate them by reference.

46. The Pipeline failure and explosion resulted from Defendants' violation of state and federal statutes and/or regulations.

47. Said violations constitute negligence *per se*.

48. Plaintiffs are within the class of individuals intended to be protected by the violated statutes and regulations.

49. Plaintiffs suffered physical, mental and emotional damages as the result of Defendants' violations of said statutes and regulations.

COUNT V
Respondeat Superior

50. Plaintiffs adopt and reiterate each and every allegation stated above as if set out fully in this paragraph and incorporate them by reference.

51. Defendants, by and through their employees, agents and/or representatives, including but not limited to Defendant, Unknown Danville Compressor Station Operator, acted or failed to act in such a negligent, reckless and/or intentional manner so as to cause Plaintiffs to suffer serious bodily and emotional injury.

52. Upon information and belief, on the date of the Pipeline failure and explosion, Defendants' employees, agents and/or representatives, including but not limited to Defendant, Unknown Danville Compressor Station Operator, were acting in the course and scope of their employment with Defendants.

53. Defendants authorized, ratified and/or should have anticipated the conduct of their employees, including but not limited to the Unknown Danville Compressor Station Operator, subjecting Defendants to punitive damages.

54. That the doctrine of respondeat superior applies to Defendants for the negligent, reckless and/or intentional acts and/or failure to act of their employees, including but not limited to Defendant, Unknown Danville Compressor Station Operator.

COUNT VI
Nuisance

55. Plaintiffs adopt and reiterate each and every allegation stated above as if set out fully in this paragraph and incorporate them by reference.

56. The pipeline explosion resulted from the creation of an ultra-hazardous and abnormally dangerous condition and nuisance by Defendants and/or their employees, representatives, agents, or servants, which creation constitutes strict liability.

57. Defendants' use of the Pipeline, site of the Pipeline failure, surrounding air, and/or Plaintiffs' property, was unreasonable.

58. The aforementioned unreasonable use by Defendants caused substantial harm to Plaintiffs.

COUNT VII
Trespass

59. Plaintiffs adopt and reiterate each and every allegation stated above as if set out fully in this paragraph and incorporate them by reference

60. Defendants negligently breached their duty of due care to Plaintiffs in any or all of the ways described herein above.

61. Defendants breached duty of care caused excessive heat, fumes, smoke, and ash to enter Plaintiffs' land, home, property, and the very air they breathe on their land and in their home.

62. The presence of said heat, fumes, smoke, and ash caused harm to Plaintiff's land, home, property, and bodies.

COUNT VIII
Intentional Infliction of Emotional Distress

63. Plaintiffs adopt and reiterate each and every allegation stated above as if set out fully in this paragraph and incorporate them by reference.

64. Defendants' actions which resulted in the Pipeline failure and explosion were intentional and/or reckless, offensive and against generally accepted standards of decency and morality.

65. Defendants knew or should have known that their conduct would cause Plaintiffs severe emotional distress.

66. That as a direct and proximate result of the actions of Defendants, Plaintiffs suffered severe and serious emotional injury that a reasonable person, normally constituted, would not be expected to endure.

COUNT IX
Negligent Infliction of Emotional Distress

67. Plaintiffs adopt and reiterate each and every allegation stated above as if set out fully in this paragraph and incorporate them by reference.

68. Defendants owed Plaintiffs a duty of care to protect them from harm arising from Defendants' use of the Pipeline, as described more particularly above.

69. Defendants breached the duty of care owed to Plaintiffs in any one (1) or all of the manners described hereinabove.

70. That as a direct and proximate result of the actions of Defendants, Plaintiffs suffered severe and serious emotional injury that a reasonable person, normally constituted, would not be expected to endure

WHEREFORE, Plaintiffs, David Dolen and Lisa Dolen, respectfully demand as follows:

- A. A trial by jury on all issues of fact herein;
- B. Judgment against Defendants, jointly and severally, in favor of Plaintiffs, in an amount in excess of Seventy-Five Thousand Dollars;
- C. For compensatory damages against the Defendants in a fair and reasonable amount to be determined by a jury sitting at the trial of this matter, but in an amount sufficient to confer jurisdiction on this Court;
- D. For loss of consortium;

- E. For punitive damage;
- F. For prejudgment interest from the date of the Plaintiff's injuries until such time the judgment is paid;
- G. For Plaintiffs' costs herein expended; and,
- H. For any and all other relief to which the Plaintiffs are entitled

CERTIFICATION

This is to certify that pursuant to KRS 411.188(2), the undersigned attorneys have notified by certified mail all of those parties believed to possibly hold subrogation rights to any award received by the Plaintiff as a result of this action and that the failure to assert subrogation rights by intervention, pursuant to Kentucky Civil Rule 24, or otherwise will result in a loss of those rights with respect to any final award received by the Plaintiff as a result of this action.

The parties notified are as follows: DXC Technology for Kentucky Medicaid, PO Box 2107, Frankfort, Kentucky 40602.

RESPECTFULLY submitted this 18th day of February, 2020.

/s/ Tanner H. Shultz
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