

NO. 2012-MCF-01

**IN RE: BASTROP COUNTY
COMPLEX FIRE LITIGATION**

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IN THE DISTRICT COURT

21st JUDICIAL DISTRICT

**BASTROP COUNTY, TEXAS
(Cause No. 28,218)**

SECOND AMENDED MASTER PETITION FOR INDIVIDUAL PLAINTIFFS GROUP

TO THE HONORABLE JUDGE OF SAID COURT:¹

I. INTRODUCTION

1. Plaintiffs are individuals or entities who suffered damages as a result of three fires that began the afternoon of September 4, 2011, and which soon merged into a single fire, commonly known as the Bastrop County Complex Fire, that burned in an uncontrolled state until October 10, 2011. As used herein, Bastrop County Complex Fire shall refer to both Bastrop One, Bastrop Two, and Bastrop Three (as defined below) before, during, and after the fires converged. Plaintiffs seek recovery of their damages caused by the Bastrop County Complex Fire.

2. One of the fires originated at approximately 2:00 p.m. in the Circle D Country Acres subdivision area of Bastrop County at or within a utility easement situated to the immediate northwest and running parallel to property located at 258 Charolais Drive, Bastrop, Texas. This fire will be further referenced in this Petition as the “Bastrop One” fire. Another fire originated at roughly the same time at or within a utility easement that fronts property located at 159 Schwantz Ranch Road in McDade, Texas. This fire will be further referenced in

¹ This Second Amended Master Petition (“Petition”), or portions thereof, will be adopted or amended by the individual plaintiff(s) by separate pleadings. Such pleadings will identify the plaintiff(s) and the law firm representing them.

this Petition as the “Bastrop Two” fire. The third and final fire of the Complex originated at approximately 5:00 p.m. near the Tahitian Village neighborhood. The third fire originated south of Highway 71 immediately to the east of the property situated at 643 Highway 71 in Bastrop County, Texas. This fire will be further referenced in this Petition as the “Bastrop Three” fire.

II. DISCOVERY

3. Discovery is to be conducted in connection with the captioned cause as a Level 3 matter, pursuant to the provisions of Rule 190.4, Texas Rules of Civil Procedure.

III. PARTIES

4. Plaintiffs are individuals or entities who sustained personal and/or property damage in Bastrop County, Texas as a result of the Bastrop County Complex Fire. Plaintiffs reside and/or conduct business in Bastrop County, Texas. All of Plaintiffs’ claims arise from events or occurrences within Bastrop County, Texas which resulted from damages, losses, and injuries within Bastrop County, Texas.

5. Defendant Bluebonnet Electric Cooperative, Inc. (hereinafter “Bluebonnet”) is a Texas non-profit corporation organized as an electrical cooperative corporation and has its principal place of business in Bastrop County, Texas. Bluebonnet may be served through its registered agent, Mark Rose, at 650 Highway 21 East, P.O. Box 729, Bastrop, Texas 78602.

6. Defendant Asplundh Tree Experts Company (hereinafter “Asplundh”) is a Pennsylvania corporation, having its principal offices at Willow Grove, Pennsylvania. Asplundh is registered to do business in the State of Texas and may be served through its registered agent, CT Corp. System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

IV. JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court as the amount in controversy is within this Court's jurisdictional limits. Venue is mandatory in Bastrop County under Section 15.011 of the TEX. CIV. PRAC. & REM. CODE because this is a suit for damages to real property located in Bastrop County. Venue is also proper in Bastrop County under Section 15.002 of the TEX. CIV. PRAC. & REM. CODE because a substantial part of the events or omissions giving rise to the Plaintiff Class' claims occurred in Bastrop County. Plaintiffs reserve their right to change venue pursuant to Texas Rules of Procedure 257-259, or on any other grounds allowed by law or equity.

8. Along with an action seeking class status, subrogation actions by insurers relating to the Bastrop County Complex Fire have been coordinated, related and organized with this case for the purposes of discovery by the 21st Judicial District Court, Bastrop County, Texas.

V. FACTUAL BACKGROUND

The Plaintiffs

9. The Bastrop County Complex Fire caused many of Plaintiffs to evacuate their homes, close their businesses, caused damage to their real, personal, and/or business property, and displaced certain Plaintiffs for extended periods while their homes and/or businesses were repaired. Additionally, some of the Plaintiffs suffered business interruption, and some suffered personal injury. This action seeks recovery of damages for all injuries suffered by Plaintiffs.

The Defendants

10. Defendant Bluebonnet is one of the largest electric cooperatives in Texas, providing electrical service since 1939 to all or part of 14 central Texas counties, including Bastrop County, Texas, and, more particularly, was at all relevant times the common electric service provider to Plaintiffs' residences and/or properties and/or businesses, through a network of 11,000 miles of electrical transmission and distribution lines.

11. Defendant Asplundh is a utility contractor specializing in tree pruning and vegetation management. Established in 1928, Asplundh has become the United States' largest firm in utility clearance and was the first company to specialize in power line clearance and vegetation management.

The Fire

12. The Bastrop County Complex Fire of September 4, 2011 involves damages resulting from Bastrop One, Bastrop Two, and Bastrop Three, both individually and as the fires joined together to become the Bastrop County Complex Fire, a wildfire responsible for incinerating more than 34,000 acres and either damaging or destroying homes and businesses of over 1,600 families residing within Bastrop County, Texas. The Bastrop County Complex Fire is reported as being the largest fire in the history of Texas.

13. Bastrop One, which was the first of two fires to be discovered on September 4, 2011, originated at energized power lines situated between Bluebonnet utility poles numbered 575564 and 575567, and located in a utility easement, owned and maintained by Bluebonnet, that runs parallel to the northwest border of residential property located at 258 Charolais Drive, Bastrop, Texas.

14. Bastrop One originated due to sagging and improperly spaced Bluebonnet energized power lines contacting each other mid-span, which caused the energized lines to arc and fuse together. This arcing event showered sparks and molten aluminum into tinder-dry brush and undergrowth situated within Bluebonnet's easement, quickly igniting the combustible vegetation that Bluebonnet and Asplundh had discarded and/or allowed to accumulate within Bluebonnet's right-of-way.

15. Prior to the ignition of Bastrop One, a neutral power line extending from Bluebonnet utility pole 575564 towards the service drop for the residential property located at 258 Charolais Drive broke and fell to the ground. The subject broken power line was collected by Bluebonnet prior to Plaintiffs having an opportunity to inspect the scene. Similarly, the fire scene surrounding the broken power line was significantly altered prior to Plaintiffs being granted access to the scene.

16. Bastrop One rapidly spread from the ignited dried brush and undergrowth situated within Bluebonnet's right-of-way in a general southerly direction towards property of others.

17. Shortly after Bastrop One began, Bastrop Two originated at power lines situated between Bluebonnet poles 620703 and 620704 that were situated within a utility easement owned and maintained by Bluebonnet and which fronted property located at 159 Schwantz Ranch Road in McDade, Texas.

18. Bastrop Two originated due to Bluebonnet's energized power lines becoming entangled with branches from a mature Blackjack Oak tree that for decades had grown within the Bluebonnet utility easement. The entanglement of this tree with the energized power lines caused an electrical event resulting in sparks, molten aluminum, and/or ignited vegetation falling to the ground further igniting the dried brush, undergrowth, and vegetation that Bluebonnet and

Asplundh had discarded and/or had allowed to accumulate and/or grow within Bluebonnet's utility easement.

19. The vegetation surrounding and in some instances in contact with the power lines at and around the area of origin of Bastrop Two were altered and in some instances destroyed by Bluebonnet and Asplundh.

20. Bastrop Two rapidly spread from the ignited brush and undergrowth situated within Bluebonnet's easement, eventually joining up with Bastrop One in first forming the Bastrop County Complex Fire.

21. Later still that afternoon, Bastrop Three originated near Bluebonnet pole 266138, a pole situated to the south of Highway 71 and located within a utility easement owned and maintained by Bluebonnet.

22. Bastrop Three originated due to Bluebonnet's energized power lines coming in contact with branches from a mature pine tree that encroached within Bluebonnet's utility easement. The pine branches, in striking Bluebonnet's energized power lines, caused an electrical event resulting in sparks, molten aluminum and/or ignited tree vegetation falling to the ground igniting the dried brush and undergrowth also found within Bluebonnet's utility easement.

25. Bastrop Three rapidly spread from the ignited dried brush and undergrowth situated within Bluebonnet's right-of-way towards property of others, eventually being overlapped by Bastrop Two in forming another component of the Bastrop County Complex Fire.

Vegetation Management

26. Bluebonnet, in its Vegetation Management Program, exhibited an actual awareness of its need to control vegetation to maintain proper clearance from its energized

conductors and to cut, trim, chemically treat, and/or remove any or all trees, brush, shrubbery or other obstruction within or outside Bluebonnet easement areas to the extent necessary to keep the easement area clear, or which might otherwise endanger or interfere with the efficiency of the lines, including the removal of any dead, weak, leaning, or dangerous trees that are tall enough to strike the lines in falling.

27. From January 1, 2005 up to and including September 4, 2011, Asplundh had entered into an agreement with Bluebonnet wherein Asplundh had agreed to furnish supervisors, labor, tools, transportation, equipment and materials for the sole purpose of trimming and/or removing trees that might otherwise endanger or interfere with Bluebonnet's lines, cutting and/or chemically treating brush and undergrowth on Bluebonnet's rights-of-way, and disposing of the debris from such work as specified by Bluebonnet.

28. For several years prior to September 4, 2011, Bastrop County, Texas was in the grip of successive annual droughts.

29. Defendants, and each of them, were aware of the danger from fires in Bastrop County, Texas when environmental conditions are favorable for extensive conflagration in the absence of moisture, with a prevalence of wind and high temperatures, which combination renders the extinguishment of a burning fire difficult. Each of them was aware of the 2009 Wilderness Ridge Fire and the devastation it wreaked upon the County, as the result of poor vegetation management and poor line maintenance, and consequently each was particularly alerted to the danger of wildfire spreading from the Bluebonnet right of way.

30. The conditions and circumstances existent at the time of ignition in both fire origin areas, including the extended drought, high temperature, low humidity, tinder-like dryness of vegetation, and seasonal winds, were reasonably foreseeable, if not expected, by a reasonable

and prudent person and were reasonably foreseeable and to be expected by Defendants, especially with their special knowledge and expertise.

31. Defendants, and each of them, failed in their duty to exercise care commensurate with and proportionate to the combined danger of an area susceptible to wildfire and the dangerous activity of high voltage power lines carrying electricity. The Defendants' breach of duty was therefore a proximate cause of the fires, as more fully set forth below. By way of example only, Bluebonnet and Asplundh each had a duty to use reasonable care to cut, trim and/or remove any trees, brush and vegetation to the extent necessary to keep Bluebonnet's easements clear along and within the electric distribution line or system's right-of-way. Bluebonnet and Asplundh failed in their respective duties to adequately maintain the right-of-way and the areas surrounding the right-of-way. In fact, the Texas Forest Service investigation found that not only had Bastrop Two been caused by a tree that had grown up through the power lines, but also observed other instances along the power lines where Bluebonnet and Asplundh had allowed other trees to grow up through the power lines. Further, Plaintiffs would show that Bluebonnet and Asplundh discarded vegetation waste by simply leaving it on Bluebonnet's easements, exacerbating the fire hazards resulting from Defendants' other conduct. Plaintiffs would further show that Bluebonnet and Asplundh permitted the easements in question to be overgrown with dry vegetation throughout a drought that had plagued Bastrop County, and, on information and belief, failed to adhere to Bluebonnet's policies relating to vegetation management.

32. Energized high voltage power lines carrying electricity are a dangerous instrumentality and a hazardous and dangerous activity requiring the exercise of increased care commensurate with and proportionate to that increased danger. The requisite increased duty and

high level of care requires the safe transport of electricity through wires under all circumstances and exigencies offered by the surrounding environment, including the risk of fire.

33. Defendants failed to take any and all actions and/or precautions that became known through the course of discovery. As a result of Defendants' acts and/or omissions, Plaintiffs suffered substantial damages. Defendants refuse to take responsibility for Plaintiffs' damages, so Plaintiffs were forced to bring this suit. All conditions precedent to Plaintiffs' recovery have occurred or have been waived.

VI. FIRST CAUSE OF ACTION
(Negligence – Bluebonnet)

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

35. Bluebonnet has a non-delegable duty to apply a high level of care commensurate with and proportionate to the danger of designing, engineering, constructing, maintaining and operating electrical transmission and distribution systems. This duty arises from the common law of the state of Texas and from the Restatement (Second) of Torts, Section 364.

36. Bluebonnet also has a non-delegable duty of oversight, in the design, construction, installation, maintenance, use, operation, repair, control, and inspection appropriate to the changing conditions and circumstances of those systems, including the management and control of vegetation growing in proximity to its electric facilities.

37. Prior to September 4, 2011, Bluebonnet hired, retained, and contracted with Asplundh to perform work in accordance with Bluebonnet's Vegetation Management Program, said work including the trimming and/or removing of trees might endanger or interfere with Bluebonnet's lines, and the cutting and/or chemical treatment and removal of brush and undergrowth on and around Bluebonnet's rights-of-way.

38. The work for which Asplundh was hired involved a risk of fire which was peculiar to the work to be performed and arose either from the nature of the work and/or its location. A reasonable property/easement owner in the position of Bluebonnet knew, or should have recognized, the necessity of taking special precautions to protect adjoining property owners against the risk of harm relative to the work to be performed.

39. Bluebonnet knew or should have known that the activities of Asplundh involved a risk of fire which was peculiar to the work to be done and arose either from the nature and/or location of the work. Notwithstanding this, Bluebonnet failed to take reasonable precautions to protect adjoining property owners against the foreseeable risk of harm created by the failure to properly maintain vegetation within its easement.

40. Bluebonnet has special knowledge and expertise far above that of a lay person that it was required to bring to bear upon the design, engineering, construction, use, operation, inspection, repair and maintenance of its high voltage electric power lines to assure their safety under all of the local conditions within their service area including, but not limited to those conditions identified herein. This special knowledge included the proper spacing of energized lines to avoid line contact, taking into consideration, among other things, that lines may stretch and sag due to high temperatures.

41. Bluebonnet negligently breached its duties by, among other things:
- a) Failing to conduct reasonably prompt, proper and frequent inspections of its high voltage electric transmission lines, wire and associated equipment;
 - b) Failing to design, construct, monitor and maintain high voltage transmission and distribution lines in a manner that avoids igniting fire during long dry seasons either to allow those lines to come into contact with one another under expected operating conditions, or to come into contact with tree material;
 - c) Failing to design, construct, monitor and maintain high voltage transmission and distribution lines to withstand foreseeable conditions to avoid igniting fires;

- d) Failing to maintain and monitor high voltage transmission and distribution lines in fire prone areas to avoid igniting fires and spreading fires;
- e) Failing to keep equipment in a safe condition at all times in order to prevent fires;
- f) Failing to properly maintain its utility right-of-way and all areas surrounding its right-of-way at the above-referenced locations;
- g) Failing to adhere to utility line maintenance standards set forth in the National Electric Safety Code at the above-referenced locations; and
- h) Failing to implement and conduct adequate vegetation management, including but not limited to inspection, trimming and/or maintenance of all trees and vegetation in and around its electrical equipment.

42. In addition, Bluebonnet recognized that properly maintaining the right-of-way and facilities was necessary for the protection of its customers, including Plaintiffs. Bluebonnet undertook to maintain the right-of-way and facilities, but, as set forth above, Bluebonnet failed to perform those services with reasonable skill or diligence. To the contrary, Bluebonnet's acts and inactions in respect to maintenance and vegetation management increased the risk of harm to Plaintiffs and Bluebonnet's other customers as set forth in Paragraphs 29 through 33 above. In short, Bluebonnet breached its standard of care, and such breach was a proximate cause of the fire in question and the ensuing damages to Plaintiffs. On information and belief, prior to the fire, Bluebonnet was well aware of the dangerous conditions that existed on the easements in question as well as its other easements due to the extreme heat and drought conditions that existed in Bastrop County throughout the months leading up to the fire as set forth in Paragraph 29 through 33 above. Despite its objective and subjective knowledge of the danger and risk that such vegetation might catch fire if its power lines sparked or shorted in any way, Bluebonnet consciously disregarded that risk, and left its various rights-of-way in a dangerous condition

susceptible to such a fire. The negligence of Bluebonnet was a proximate cause Plaintiffs' damages.

43. Defendants' failure to exercise due care, described above, proximately caused damage to Plaintiffs. As a direct and proximate result of the conduct of Bluebonnet, Plaintiffs sustained loss and damage, the exact amount of which will be proven at trial.

VII. SECOND CAUSE OF ACTION
(Gross Negligence – Bluebonnet)

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

45. Bluebonnet has a non-delegable duty to apply a high level of care commensurate with and proportionate to the danger of designing, engineering, constructing, maintaining and operating electrical transmission and distribution systems.

46. Bluebonnet also has a non-delegable duty of oversight, in the design, construction, installation, maintenance, use, operation, repair, control, and inspection appropriate to the changing conditions and circumstances of those systems, including the management and control of vegetation growing in proximity to its electric facilities.

47. Bluebonnet also has a duty, by virtue of its undertaking to perform the management and control of vegetation growing in proximity to its electric facilities, to do so in a careful manner to protect the neighboring landowners, including but not limited to its members, from the risk of fire.

48. Bluebonnet also owed a duty to those properties adjacent to Bluebonnet controlled easements to exercise that control safely, and with reasonable care, pursuant to the common law of the State of Texas. Bluebonnet further owed a duty to those properties adjacent to Bluebonnet's easements/land by creating and/or acquiescing to the dangerous conditions of its

easements/land pursuant to the common law of the State of Texas and Restatement (Second) of Torts, Section 364.

49. Bluebonnet's conduct, actions, and omissions constitute gross negligence. Bluebonnet knew of the 2011 exceptional drought conditions, the 2010 Pine Forest subdivision fire, the February 2009 Wilderness Ridge Fire that consumed 1600 acres and 28 homes under less extreme conditions, and that it had received several calls for service warning that trees were interfering with its power lines, that its Bastrop County easements were overgrown with uncontrolled vegetation, that such vegetation endangered and/or was actually interfering with its electrical lines and that such vegetation would ignite if its power lines sparked or shorted that a catastrophic wildfire would ensue.

50. Bluebonnet failed to inspect its power lines and easement areas, it failed to respond to calls for service, it failed to maintain its easements areas free from dangerous trees and vegetation, it failed to properly construct and maintain its appurtenances within the easements, and it failed to perform any or performed substandard vegetative maintenance and system maintenance pursuant to industry standards and its own vegetative management policies and procedures.

51. Bluebonnet consciously disregarded the aforementioned risks, and left its various rights-of-way in dangerous conditions impermissibly susceptible to fire. Bluebonnet's acts and omissions as set forth herein, when viewed objectively from Bluebonnet's standpoint, involved an extreme degree of risk, but despite Bluebonnet's actual, subjective awareness of the risk, Bluebonnet proceeded with a conscious indifference to the rights, safety, and welfare of Plaintiffs and others in Bastrop County. Bluebonnet knew that a fire like the Bastrop County Complex Fire was inevitable in light of the foregoing circumstances. Bluebonnet acted with a

conscious indifference to the actual dangerous conditions and actual knowledge of the risk of wildfires in the Bastrop area when it failed to take reasonable steps to keep the area within and outside its easements clear from threatening trees that endangered and/or were actually interfering with its power lines and failed to perform reasonable appurtenance inspections and maintenance. Bluebonnet ignored the known unjustifiable extreme risks involved and the potential devastating harm to Plaintiffs and the general public, and proceeded with a conscious indifference to the publics' and Plaintiffs' rights, safety, and welfare.

52. Defendants' gross negligence, as described above, proximately caused damage to Plaintiffs. As a direct and proximate result of the grossly negligent conduct of Bluebonnet, Plaintiffs sustained loss and damage, the exact amount of which will be proven at trial.

VIII. THIRD CAUSE OF ACTION
(Negligence – Asplundh)

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

54. Bluebonnet entered into a written contract agreement with Asplundh for the purpose of maintaining line clearance, vegetation clearance, inspecting of trees, brush and undergrowth, and the trimming and removal of limbs, branches and undergrowth within and along the easements and rights-of-way at, near and/or on its power lines.

55. Asplundh owed a duty under the common law of Texas to apply a high level of care commensurate with and proportionate to the danger of power line related vegetation maintenance and to use its skill, prudence, judgment and diligence to inspect, identify, mark, notify, trim, remove and deal with trees, brush, and vegetative undergrowth, and to carry out the terms of its contract agreement with Bluebonnet. Furthermore, Asplundh owed a duty under the Restatement (Second) of Torts, Section 324A, by virtue of its undertaking to perform the work of

its contract with Bluebonnet to do so in a careful manner to protect the neighboring landowners from the risk of fire. Instead, it made the risk of fire worse because it failed to perform its contract, and because Bluebonnet was relying upon Asplundh to perform its contract carefully.

56. Asplundh has a non-delegable duty of oversight as appropriate to the changing conditions and circumstances relating to the vegetation management of the trees, brush and vegetative undergrowth that was the subject of its agreement with Bluebonnet.

57. Asplundh failed to timely inspect, identify, mark, notify, trim and remove trees, brush, limbs, and vegetative undergrowth, and to otherwise carry out the terms of their contract and agreement so as to prevent contact with power lines owned and/or operated by Bluebonnet and/or to prevent the ignition and spread of fire from brush and undergrowth situated within Bluebonnet's rights of way.

58. Asplundh and Bluebonnet recognized that Asplundh's services were necessary to protect Plaintiffs and Bluebonnets' other customers. Asplundh had a legal duty to perform its work with reasonable skill and diligence. Despite its contractual and common law duties to keep the easement free and clear, Asplundh failed in this undertaking for an extended period leading up to this fire. Asplundh's failure to keep the Bluebonnet's easements free and clear of the vegetation in question was a proximate cause of the fire and the resulting damages to Plaintiffs. On information and belief, prior to the fire, Asplundh was well aware of the dangerous conditions, set forth in Paragraph 29 through 32 above, that existed on the easements in question as well as its other easements due to the extreme heat and drought conditions that existed in Bastrop County throughout the months leading up to the fire. Despite its objective and subjective knowledge of the danger and risk that such vegetation might catch fire if the power lines served by the easements sparked or shorted in any way, Asplundh consciously disregarded

that risk, and left the various rights-of-way in a dangerous condition susceptible to such a fire. The negligence of Asplundh was a proximate cause of Plaintiffs' damage.

59. Asplundh's failure to exercise its duty of due care proximately caused damage to Plaintiffs. As a direct and proximate result of the conduct of Asplundh, Plaintiffs sustained loss and damage, the exact amount of which will be proven at trial.

IX. FOURTH CAUSE OF ACTION
(Gross Negligence – Asplundh)

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

61. Pursuant to a contract entered into with Bluebonnet, Asplundh had a non-delegable duty to apply a high level of care commensurate with and proportionate to the danger of maintaining line clearance, vegetation clearance, inspecting of trees, brush and undergrowth, and the trimming and removal of limbs, branches and undergrowth within and along the easements and rights-of ways at, near and/or on Bluebonnet's power lines.

62. Asplundh also owed a duty under the common law of Texas to apply a high level of care commensurate with and proportionate to the danger of power line related vegetation maintenance and to use its skill, prudence, judgment and diligence to inspect, identify, mark, notify, trim, remove and deal with trees, brush, and vegetative undergrowth, and to carry out the terms of its contract agreement with Bluebonnet.

63. Asplundh also owed a duty under the terms of its contract with Bluebonnet to perform all work related to the vegetation management as described above in a careful manner to protect the neighboring landowners from the risk of fire. Despite Asplundh's knowledge Bluebonnet was relying upon Asplundh to perform the contract carefully, Asplundh knowingly,

and with conscious disregard of the extreme risk of danger under the known conditions, failed to perform its contract.

64. By virtue of its contract with Bluebonnet, Asplundh also has a non-delegable duty of oversight as appropriate to the changing conditions and circumstances related to the vegetation management of the trees, brush and vegetative undergrowth that was the subject of its agreement with Bluebonnet.

65. Despite the known high risk of fire due to drought conditions and high heat, Asplundh, with conscious disregard for the safety and welfare of Plaintiffs' rights, failed to timely inspect, identify, mark, notify, trim and remove trees, brush, limbs, and vegetative undergrowth, and to otherwise carry out the terms of their contract and agreement so as to prevent the known high risk of fire caused by tree contact with power lines, and the fuel load of vegetative undergrowth.

66. Asplundh's conduct, actions, and omissions constitute gross negligence. Asplundh knew of the 2011 exceptional drought conditions, the 2010 Pine Forest subdivision fire, the February 2009 Wilderness Ridge Fire that consumed 1600 acres and 28 homes under less extreme conditions, was specifically retained by Bluebonnet to perform work within Bastrop County to provide vegetative management to clear tree, branches, and undergrowth for the very purpose of eliminating the threat of fire, and had actual knowledge that such vegetation would ignite if its power lines sparked or shorted and cause a catastrophic wildfire would ensue.

67. Asplundh failed to inspect the power lines and easement areas, it failed to perform its contractual duties, it failed to maintain the easements areas free from dangerous trees and vegetation, and it failed to perform any or performed substandard vegetative maintenance and

system maintenance pursuant to industry standards despite the knowledge Bluebonnet was relying upon Asplundh to perform these duties in order to the public's rights, safety, and welfare.

68. Asplundh consciously disregarded the aforementioned risks, and left Bluebonnet's rights-of-way in dangerous conditions impermissibly susceptible to fire. Asplundh's acts and omissions as set forth herein, when viewed objectively from Asplundh's standpoint, involved an extreme degree of risk, but despite Asplundh's actual, subjective awareness of the risk, Asplundh proceeded with a conscious indifference to the rights, safety, and welfare of Plaintiffs and others in Bastrop County. Asplundh knew that a fire like the Bastrop County Complex Fire was inevitable in light of the foregoing circumstances. Asplundh acted with a conscious indifference to the actual dangerous conditions and actual knowledge of the risk of wildfires in the Bastrop area when it failed to take reasonable steps to keep the area within and outside the easements clear from threatening trees that endangered and/or were actually interfering with the power lines and failed to perform reasonable appurtenance inspections and maintenance as required by its contract with Bluebonnet, and as required by law. Asplundh ignored the known unjustifiable extreme risks involved and the potential devastating harm to Plaintiffs and the general public, and proceeded with a conscious indifference to the publics' and Plaintiffs' rights, safety, and welfare.

69. Asplundh's gross negligence, as described above, proximately caused damage to Plaintiffs. As a direct and proximate result of the grossly negligent conduct of Asplundh, Plaintiffs sustained loss and damage, the exact amount of which will be proven at trial.

X. FIFTH CAUSE OF ACTION
(Trespass – Bluebonnet)

70. Plaintiffs repeat and re-allege each and every allegation made above, fully incorporating those allegations as though fully set forth herein, and in addition and/or in the alternative, further allege:

71. At all relevant times Plaintiffs, and each of them, were the owners, tenants, and/or lawful occupiers of property damaged by the Bastrop Complex Wildfire.

72. Bluebonnet, despite its awareness of the extreme drought conditions in Bastrop County, failed to reasonably maintain its lines and/or allowed dry vegetation accumulate within its easements. As a result of Bluebonnet's acts and/or omissions, Bluebonnet permitted Bastrop One, Bastrop Two, and Bastrop Three to ignite and/or spread out of control, causing damages to Plaintiffs. Bluebonnet's acts or omissions in allowing the fires to ignite and/or spread constitute a physical, intentional and voluntary entry of Plaintiffs' property.

73. Plaintiffs did not grant permission for Bluebonnet to cause the Bastrop County Complex Fire to enter their properties.

74. As a direct and substantial cause of the trespass, Plaintiffs have suffered and will continue to suffer damages.

XI. SIXTH CAUSE OF ACTION
(Trespass – Asplundh)

75. Plaintiffs repeat and re-allege each and every allegation made above, fully incorporating those allegations as though fully set forth herein, and addition and/or in the alternative, further allege:

76. At all relevant times Plaintiffs, and each of them, were the owners, tenants, and/or lawful occupiers of property damaged by the Bastrop Complex Wildfire.

77. Asplundh, despite its awareness of the extreme drought conditions in Bastrop County, allowed dry vegetation accumulate within Bluebonnet's easements. As a result of Asplundh's acts and/or omissions, Asplundh permitted Bastrop One, Bastrop Two, and Bastrop Three to ignite and/or spread out of control, causing damages to Plaintiffs. Asplundh's acts or omissions in allowing the fires to ignite and/or spread constitute a physical, intentional and voluntary entry of Plaintiffs' property.

78. Plaintiffs did not grant permission for Asplundh to cause the Bastrop County Complex Fire to enter their properties.

79. As a direct and substantial cause of the trespass, Plaintiffs have suffered and will continue to suffer damages.

XII. SEVENTH CAUSE OF ACTION
(Nuisance – Bluebonnet and Asplundh)

80. Plaintiffs repeat and re-allege each and every allegation made above, fully incorporating those allegations as though fully set forth herein, and addition and/or in the alternative, further allege:

81. Plaintiffs had property rights and privileges in respect to the use and enjoyment of certain lands affected by Defendants' acts and omissions. As set forth above, Bluebonnet and Asplundh failed in their respective duties to adequately maintain Bluebonnet's right-of-way and the areas surrounding Bluebonnet's right-of-way. Defendants' conduct that caused the nuisance was negligent, intentional, and/or abnormal and out of place given the circumstances and Bluebonnet's public recognition of power line fire threats. As a proximate result of Defendants' conduct in creating the nuisance, Plaintiffs suffered property damage and/or personal injury.

82. In addition, and/or in the alternative, Defendants' acts and/or omissions created a public nuisance in violation of the common law and/or TEX. HEALTH & SAFETY CODE

§ 343.011(b) & 343.011(c)(10) (defining prohibited “public nuisance” as including discarding refuse, such as vegetable matter, on a utility easement.) Plaintiffs are private citizens that suffered special harm, including deprivation of their use of Plaintiffs’ property, as a result of Defendants’ conduct. Defendants’ conduct unreasonably interfered with the public’s safe use and enjoyment of their property. As a proximate result of Defendants’ conduct in creating the nuisance, Plaintiffs suffered damages.

XIII. DAMAGES

83. Plaintiffs seek to recover all of their respective actual and consequential damages resulting from the aforementioned acts and/or omissions of Bluebonnet and Asplundh, in addition to exemplary damages, costs of court, and prejudgment and post-judgment interest.

XIV. JURY DEMAND

84. Plaintiffs demand that this Court empanel a lawful jury to hear this case.

XV. REQUEST FOR DISCLOSURE

85. Pursuant to Rule 194, Bluebonnet and Asplundh are requested to disclose, within 30 days of service of this request the information or material described in Rule 194.2.

XVI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and to answer this action and that upon final hearing the Court enter a judgment against Defendants Bluebonnet and Asplundh and in favor of Plaintiffs for a sum in excess of the jurisdictional limits of this Court, with prejudgment and post-judgment interest at the legal rate, court costs, and any such other and further relief, both at law and in equity, which Plaintiffs may show themselves justly entitled.

ELECTRONIC CERTIFICATE OF SERVICE

On this 21st day of March, 2013, pursuant to Section 4(b) of the Court's Case Management and Docket Control Order, I instituted service of the foregoing document described as Second Master Petition for Individual Plaintiffs Group on the interested parties by submitting an electronic version of the document via file transfer protocol (FTP) to CaseHomePage through the upload feature at www.casehomepage.com.

/s/ S. Abraham Kuczaj, III

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