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Attorneys for Plaintiffs

Lodged
~~FILED~~ in the TRIAL COURTS
State of Alaska Third District
at Palmer, Alaska

MAR 09 2021

Clerk of the Trial Courts

By _____ Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

STATE FARM FIRE AND CASUALTY
COMPANY, NAUTILUS INSURANCE
COMPANY, and FOREMOST INSURANCE
COMPANY GRAND RAPIDS, MICHIGAN,

Plaintiffs,

v.

MATANUSKA ELECTRIC ASSOCIATION,
INC., an electric cooperative,

Defendant.

Case No. 3PA-20-02358 CI

FIRST AMENDED COMPLAINT

Plaintiffs, State Farm Fire and Casualty Company, Nautilus Insurance Company,
and Foremost Insurance Group (collectively "Plaintiffs"), state and allege as follows:

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JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to AS 22.10.020 as the amount in claimed exceeds \$100,000.

2. Venue is proper in the Third Judicial District pursuant to Alaska Civil Rule 3(e).

PARTIES

3. At all times relevant, Plaintiff State Farm Fire and Casualty Company ("State Farm") was and is an Illinois corporation, duly licensed to conduct business in the State of Alaska as an insurance company.

4. At all times relevant, Plaintiff Nautilus Insurance Company ("Nautilus") was and is an Arizona corporation, duly licensed to conduct business in the State of Alaska as an insurance company.

5. At all times relevant, Plaintiff Foremost Insurance Company Grand Rapids, Michigan ("Foremost"), was and is a Michigan corporation, duly licensed to conduct business in the State of Alaska as an insurance company.

6. State Farm, Nautilus, and Foremost collectively, are referred to herein as Subrogation Plaintiffs.

7. At all times relevant, Defendant Matanuska Electric Association, Inc. ("MEA") was and is an electric cooperative licensed to conduct business in the State of Alaska, with its principal place of business located in Palmer, Alaska.

GENERAL ALLEGATIONS

8. Plaintiffs' Complaint is a subrogation action seeking redress for property damage, business interruption and other related losses suffered by Subrogation Plaintiffs' insureds that resulted from the McKinley Fire that started on or about August 17, 2019.

9. At all relevant times, Defendant MEA owned, maintained, and operated an electrical distribution system in Palmer, Alaska.

10. At all relevant times, electrical distribution lines were part of the electrical distribution system owned, maintained, operated, and controlled by MEA.

11. On or about August 17, 2019, a fire ignited near Milepost 91, Parks Highway, as a result of a spruce tree that fell and contacted energized electrical conductors owned, maintained, operated, and controlled by MEA.

12. The spruce tree caused MEA's electrical conductors to come to the ground, igniting dry vegetation.

13. MEA knew or should have known that the subject spruce tree was a hazard, at risk of contacting MEA's energized electrical distribution lines.

14. MEA knew or should have known that if the spruce tree fell into MEA's energized electrical distribution lines, there was a risk of electrical failure, fire, and property damage.

15. The fire ignited by MEA's distribution lines became known as the McKinley Fire.

16. The McKinley Fire originated near Milepost 91 on the Parks Highway, between Willow and Talkeetna, Alaska.

17. The McKinley Fire ultimately burned 3,288 acres, destroying approximately 52 residences, 3 commercial structures and 84 outbuildings, including the real and personal property of Plaintiffs' insureds.

18. As a result of the McKinley Fire, Subrogation Plaintiffs' insureds presented claims to State Farm, Nautilus, and Foremost for benefits under their respective insurance policies. Subrogation Plaintiffs have and will make payments to or on behalf of its insureds for damages and expenses caused by the McKinley Fire. Subrogation Plaintiffs are contractually and equitably subrogated to the extent of payments made to or on behalf of their insureds for damages caused by the McKinley Fire.

**FIRST CAUSE OF ACTION
(Negligence)**

19. Subrogation Plaintiffs re-allege each and every allegation made above, fully incorporating those allegations as though fully set forth herein.

20. At all times material herein, MEA, through its agents and employees, acting in the scope of their employment, had a duty to use due care to install, inspect, maintain, operate and/or control the electrical distribution system in accordance with all standards, rules, regulations, orders, statutes and common law requirements applicable to MEA's electrical distribution system.

21. MEA, through its agents and employees, acting in the scope of their employment, had a duty to use due care in the planning and implementation of vegetation management along its easement or right of way, including the inspection and maintenance of all trees and vegetation in and around MEA's electrical distribution system. This duty included, but was not limited to, identifying potentially hazardous trees, maintaining safe distances between the electrical distribution system and any potentially

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hazardous trees, and removing trees which were potentially hazardous to the electrical distribution system.

22. MEA breached its duties by failing to use due care in the inspection, maintenance, operation, and control of the electrical distribution system in accordance with standards applicable to the electrical distribution system.

23. It was reasonably foreseeable to MEA that failing to operate its electrical distribution system consistent with the applicable standards and failing to inspect, identify, and remove potentially hazardous trees could result in ignition of a fire.

24. MEA's negligence was a substantial factor and proximate cause of the McKinley Fire, resulting in damages to the real and personal property of Subrogation Plaintiffs' insureds. Accordingly, State Farm, Nautilus, and Foremost were required to, and will pay their insureds an amount in excess of \$2,700,000.

**SECOND CAUSE OF ACTION
(Trespass)**

25. Subrogation Plaintiffs re-allege each and every allegation made above, fully incorporating those allegations as though fully set forth herein.

26. MEA had a non-delegable duty to ensure that the maintenance and operation of its electrical distribution system would not damage the property of Subrogation Plaintiffs' insureds.

27. Subrogation Plaintiffs' insureds were the owners, tenants, and/or lawful occupiers of real property damaged or impacted by the McKinley Fire.

28. MEA's acts and omissions ignited the McKinley Fire and caused the fire to enter onto and damage the property of Subrogation Plaintiffs' insureds.

29. Subrogation Plaintiffs' insureds did not consent to the entry of the McKinley Fire onto their property.

30. As a direct and proximate result of MEA's unlawful trespass, the real and personal property of Subrogation Plaintiffs' insureds was damaged or destroyed in the McKinley Fire causing damages in an amount in excess of \$2,700,000.

**THIRD CAUSE OF ACTION
(Nuisance)**

31. Subrogation Plaintiffs re-allege each and every allegation made above, fully incorporating those allegations as though fully set forth herein.

32. Subrogation Plaintiffs' insureds were the owners, tenants, and/or lawful occupiers of real property damaged by the McKinley Fire.

33. Subrogation Plaintiffs' insureds had the right to own, enjoy and/or use their property without interference by MEA.

34. MEA's acts and omissions caused the McKinley Fire, thereby causing a substantial and unreasonable obstruction of, and interference with, the free use and enjoyment of the personal and real property interests of Subrogation Plaintiffs' insureds.

35. As a direct and proximate cause of MEA's acts and omissions, the personal and real property of Subrogation Plaintiffs' insureds was damaged and/or destroyed in the McKinley Fire resulting in damages in excess of \$2,700,000.

WHEREFORE, Subrogation Plaintiffs State Farm Fire and Casualty Company, Nautilus Insurance Company, and Foremost Insurance Company Grand Rapids, Michigan pray for the following relief:

1. For an award of money damages in favor of Subrogation Plaintiffs and against Defendant Matanuska Electric Association, Inc. in an amount exceeding \$2,700,000, the exact amount to be proven at trial;

2. For pre-judgment and post-judgment interest;

3. For attorneys' fees and costs incurred in bringing and maintaining this action, pursuant to Alaska Civil Rules 82 and 79; and

4. For such other relief as the Court deems just and proper.

DATED this 8th day of March, 2021.

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of March, 2021, a true and correct copy of the foregoing was served on the following in the manner indicated:

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By: *V. Stontang*