

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO. _____
IN ADMIRALTY**

**MISS OCRACOKE, INC., STEPHEN J.
WILSON, HATTERAS BLUE, INC.,
STEVEN J. HARRIS, STEVEN WRIGHT,
CHARLES EDWARD HOFMANN, ALEX
DANIEL GARRISH, on behalf of themselves
and all others similarly situated,**

PLAINTIFFS,

vs.

**PCL CONSTRUCTION ENTERPRISES,
INC., PCL CIVIL CONSTRUCTORS, INC.,
PCL CONSTRUCTION SERVICES, INC.,
and PCL CONSTRUCTION RESOURCES
(USA) INC.,**

DEFENDANTS.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

NOW COME the Plaintiffs, by and through the undersigned counsel, on behalf of themselves and all other persons and entities similarly situated and hereby file this action against Defendants, PCL Construction Enterprises, Inc., PCL Civil Constructors, Inc., PCL Construction Services, Inc., and PCL Construction Resources (USA) Inc. (hereinafter collectively referred to as "Defendants" or "PCL") and allege as follows:

NATURE OF THE ACTION

All of the following facts and claims are alleged upon information and belief:

1. On or about July 27, 2017, Defendants acted negligently by causing damage to the electrical transmission system that supplies power to Hatteras and Ocracoke Islands (hereinafter collectively referred to as "the Islands") during the construction of a local bridge. This negligence resulted in widespread electrical power outages for residents, visitors and businesses on the islands. The power outage resulted in Governor Roy Cooper declaring a state of emergency and

issuing a mandatory evacuation of thousands of individuals from the Islands, which is a popular tourist destination that earns most of its revenue during the busy summer season.

2. The power outage caused significant economic and personal hardship to businesses operating in and around the Hatteras and Ocracoke Islands area, as well as to individuals and families who were visiting, or who had planned to visit, the Islands. Plaintiffs bring this class action against Defendants for the economic damages and personal hardships which they experienced following the power outages and evacuation of the affected area and inability to stay at, visit, or conduct regular business on and around the Hatteras and Ocracoke Islands.

PARTIES

3. Plaintiff Miss Ocracoke, Inc. (hereinafter “Miss Ocracoke”) is a business located in Ocracoke, North Carolina. Miss Ocracoke is a charter fishing boat business and has suffered damages including but not limited to a financial loss as the result of Defendants’ conduct.

4. Plaintiff Stephen J. Wilson is a resident of Hyde County, North Carolina, and is the owner and operator of Miss Ocracoke. Plaintiff Wilson has suffered damages, including but not limited to a financial loss, stress, anxiety, worry, annoyance, inconvenience and other emotional and mental harms as the result of Defendants’ conduct.

5. Plaintiff Hatteras Blue, Inc. (hereinafter “Hatteras Blue”) is a business located in Hatteras, North Carolina. Hatteras Blue is a charter sport fishing boat business and has suffered damages including, but not limited, to a financial loss as the result of Defendants’ conduct.

6. Plaintiff Stephen J. Harris is a resident of Colfax County, New Mexico, and is the is the owner of rental property located in Ocracoke, Hyde County, North Carolina, Plaintiff Harris has suffered damages, including but not limited to a financial loss, stress, anxiety, worry, annoyance, inconvenience and other emotional and mental harms as the result of Defendants’ conduct.

7. Plaintiff Steven Wright is a resident of Nash County, North Carolina, and is the owner of rental property located in Ocracoke, Hyde County, North Carolina, Plaintiff Wright has suffered damages, including but not limited to a financial loss, stress, anxiety, worry, annoyance, inconvenience and other emotional and mental harms as the result of Defendants' conduct.

8. Plaintiff Charles Edward Hofmann is a resident of Hyde County, North Carolina. Plaintiff Hofmann is hourly wage employee at a local restaurant and has suffered damages, including but not limited to a financial loss, stress, anxiety, worry, annoyance, inconvenience and other emotional and mental harms as the result of Defendants' conduct.

9. Plaintiff Alex Daniel Garrish is a resident of Hyde County, North Carolina. Plaintiff Garrish is employed as an hourly wage employee at a local business and has suffered damages, including but not limited to a financial loss, stress, anxiety, worry, annoyance, inconvenience and other emotional and mental harms as the result of Defendants' conduct.

10. The PCL "family of companies" is composed of a number of independent construction companies including PCL Civil Constructors, Inc. PCL Construction Enterprises, Inc., PCL Construction Services, Inc. and PCL Construction Resources (USA) Inc. PCL carries out operations in different construction markets throughout Canada, the United States, the Caribbean and Australia. PCL employs more than 4,500 full-time professional and administrative salaried staff and more than 10,000 hourly tradesmen. PCL does an annual construction volume of \$8 billion.

11. Defendant PCL Construction Enterprises, Inc., is a corporation organized and existing under the laws of the state of Colorado and headquartered in Denver, Colorado. PCL Construction Enterprises, Inc., offers commercial, civil, and heavy industrial construction services in North America.

12. Defendant PCL Civil Constructors, Inc. is a wholly-owned subsidiary of PCL Construction Enterprises, Inc., which is a corporation organized and existing under the laws of the state of Colorado and does business in North Carolina, among other locations.

13. PCL Construction Services, Inc. is a corporation organized and existing under the laws of the state of Colorado with a principal place of business at 2000 South Colorado Blvd, Tower Two, Suite 2-500, Denver, Colorado 80222.

14. PCL Construction Resources (USA) Inc. is a corporation organized and existing under the laws of the state of Colorado with a principal place of business at 2000 South Colorado Blvd, Tower Two, Suite 2-500, Denver, Colorado 80222.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there are more than 100 Class Members, the class contains members of diverse citizenship from Defendants, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and cost, and because Defendants are citizens of another State. Jurisdiction exists before this Court pursuant to Article III, Section 2 of the United States Constitution, which empowers the federal judiciary to hear “all Cases of admiralty and maritime jurisdiction.” Jurisdiction is based on 28 U.S.C. § 1331 (federal question) and pursuant to 28 U.S.C. § 1333 (admiralty and maritime jurisdiction). This Court also has supplemental jurisdiction under 28 U.S.C. § 1367 of state law claims related to the claims of original jurisdiction in that the state claims form part of the same case or controversy under Article III of the United States Constitution.

16. Certain claims presented herein are admiralty or maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Plaintiffs hereby designate this case as an admiralty or maritime case pursuant to Rule 9(h).

17. Jurisdiction also exists over this class action pursuant to The Admiralty Extension Act, 46 U.S.C. § 30101, which extends the admiralty and maritime jurisdiction of the United States to cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land.

18. This Court has personal jurisdiction over Defendants because they are incorporated in Colorado, and licensed to and conduct substantial business in North Carolina, and in particular in this federal judicial District.

19. The Defendants are each licensed to do business in North Carolina, and maintain minimum contacts with the State of North Carolina to satisfy the due process clause of the United States Constitution. Defendants have sufficient minimum contacts with the State of North Carolina such that maintenance of this suit does not offend traditional notions of fair play and substantial justice.

20. Prosecution and venue of this class action in this district is proper under 28 U.S.C. § 1391 because Defendants do business herein, many Plaintiffs and Class Members reside and do business herein, and the events or omissions giving rise to the claims asserted herein occurred in this district.

FACTUAL ALLEGATIONS

21. The Herbert C. Bonner Bridge (hereinafter, “Bonner Bridge”) is located in the heart of one of North Carolina’s most popular tourist attractions, the Outer Banks.

22. Every day, up to 14,000 cars traverse the Bonner Bridge in both directions, and visitors, residents and local businesses rely on the Bridge for accessibility to Hatteras Island.

23. In July, 2011, the N.C. Department of Transportation (“NCDOT”) awarded a design-build contract to PCL with HDR Engineering, Inc. of the Carolinas (“HDR”) as the lead design firm for the Bonner Bridge Replacement Project (“the Bonner Bridge Project”).

24. Design-build allows NCDOT to hire a team of designers and builders under one contract which reduces the overall design and construction time from what it would have been had the project been fully designed and then a contractor hired to build the project.

25. The actual construction began on the Bonner Bridge Project on March 8, 2016 with preliminary work beginning in February 2016, and it is expected to be open to the public in November 2018.

26. The total length of the Bonner Bridge Project is 3.5 miles with 2.5 miles of it over navigable water ways.

27. The total cost of the Bonner Bridge Project is \$246 million.

28. The Bonner Bridge Project is the first bridge in North Carolina to use stainless reinforcing steel that is supposed to provide protection against corrosion from salt water penetrating into key concrete components of the bridge.

29. The Bonner Bridge Project's steel casings and pilings (foundation) were to be driven deeper into the inlet floor, to prevent issues with scour (sand washing away from around the piles).

30. Casings are giant tubes that enclose individual concrete pilings to keep them in position while they are installed in clusters at various angles to support the bridge deck.

31. On July 27, 2017, workers affiliated with Defendants were in the process of setting aside the casing for future use by driving them into the ground.

32. The locations of all utility lines, including, but not limited to, the electrical transmission system that supplied power to the Islands were clearly shown on plan and design drawings for the Bonner Bridge Project construction, and as a result, all parties and entities involved in the construction, including but not limited to Defendants, knew or should have known the location of the electrical transmission system, and all parties and entities involved should have been able to avoid causing any damage to said the electrical transmission system by exercising ordinary care and diligence.

33. During the construction and excavation process, Defendants had a duty to confirm the location of any and all underground utility lines, including, but not limited to, the electrical transmission system that supplied power to the Islands.

34. Defendants knew or should have known that the summer months, including July and August, are peak tourist and business season for all types of local businesses and vacationers on and around Hatteras and Ocracoke Islands.

35. Defendants knew or should have known that an uninterrupted supply of power to the affected areas was vital and necessary in order for all local businesses to earn financially during this peak season, and vital and necessary for all vacationers to stay and enjoy their vacation times.

36. It was reasonably foreseeable to Defendants and to any entity or individual engaged in construction near the aboveground and/or underground electrical transmission system that supplied power to the entire affected areas, that massive financial and emotional harms would be caused if their construction activity caused the electrical transmission system to be damaged or cut, or otherwise caused an interruption to the supply of power.

37. On July 27, 2017, at 4:30 am, Defendants drove a steel pile casing through the underground electrical transmission system between the southern end of Bonner Bridge and the first riser pole on Hatteras Island causing all power to go out (“the Power Outage”) on Ocracoke and Hatteras Islands.

38. The Defendants made the decision to drive the pile casings in a location and in such a manner as to severely damage the electrical transmission system that was clearly marked on the above described plans. As is further described herein, Defendants’ conduct in doing so was negligent, grossly negligent, willful, wanton, and done with a conscious and intentional disregard for the rights and safety of all businesses and individuals in the affected areas.

39. On or about July 27, 2017, Defendants admitted to the Cape Hatteras Electric Cooperative that it “drove a steel casing into the underground transmission cable that runs between the south end of the Bonner Bridge and the overhead riser pole.”

40. After the first cable in the electrical transmission system was damaged, one or two additional transmission cables were also damaged.

41. As a result of the damage to the electrical transmission system all power to Hatteras and Ocracoke Islands was cut off.

42. The underground electrical transmission system and/or excavation equipment was located on, in or adjacent to a navigable waterway.

43. The Power Outage occurred during the peak tourist and business season for all types of local businesses and vacationers on and around Hatteras and Ocracoke Islands.

44. On July 27, 2017 at 5:00 pm, due to the Power Outage affecting Ocracoke Island, Hyde County, North Carolina issued a mandatory evacuation of all non-residents.

45. On July 27, 2017, the Governor of North Carolina declared a state of emergency for Ocracoke and Hatteras Islands.

46. On July 29, 2017, due to life safety issues from the loss of reliable electrical power on Hatteras Island and growing uncertainty as to when repairs to the electrical transmission system will be completed to enable restoration of full power, Dare County North Carolina issued a mandatory evacuation for all non-residents to Hatteras Island, effective at 6:00 a.m. The mandatory evacuation included the villages of Rodanthe, Waves, Salvo, Avon, Buxton, Frisco and Hatteras, North Carolina (collectively "Hatteras Island").

47. Accordingly, as of July 29, 2017 at 6:00 am, all non-residents have been evacuated from Hatteras and Ocracoke Islands.

48. As of the time of this filing, it is unclear when the electrical transmission system will be repaired and power will be restored.

49. Due to the mandatory evacuations, the Power Outage, and the uncertainty of when the repairs will be completed to restore the electrical transmission system, Plaintiffs and all others similarly situated have been devastated because of lost rentals, tourist and business income during the peak tourist season for Ocracoke and Hatteras Islands. Further, tourists and vacationers have canceled plans to travel to Ocracoke and Hatteras Islands through the rest of the tourist seasons due to the uncertainty of the repairs to the electrical transmission system. Accordingly, this Class Action Complaint is filed on behalf of those persons (individuals and entities) seeking private (non-governmental) economic loss and property damages, as well as

compensation for stress, anxiety, worry, annoyance, inconvenience and other emotional or mental harms, and any other damages recognized by law that may be proven at trial.

50. This Complaint asserts claims under federal maritime law, including federal common law and federal statutory law, and under state common and statutory law, seeking damages for the Class defined in the Class Allegations section of this Complaint, including actual, compensatory, and punitive damages, arising from the damage to the electrical transmission system causing the Power Outage on Hatteras and Ocracoke Island.

51. Defendants could have prevented this catastrophe by using proper risk management practices, reviewing and adhering to drawings and plans showing the location of the electrical transmission system, taking measures to confirm the location of the electrical transmission system, following industry standards, taking measures to mitigate damage to the electrical transmission system, following required safety protocols and precautionary procedures, and properly maintaining equipment. However, Defendants chose to violate or ignore operational discipline, and to save money and time at the expense of safety. Their cost-cutting measures were taken with willful, wanton, and reckless indifference to the economic interests, businesses, and property of Plaintiffs and Class Members described herein.

52. Defendants made decisions impacting the safety, health, welfare, and value of the people, businesses, and property of the Plaintiffs and class members in the direction of short-term gain, through reduced schedule and reduced cost, rejecting adequate and responsible risk-analysis checks and balances to weigh cost and time versus risk and safety. The result was both predictable in outcome and unprecedented in scale.

53. Moreover, because their conduct endangered the health and safety of a large region and population, caused and increased the risk of serious injury and bodily harm, and affected a financially vulnerable population dependent on tourism and vacationers during this time of year, the degree of reprehensibility of Defendants' conduct is at the highest level.

54. As a direct and proximate result of Defendants negligence and wrongdoing, Plaintiffs have suffered harms and damages, including but not limited to economic loss and property damages, stress, anxiety, worry, annoyance, inconvenience and other emotional or mental harms, and any other damages recognized by law that may be proven at trial. The damages caused to Plaintiffs as a result of the Power Outage are especially severe because this is peak season for businesses, tourists and renters on Hatteras and Ocracoke Islands.

55. The Power Outage has caused, and continues to cause, devastating economic damage. For example, businesses have lost and continue to lose income; the tourism industry and hotels, resorts, restaurants, commercial fisherman, rental owners and other tourism-reliant businesses have lost and continue to lose income; and property owners have suffered the loss, damage, and/or diminution of the value of their properties throughout the Hatteras and Ocracoke Islands.

56. Due to the Islands being evacuated and closed to visitors while the state of emergency continues, local businesses, including Plaintiffs Miss Ocracoke, Steven J. Wilson and Hatteras Blue, have lost income and will continue to lose income for an indeterminate amount of time, as well as incurring additional damages, costs and expenses as a result of the Power Outage caused by Defendants' negligence and wrongful conduct. As a direct and proximate result of the Power Outage, businesses and business owners including Plaintiffs Miss Ocracoke, Steven Wilson and Hatteras Blue, have suffered harms and damages, including but not limited to economic loss and property damages, stress, anxiety, worry, annoyance, inconvenience and other emotional or mental harms, and any other damages recognized by law that may be proven at trial.

57. When Governor Cooper declared a state of emergency, many people, including business owners, rental property owners, visitors renting properties, and hourly wage workers were mandated to evacuate. Many rental property owners were mandated to evacuate before the end of their rental term.

58. Rental property owners, including Plaintiff Harris and Plaintiff Wright, have lost income as a result of these early terminated rentals. Additionally, because no renters are allowed on the Islands while the state of emergency persists, these rental property owners will lose rental income for their rental properties for an indeterminate amount of time, as well as incurring additional costs and expenses as a result of the Power Outage. As a direct and proximate result of the Power Outage, rental property owners have suffered harms and damages, including but not limited to economic loss and property damages, stress, anxiety, worry, annoyance, inconvenience and other emotional or mental harms, and any other damages recognized by law that may be proven at trial.

59. Vacationers and property renters lost monies paid for vacation rentals, which they now are not permitted to use, and incurred additional travel expenses and other costs resulting from the Power Outage. As a direct and proximate result of the Power Outage, vacationers and property renters have suffered harms and damages, including but not limited to economic loss and property damages, stress, anxiety, worry, annoyance, inconvenience and other emotional or mental harms, and any other damages recognized by law that may be proven at trial.

60. As a result of vacationers not being allowed onto the Islands and some businesses having to close as a result of the Power Outage, hourly workers at local businesses including Plaintiff Hofmann and Plaintiff Garrish, have suffered harms and damages, including but not limited to economic loss and lost wages and earnings, stress, anxiety, worry, annoyance, inconvenience and other emotional or mental harms, and any other damages recognized by law that may be proven at trial.

CLASS ACTION ALLEGATIONS

61. Plaintiffs bring this suit as a class action on behalf of themselves and on behalf of all others similarly situated pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of the provisions of Rule 23.

A. Class Definitions and Exclusions

62. Plaintiffs seek certification of the following Classes:

Area Business Class:

All businesses, and owners of businesses, operating on and around Hatteras and Ocracoke Islands in North Carolina that lost income or were otherwise damaged due to the Power Outage.

The Rental Property Owner Class:

All owners of rental property on Hatteras and Ocracoke Islands in North Carolina that lost income or were otherwise damaged due to the Power Outage.

The Vacation Renter Class:

All individuals who were renting or made a payment to rent vacation properties in the area impacted by the Power Outage during the time period of the State-imposed mandatory evacuation.

The Hourly Worker Class:

All hourly workers of businesses on Hatteras and Ocracoke Islands in North Carolina who lost income or were otherwise damaged due to the Power Outage.

63. Excluded from the Classes are: (a) any Judge or Magistrate Judge presiding over this action and members of their families; (b) PCL and any entity in which PCL have a controlling interest or which has a controlling interest in PCL and their legal representatives, assigns and successors of PCL; and (c) all persons who properly execute and file a timely request for exclusion from the Classes or are currently in litigation with PCL.

B. Numerosity of the Class/Impracticability of Joinder — F.R.C.P. 23(a)(1)

64. The Classes consists of tens of thousands of individuals and businesses that have been economically damaged by the Power Outage, making joinder impracticable. Class members can be informed of the pendency of this action by print, Internet, and broadcast notice.

C. Commonality — F.R.C.P. 23(a)(2).

65. Common questions of law and fact exist as to all members of the Classes. Because Defendants behavior here is governed by federal regulations, and federal maritime law, the Class members will be subject to common questions of law.

66. Furthermore, the factual bases of Defendants conduct are common to all Class members and represent a common thread of reckless conduct and decisions, gross negligence and willful, wanton, and reckless indifference for the rights of others, resulting in injury to all members of the Class. Each Class member's claim arises from the same course of planning, decisions, and events, and each Class member will make similar legal and factual arguments to prove Defendants' outrageous, willful, reckless, wanton, and deplorable conduct and liability.

67. Defendants' conduct presents a series of significant factual questions with common answers, including:

- a. Whether Defendants negligently, outrageously, willfully, wantonly, and/or recklessly caused and/or contributed to the Power Outage;
- b. Whether Defendants knew or should have known of the risk of a Power Outage; and
- c. Whether Defendants' conduct in failing to utilize all available best practices and safety mechanisms while driving steel pile casings to prevent the Power Outage was outrageous, grossly negligent, willful, wanton, or reckless.

68. Common questions of fact also exist with respect to the punitive damages liability of Defendants to the Class, including Defendants' outrageous, grossly negligent, willful, reckless, and wanton conduct; the calculation of the amount of punitive damages that may be imposed upon each of the Defendants consistent with due process; intra-class equity with respect to the allocation and utilization of punitive damages; and the most practicable and most equitable allocation, disbursement, and utilization of such damages for punishment of Defendants' wrongful conduct toward Plaintiffs, the Classes, and society, and in fulfillment of the deterrent policy and purpose of punitive damages.

D. Typicality -- F.R.C.P. 23(a)(3)

69. The claims in this Class Action Complaint are typical of the claims of the Classes in that they represent the various types of non-governmental economic losses and property damage caused by the Power Outage. Each Class member's claim arises from the same course of planning, decisions, and events, and each Class member will make similar legal and factual arguments to

prove Defendants' outrageous, grossly negligent, willful, reckless, and wanton conduct and liability.

E. Adequacy of Representation — F.R.C.P. 23(a)(4)

70. Plaintiffs will fairly and adequately represent and protect the interests of the Classes. They have no disabling conflicts of interest that would be antagonistic to those of the other members of the Class and the damages they have suffered are typical of other Class members. Plaintiffs have retained counsel with substantial experience in prosecuting complex class actions and admiralty cases. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Classes and have the financial resources to do so.

F. Class Certification under F.R.C.P. 23(b)(3) — Predominance and Superiority

71. The common issues of fact and law presented in this action, including those specified above, predominate with respect to the claims of the Classes over any questions affecting only individual Class members. Fundamentally, all Plaintiffs' claims arise out of a single course of conduct by Defendants that caused the Power Outage. Although this is a single event, single location mass disaster that has affected, and will continue to affect many individuals and businesses, its wide-ranging effects can be traced back to one single root: a chain of decisions and actions made jointly and severally by a small group of actors. Plaintiffs will present common proof with respect to Defendants' failure to use best practices or take adequate safety precautions in the construction of the Bonner Bridge Project — proof that is the same for each member of the Class.

72. Plaintiffs' proof of Defendants' outrageous, grossly negligent, willful, reckless, and wanton conduct will involve the same cast of characters, events, discovery, documents, fact witnesses, and experts. Common questions of fact also predominate concerning the determination of the aggregate quantum of punitive damages, necessary to fulfill the punishment and deterrence goals of such damages.

73. Because Defendants' behavior here is governed by federal and state regulations, and federal maritime law and state common law, the Class members will be subject to common

questions of law. This admiralty action will also promote the uniformity of admiralty and maritime law.

74. A class action is superior to the only other method available for the adjudication of Defendants' outrageous, grossly negligent, willful, reckless, and wanton conduct — individual litigation and multiple trials. The repetitive individual litigation of Defendants' conduct by all members of the Classes is inefficient, impracticable, economically infeasible, and potentially unfair, particularly in light of the unique context of Defendants' course of conduct and its unprecedented impact upon the Classes, the economy, and society.

75. It would be unduly burdensome on the courts to undergo the individual re-litigation of the same facts and legal issues in thousands of cases. The consideration of common questions of fact and law via this class action will conserve judicial resources and promote a fair and consistent resolution of these claims.

76. The litigation of the claims brought herein is manageable. Defendants' uniform conduct, the consistent provisions of the relevant laws, and the ascertainable identities of Class Members demonstrates that there would be no significant manageability problems with prosecuting this lawsuit as a class action.

77. Adequate notice can be given to Class Members directly using information maintained in public records.

78. Unless a Class-wide injunction is issued, Defendants may continue to construct the Bonner Bridge in a negligent manner so that future economic and personal losses could be experienced by Plaintiffs and Class Members.

79. Further, Defendants have acted negligently in a manner that applies generally to the Classes, making final injunctive and declaratory relief appropriate to the Classes as a whole. Defendants' acts and omissions are the direct and proximate cause of damage described more fully elsewhere in this Complaint.

80. Plaintiffs reserve the right to modify or amend the definition of the proposed Classes, before the Court determines whether certification is appropriate and as the parties engage in discovery.

CLAIM I
NEGLIGENCE

81. Plaintiffs reallege each and every allegation set forth in all preceding and foregoing paragraphs as if fully restated herein.

82. At all times material hereto, Defendants were engaged in bridge construction operations on a vessel over navigable water and/or were on, in or adjacent to a navigable waterway for the Bonner Bridge Project.

83. At all times material hereto, Defendants owed and breached duties of ordinary and reasonable care to Plaintiffs in connection with the bridge construction operations of the Bonner Bridge Project and the maintenance of the vessel, its appurtenances and equipment, and additionally owed and breached duties to Plaintiffs to guard against and/or prevent the risk of a Power Outage.

84. The existence and breach of these legal duties are established under the general maritime law and state law as deemed applicable herein.

85. Plaintiffs, as owners, lessors, lessees, and/or operators of real property at or near the Bonner Bridge Project on Ocracoke or Hatteras Islands and/or businesses or employees of businesses that are dependent upon the tourism to Ocracoke and Hatteras Islands for their livelihood and income, were within an appreciable zone of risk and, as such, Defendants were obligated to protect them.

86. Defendants knew or should have known of the dangers associated with driving steel plie casings and failed to take appropriate measures to prevent damage to Plaintiffs' and the Class members.

87. Defendants were under a duty to exercise reasonable care while participating in bridge construction operations, including but not limited to driving steel pipe casings on the Bonner Bridge Project to ensure that it did not damage the electrical transmission system as a result of such operations.

88. Defendants were under a duty to exercise reasonable care to ensure that it not damage the electrical transmission system or take precautions to ensure that the electrical transmission system was not damaged in the process.

89. In designing and building the Bonner Bridge, Defendants had a duty to exercise reasonable care during construction so as not to cause any interference with the vacation rental plans of individuals and families in the affected area, including Plaintiffs and Class Members.

90. Defendants failed to exercise reasonable care while engaged in bridge construction operations to ensure that they did not damage the electrical transmission system and thereby breached duties owed to Plaintiffs and the Classes.

91. Defendants failed to exercise reasonable care to ensure that adequate safeguards, protocols, procedures and resources would be readily available to prevent and/or mitigate the effects of damage to the electrical transmission system, and thereby breached duties owed to Plaintiffs and the Classes.

92. The conduct of Defendants with regard to the bridge construction operations such as the Bonner Bridge Project and its appurtenances and equipment is governed by numerous state and federal laws and permits issued under the authority of these laws. These laws and permits create statutory standards that are intended to protect and benefit Plaintiffs and the Classes. Defendants violated these statutory standards.

93. Defendants violated the following regulations:

- a. Defendants failed to protect health, safety, property, and the environment by failing to perform all operations in a safe and workmanlike manner;
- b. Defendants did not take measures to prevent damaging the underground and underwater electrical transmission system; and

- c. Defendants failed to follow North Carolina Building Codes, the plans and specifications, and industry standards in construction of the Bonner Bridge Project.

94. The violations of these statutory standards constitute negligence *per se* under federal law and North Carolina law.

95. In addition to the foregoing acts of negligence *per se*, Plaintiffs allege that the Power Outage was caused by the following negligent acts of omissions:

- a. Failing to follow safety statutes for the Bonner Bridge Project;
- b. Failing to properly review the plans and specifications for the Bonner Bridge Project to assure that they did not drive steel pile casings or pilings into the underground or underwater electrical transmission system;
- c. Failing to confirm the location of any and all underground utility lines, including, but not limited to, the electrical transmission system that supplied power to the Islands;
- d. Acting in a careless and negligent manner without due regard for the safety of others;
- e. Failing to promulgate, implement and enforce rules and regulations pertaining to the safe operations of the Bonner Bridge Project which, if they had been so promulgated, implemented and enforced, would have averted the Power Outage;
- f. Negligently hiring, retaining and/or training personnel;
- g. Failing to have adequate and qualified vessel master and crew and personnel;
- h. Failing to have proper and adequate equipment to perform the work safely;
- i. Failing to take appropriate action to avoid or mitigate the Power Outage;
- j. Negligently implementing or failing to implement policies and procedures to safely construct the Bonner Bridge Project;
- k. Failing to warn in a timely manner;
- l. Failing to timely bring the Power Outage under control;
- m. Failing to provide appropriate accident prevention equipment; and

n. Such other acts of negligence and omissions as will be shown at the trial of this matter; all of which acts are in violation of the general maritime law.

96. Defendants' actions that resulted in damage to the electrical transmission system and resulting wide-scale power outage demonstrates a failure to exercise their duties of care.

97. Defendants knew or should have known that the acts and omissions described herein could result in damage to Plaintiffs and the Classes.

98. Defendants' breach of its duty to exercise reasonable care was the actual and proximate cause of Plaintiffs' and Class Members' economic and personal injuries and damages which they would not have experienced but for the negligence and wrongful conduct of Defendants.

99. Plaintiffs and the Class Members were the foreseeable and probable victims of any inadequate care toward the construction of the Bonner Bridge. Defendants knew or should have known of the inherent economic risks in causing a wide-scale power outage in the Outer Banks area during the busy summer season.

100. Plaintiffs are entitled to a judgment finding Defendants jointly and severally liable, and solitarily liable, to Plaintiffs for all harms and damages, including but not limited to economic loss and property damages, stress, anxiety, worry, annoyance, inconvenience and other emotional or mental harms, and any other damages recognized by law that may be proven at trial proximately caused by Defendants' negligence in amounts determined by the trier of fact.

101. The injuries to Plaintiffs and the Classes were also caused by and/or aggravated by the fact that Defendants failed to take necessary actions to mitigate the danger associated with its operations.

102. As a direct and proximate result of Defendants' negligence and wrongful conduct, Plaintiffs and the Classes have suffered damages including but not limited to: a loss of rental and business income; loss of the use of the Ocracoke and Hatteras Islands for commercial and tourism purposes; damages associated with the mandatory evacuations; loss of their livelihood; stress,

anxiety, worry, annoyance, inconvenience and other emotional or mental harms; and any other damages recognized by law.

CLAIM II
GROSS NEGLIGENCE AND WILLFUL AND WANTON MISCONDUCT

103. Plaintiffs reallege each and every allegation set forth in all preceding and foregoing paragraphs as if fully restated herein.

104. Defendants owed and breached duties of ordinary and reasonable care to Plaintiffs in connection with the bridge construction operations on the Bonner Bridge Project, and additionally owed and breached duties to Plaintiffs and the Classes to guard against and/or prevent the risk of the Power Outage. The existence and breach of these legal duties are established under the general maritime law and state law as deemed applicable herein.

105. Defendants breached its legal duty to Plaintiffs and failed to exercise reasonable care and acted with reckless, willful, and wanton disregard in the negligent construction of the Bonner Bridge Project.

106. Defendants knew or should have known that its wanton, willful, and reckless misconduct would result in a disastrous and devastating Power Outage that would endanger the life and safety of the residents and visitors of Hatteras and Ocracoke Islands causing damage to those affected by the Power Outage.

107. Defendants acted with gross negligence, willful and wanton misconduct, and reckless disregard for human life and the safety and health of the environment and Plaintiffs and the Classes by, *inter alia*, disregarding bridge construction and steel pile casing driving procedures; failing to ensure that adequate safeguards, protocols, procedures and resources would be readily available to prevent and/or mitigate the effects the Power Outage for Ocracoke and Hatteras Islands.

108. Defendants acted with gross negligence, willful misconduct, and reckless disregard for human life and the safety and health of the environment and Plaintiffs by, *inter alia*, recklessly

maintaining and altering, and/or wantonly operating and/or using the BOP appurtenant to the Bonner Bridge Project.

109. As a direct and proximate result of Defendants' negligence and wrongful conduct, Plaintiffs and the Classes have suffered damages including but not limited to: a loss of rental and business income; loss of the use of the Ocracoke and Hatteras Islands for commercial and tourism purposes; damages associated with the mandatory evacuations; loss of their livelihood; stress, anxiety, worry, annoyance, inconvenience and other emotional or mental harms; and any other damages recognized by law.

CLAIM III
NUISANCE

110. Plaintiffs reallege each and every allegation set forth in all preceding and foregoing paragraphs as if fully restated herein.

111. At all times material hereto, Plaintiffs and Class Members were owners, lessors, or lessees of residential, commercial, and/or investment properties on either Ocracoke or Hatteras Islands.

112. Defendants negligence caused and/or contributed to the Power Outage while constructing the Bonner Bridge Project and resulted in an economic disaster that has directly and proximately caused Plaintiffs' and the Classes' interests as business owners, lessors, and/or lessees of properties to be deprived of their use and enjoyment of their properties.

113. Defendants were under a duty to take positive action to prevent or abate the negligent action, but failed to do so.

114. The harm suffered by Plaintiffs and the Classes is significant and of a kind that would be suffered by a normal person in the community or by property in normal condition and used for normal purpose.

115. Defendants acted in an unreasonable manner in creating the nuisance described herein.

116. Defendants negligence and wrongful conduct in causing the Power Outage on and around Hatteras and Ocracoke Islands constitutes a nuisance that has caused and will continue to cause injury to Plaintiffs, including, but not limited to: diminution in the value of their properties and the surrounding environments; a loss of rental and business income; loss of the use of the Ocracoke and Hatteras Islands for commercial and tourism purposes; damages associated with the mandatory evacuations; loss of their livelihood; stress, anxiety, worry, annoyance, inconvenience and other emotional or mental harms; and any other damages recognized by law.

117. Defendants are liable to Plaintiffs and the Classes for all actual and compensatory damages sustained as the direct and proximate result of the nuisance alleged herein.

CLAIM IV
TORTIOUS INTERFERENCE

118. Plaintiffs reallege each and every allegation set forth in all preceding and foregoing paragraphs as if fully restated herein.

119. Plaintiffs and the Classes have business relationships whereby they would lease their real property to renters and sell their goods to tourists. These business relationships were memorialized by invoices, receipts, and other documents showing a consistent course of sales.

120. Plaintiffs and Class members had a reasonable expectation of economic gain resulting from the relationships with their customers, tenants, renters, tourists, property owners, and employers. Plaintiffs reasonably expected to continue to conduct business and go on vacation free of a Power Outage, and reasonable expected that they would not be adversely affected by a Power Outage or a mandatory evacuation.

121. Defendants knew that Plaintiffs and other business entities on Ocracoke and Hatteras Islands expected these business relationships to continue in the future.

122. Defendants interfered with these prospective future business relationships through its conscious decision to fail to ensure it took safety precautions and complied with all

industry standards, building codes, and plans and specifications in constructing the Bonner Bridge Project.

123. Defendants knew, or should have known, that failing to comply with all industry standards, building codes, and plans and specifications would lead to the Power Outage.

124. Defendants failure to follow industry standards, building codes, plans and specifications has destroyed Plaintiffs' and Class Members' business and income capabilities during peak tourist season.

125. Due to the Power Outage, Plaintiffs and others similarly situated are unable to lease their real property.

126. Defendants interfered with Plaintiffs' and the Classes business relationships and ability to earn an income; and Defendants knew the interference was certain or substantially certain to occur as a result of its conduct constructing the Bonner Bridge Project.

127. Plaintiffs have been proximately damaged and continue to be damaged as a result of Defendants' interference in ways including, but not limited to, the following: diminution in the value of their properties and the surrounding environments; a loss of rental and business income; loss of the use of the Ocracoke and Hatteras Islands for commercial and tourism purposes; damages associated with the mandatory evacuations; loss of their livelihood; stress, anxiety, worry, annoyance, inconvenience and other emotional or mental harms; and any other damages recognized by law.

128. Defendants' tortious conduct serves as a direct and proximate cause of the injuries and damages sustained by Plaintiffs and the others similarly situated.

CLAIM V
PUNITIVE DAMAGES

129. The preceding and foregoing paragraphs are incorporated by reference as if fully set forth herein.

130. As a direct and proximate result of the grossly negligent, reckless, intentional and willful conduct of Defendants, as well as their conscious disregard of the health and safety of Plaintiffs, Class Members, and other members of the public as alleged herein, Plaintiffs are entitled to recover punitive and exemplary damages under both federal and state law to punish Defendants for their illegal, egregiously wrongful, reckless, willful, and/or wanton misconduct and to deter such conduct by others.

131. Plaintiffs are entitled to recover punitive damages from Defendants, jointly and severally, in an amount later to be determined at trial.

JOINT AND SEVERAL LIABILITY OF ALL DEFENDANTS

132. The allegations set forth in the preceding paragraphs are re-alleged and incorporated herein by reference.

133. The Defendants are jointly and severally liable to Plaintiffs and class members for all damages alleged herein since their negligent or wrongful acts and omissions, singularly or in combination, concurred or combined to produce, as a proximate cause, indivisible injuries to each Plaintiff and class member.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in Plaintiffs' favor and against Defendants, as follows:

1. For an Order certifying this action as a class action and appointing Plaintiffs and their Counsel to represent the Classes;
2. Awarding Plaintiffs actual damages, including compensatory and consequential damages, in an amount to be determined at trial;
3. Awarding Plaintiffs exemplary or punitive damages;
4. Awarding Plaintiffs pre-judgment and post-judgment interest;
5. Awarding Plaintiffs such costs and disbursements as are incurred in prosecuting this action, including reasonable attorneys' and experts' fees; and,

6. Granting Plaintiffs such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial for any and all claims pled herein in which a jury trial is available by law.

Respectfully submitted, this the 2nd day of August, 2017.

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