

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

MIKE WELLS, TERESA WELLS and §
GERMANIA FARM MUTUAL INSURANCE §
ASSOCIATION §
PLAINTIFFS §
vs. §
UNION PACIFIC RAILROAD COMPANY §
DEFENDANT §

Civil Action No. 5:19-CV-_____
(Jury Requested)

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs Mike Wells, Teresa Wells and Germania Farm Mutual Insurance Association and file their Original Complaint against Defendant Union Pacific Railroad Company, and in support thereof would respectfully show unto the Court as follows:

PARTIES

I.

Plaintiffs Mike Well and Teresa Wells are individual citizens and residents of Bowie County, Texas.

II.

Plaintiff Germania Farm Mutual Insurance Association is an insurance company organized under the laws of the state of Texas, with its principal place of business located in Texas.

III.

Defendant Union Pacific Railroad Company is a corporation organized and existing under

the laws of the state of Delaware, with its principal place of business located in Omaha, Nebraska. Defendant operates as an interstate carrier subject to the jurisdiction of the U.S. Surface and Transportation Board. Defendant may be served with process through its registered agent, C.T. Corporation System, 5601 South 59th Street, Lincoln, Nebraska 68516.

JURISDICTION AND VENUE

IV.

The Court has jurisdiction over this lawsuit under 28 U.S.C. § 1332(a)(1) because Plaintiffs and Defendant are citizens of different U.S. states, and the amount in controversy exceeds \$75,000.00, excluding interest and costs. Plaintiffs are citizens of the state of Texas and Defendant is a citizen of the state of Nebraska.

V.

Venue is proper in this District under 28 U.S.C. § 1391(b)2 because a substantial part of the events or omissions giving rise to this claim occurred in this District.

FACTUAL BACKGROUND

VI.

Plaintiffs Mike and Teresa Wells were at all material times the owners of a home located at 2041 Presley Road in Bowie County, Texas. They resided in the home with their daughters and several pets.

VII.

At the time of the occurrence in question Plaintiff Germania Insurance had issued to the Wells a basic dwelling policy (No. 7-600-681-8756). The policy in question was in full force and

effect at the time of the occurrence in question, and provided coverage for certain losses, including damage to the Wells's home and contents caused by fire.

VIII.

On October 28, 2018, a small fire started in the Wells's residence. It was ultimately determined that the origin of the fire was an electrical power strip located at the base of the east wall in the northeast corner bedroom of the home. The power strip was destroyed in the fire.

IX.

The Wells were not home at the time the fire started. A passerby noticed smoke around the house and, upon further inspection, saw smoke coming from the roof vents. The passerby dialed 911 and reported the fire. At the time the passerby called 911, the doors and windows were all intact and there was no visible fire anywhere. Smoke was coming from the roof vents, but it was not billowing out.

X.

The Liberty Eylau Volunteer Fire Department ("LEVFD") was the primary fire department for the area where the Wells's home was located. The LEVFD fire station is located only 1.6 miles from the scene of the fire. The fire was reported via 911 at 1:03 p.m. and firefighters from LEVFD were en route by 1:04 p.m.

XI.

Texarkana Texas Fire Department ("TTFD") Station Five is located approximately 3.5 miles from the scene of the fire. TTFD Engine 7 and Quint 5 ladder truck were dispatched in response to the fire at 1:06 p.m. pursuant to a mutual aid agreement between the fire departments.

XII.

At approximately 1:07 p.m., approximately three (3) minutes after leaving the station, an LEVFD vehicle approached the crossing at Bottoms Road, located a short distance from the Wells's home. The crossing was blocked because a train owned and operated by Defendant was stopped and blocking the crossing. Shortly thereafter, a fire engine and Quint 5 unit dispatched from TTFD Station 5 also arrived at the Bottoms Road crossing, and were also prohibited from reaching the scene of the fire due to the blocked crossing. Had it not been for the parked train blocking the crossing, the LEVFD unit would have arrived at the fire scene no later than 1:08 p.m., approximately five (5) minutes after the 911 call was made, and before any fire was visible.

XIII.

Once LEVFD and TTFD units reported that the crossing was blocked, the Wake Village Fire Department ("WVFD") was dispatched to the scene as the LEVFD and TTFD units were blocked by Defendant's train. WVFD was dispatched because it is located on the same side of the blocked railroad crossing as the Wells's home.

XIV.

Once it became clear that Defendant's train was not going to move, disengage its units blocking the crossing or otherwise clear a path for the responding emergency vehicles, the LEVFD units and TTFD units (except Quint 5) backed down the road and proceeded to take an alternate route to the fire. TTFD's Quint 5 unit stayed at the crossing and waited. The LEVFD and TTFD fire units rerouted to the fire by detouring back to Eylau Loop Road, then to South Kings Highway, East to Macedonia Road, then Will Smith Road and Bottoms Road to reach the scene. The rerouted units

lost a critical twelve (12) minutes in arriving at the fire due to the continued blocking of the crossing in question by Defendant's train.

XV.

The first engines would have reached the fire scene within five (5) minutes of the call had the crossing been open. Instead, it took them until 1:20 p.m. to reach the scene. The WVFD unit reached the scene at 1:25 p.m. Had Defendant not blocked and continued to block the crossing in question, fire fighters would have been able to contain the fire to the bedroom in which it began, and before it spread to the rest of the home. Defendant failed to notify Bowie County Emergency Dispatch, the sheriff's office, the fire departments or any local emergency management personnel about the crossing being blocked by a parked train. Had it done so, the responding fire departments would have planned another route and been prepared for a fire incident or on the other side of the railroad tracks.

XVI.

As a direct and proximate result of Defendant blocking the crossing, the Wells's home and contents were a total loss.

NEGLIGENCE

XVII.

At the time of the occurrence in question, Defendant had a duty to exercise ordinary care not to block railroad crossings and deny emergency vehicles access to reach fire emergencies located on the opposite side of a crossing. Defendant breached that duty in one or more of the following ways:

- failing to keep the crossing in question open and otherwise allowing passage of local emergency vehicles through the crossing once they appeared with sirens and lights

activated;

- failing and/or refusing to allow local emergency responders passage through the crossing in a timely manner;
- unreasonably impeding local emergency service vehicles responding to the fire alarm;
- obstructing local emergency vehicles responding to the fire emergency;
- failing to properly yield to local emergency responders;
- failing to put in place safety procedures to allow for giving local emergency responders access to pass a crossing blocked by its parked train;
- failing to notify local authorities, including the county, fire departments and emergency management officials, that the crossing in question would be blocked for a prolonged period time by a parked train; and
- failing to exercise reasonable care and take appropriate action that would be commensurate with the unique, local and dangerous conditions of the railway crossing as the train crew and other Union Pacific Railroad Company employees knew or should have known that local emergency responders responding to an emergency were blocked by a train parked at that crossing.

DAMAGES

XVIII.

As a direct and proximate result of Defendants' negligence, Plaintiffs suffered the following damages:

- a. Plaintiff Germania paid benefits pursuant to the policy of insurance in question to

replace the dwelling and some of the contents up to the policy limits of approximately \$404,890.10.

- b. The Wells Plaintiffs sustained damages for loss of and damage to their home and personal property and payment of deductibles, which exceeded the limits or was not otherwise covered by the Germania policy, in the approximate amount of \$50,173.33.
- c. The Wells Plaintiffs lost several beloved pets to the fire, which would not have died had Defendant not negligently blocked local emergency responders from promptly reaching the fire scene.
- d. The Wells Plaintiffs also sustained other out-of-pocket expenses incurred as a result of the delay in receiving fire department assistance caused by Defendant.

JURY DEMAND

XIX.

Plaintiffs hereby demand a trial by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that Defendant Union Pacific Railroad Company be summoned to appear and answer herein, and that upon final hearing the Court award judgment against Defendant for Plaintiffs' damages as follows:

1. reimbursement to Plaintiff Germania for policy benefits paid in the sum of \$404,890.10;
2. actual damages to Wells Plaintiffs in the amount of \$50,173.33;

3. prejudgment and post-judgment interest as provided by law; and
4. any and all further relief to which Plaintiffs are entitled.

August 21, 2019

Respectfully submitted,

/s/ W. David Carter - Lead Attorney
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FARM MUTUAL INSURANCE
ASSOCIATION

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE