

CIRCUIT COURT OF STATE OF OREGON
COUNTY OF MULTNOMAH

AMY ALLEN; WILLIAM ALLEN; EDWIN
FOSTER; ERNEST BROSIG; and PATSY
HINES,

Plaintiffs,

v.

PACIFICORP, an Oregon corporation;
PACIFIC POWER, an Oregon registered
electric utility and assumed business name of
PACIFICORP; DOES 1-200 inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES
(Negligence; Trespass; Nuisance)

Fee Authority: ORS 21.160(1)(d): \$884

NOT SUBJECT TO MANDATORY
ARBITRATION

JURY TRIAL DEMANDED

I.

INTRODUCTION

1.

Plaintiffs allege the following against Defendants PacifiCorp, Pacific Power, and Does 1-200 inclusive, based, where applicable, on personal knowledge, information and belief, and the investigation and research of counsel.

2.

On September 5 and 6, 2020, the National Weather Service issued weather warnings in Oregon for September 7, 2020, Labor Day. The warning indicated hot, dry winds from the east would top 75 miles per hour, resulting in extreme fire conditions, with the risk increasing through Labor Day evening.

3.

Despite being warned of this extreme risk of fire, Defendants left their powerlines energized. And

1 when the hot, dry winds came as predicted, Defendants' powerlines toppled, igniting surrounding
2 vegetation in communities across Oregon, including the area of Santiam Canyon.

3 4.

4 These fires could have been avoided had Defendants deenergized their powerlines as other electric
5 utilities did in anticipation of the wind event. Because Defendants failed to do so their powerlines
6 ignited fires at multiple points, igniting a conflagration that destroyed homes and communities
7 throughout the Santiam Canyon area. The Northwest Incident Management Team explained on
8 September 9, 2020:

9 Originally listed at 469 acres, the fire has grown overnight to over 131,000 acres driven by
10 high winds and extremely dry fuels. Originally named the Beachie Creek fire, it has been
11 renamed the Santiam Fire acknowledging that the Beachie Creek fire no longer was the
12 main cause of rapid fire growth and was instead *fed by a series of small fires largely caused
13 by downed power lines* and other ignition sources throughout the area.

12 5.

13 The fires grew rapidly and destroyed homes, businesses, and entire communities in the Santiam,
14 Clackamas, McKenzie, and Umpqua River Canyon areas, along with other parts of Oregon. The fires
15 burned nearly a million acres, destroyed thousands of structures, killed several people, and upended
16 countless lives. Plaintiffs now sue Defendants for recovery of damages.



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26 **Santiam Fire, Photo Via Central Oregon Daily**

1 **II.**
2 **PARTIES**

3 **A. Plaintiffs**

4 6.

5 Plaintiffs are individuals, representatives, and legal entities who were, at all times relevant to this
6 pleading, homeowners, renters, business owners, and other individuals, representatives, and entities
7 who were citizens, residents, occupants, and/or had a property interest located in Oregon.

8 7.

9 Plaintiffs have elected to join their individual lawsuits in a single action under rules of permissive
10 joinder as set forth in Oregon Rule of Civil Procedure 28(A). Plaintiffs do not seek class certification
11 or relief on any class-wide, collective, or other group basis, but instead seek the damages and other
12 remedies identified herein on an individual basis according to proof at trial or through alternative
13 dispute resolution efforts.

14 **B. Defendants**

15 8.

16 Defendant PacifiCorp is an Oregon corporation doing business as a public utility in Oregon.
17 PacifiCorp's primary place of business is in Multnomah County, Oregon at 825 NE Multnomah Street,
18 Suite 2000, Portland, Oregon 97232.

19 9.

20 Defendant Pacific Power is a registered electric utility doing business in Oregon with its primary place
21 of business in Multnomah County, Oregon at 825 NE Multnomah Street, Suite 2000, Portland, Oregon
22 97232.

23 10.

24 Pacific Power is an assumed business name of PacifiCorp. Pacific Power is wholly owned by
25 PacifiCorp. "Pacific Power" refers collectively to both PacifiCorp and Pacific Power.

26 11.

27 Defendants conduct regular, sustained business in Oregon and Multnomah County.

1 12.

2 Defendants own and/or operate powerlines and other infrastructure and equipment in Oregon to
3 transmit, supply, and provide electricity to private and public consumers.

4 13.

5 The true names and capacities of defendants Does 1 through 200 inclusive are currently unknown to
6 Plaintiffs who, therefore, sue these defendants under these fictitious names pursuant to Oregon Code of
7 Civil Procedure 20(H). These defendants are each directly and/or vicariously responsible, in some
8 manner, for the harms alleged herein. If/when Plaintiffs learn these defendants' true names and
9 capacities, Plaintiffs will seek leave to amend this pleading accordingly. "Defendants" refers
10 collectively to Pacific Power and Does 1 through 200 inclusive.

11 14.

12 At all times relevant to this pleading, Defendants, and/or each of them, were the agents, servants,
13 employees, partners, aiders and abettors, co-conspirators, and/or joint venturers of each of the other
14 Defendants; and were operating within the purpose and scope of said agency, service, employment,
15 partnership, enterprise, conspiracy, and/or joint venture; and each of Defendants has ratified and
16 approved the acts of each of the remaining Defendants. Each of Defendants aided and abetted,
17 encouraged, and rendered substantial assistance to the other Defendants in breaching their obligations
18 and duties to Plaintiffs, as alleged herein. In taking action to aid and abet and substantially assist the
19 commission of these wrongful acts and other wrongdoings alleged herein, each of Defendants acted
20 with an awareness of his/her/its primary wrongdoing and realized that his/her/its conduct would
21 substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

22 **III.**

23 **JURISDICTION AND VENUE**

24 15.

25 This Court has jurisdiction over the parties and this case, as Plaintiffs are citizens and residents of
26 Oregon, and Pacific Power is an Oregon corporation.

1 16.

2 Pacific Power engages in regular, sustained business in Oregon and Multnomah County, and maintains
3 its principal places of business at 825 NE Multnomah Street, Suite 2000, Portland, Oregon 97232.

4 Therefore, venue is proper in Multnomah County, Oregon pursuant to ORS 14.080(a).

5 **IV.**

6 **FACTS**

7 **A. Defendants Knew of the Extreme Fire Risk on Labor Day 2020**

8 17.

9 Due in part to extreme drought conditions on both sides of the Cascade Mountains through 2020, fire
10 potential in Oregon was well above normal levels by the beginning of September 2020.

11 18.

12 By September 5, 2020, the National Weather Service began warning of fire weather conditions along
13 the West Coast, including in areas close to the Cascade Mountains.

14 19.

15 By September 6, 2020, the National Weather Service warned of extremely critical fire weather on
16 September 7, 2020, for parts of Northwest Oregon, from the Cascades to the Coast Mountains, as well
17 as for other parts of the state. The National Weather Service predicted easterly winds over fifty miles
18 per hour and warned relative humidity would drop below 20%, fostering very favorable fire-spreading
19 conditions, particularly in light of the very dry fuels between the coastal ranges and Cascades.

20 20.

21 On September 7, 2020, Labor Day, at 8:58 a.m. (PDT), the National Weather Service issued another
22 warning, beginning with “. . . EXTREMELY CRITICAL FIRE WEATHER AREA FOR PORTIONS
23 OF NORTHWESTERN OREGON” The warning included winds speeds of up seventy-five miles
24 per hour, with relative humidity at 15-25%, and very dry fuels. The warning explained these conditions
25 would “create a volatile environment supportive of rapidly spreading fires exhibiting extreme
26 behavior.”

1 21.

2 Defendants were aware of the National Weather Service’s warnings issued on September 6 and early on
3 Labor Day, as well as aware of the critical fire risk that existed in the Santiam Canyon area and other
4 parts of Oregon on Labor Day. Defendants were, moreover, aware that deferred and/or inadequate
5 maintenance of Defendants’ infrastructure and equipment, as well as deferred and/or inadequate
6 maintenance of vegetation surrounding Defendants’ infrastructure and equipment, would result in fires.

7 **B. Defendants Have a Duty to Safely Maintain and Operate Their Powerlines**

8 22.

9 Defendants supply electricity throughout Oregon. They own, design, construct, operate, maintain, and
10 repair powerlines and other equipment to transmit electricity to residents, businesses, schools, and
11 industries in Oregon, including in and around the ignition points in the Santiam Canyon communities
12 of Gates, Mills City, and Lyons.

13 23.

14 As Defendants are aware, operating an electric utility and, in particular, operating high-voltage
15 electrical equipment and infrastructure, carries inherent dangers. The inherent and heightened danger
16 associated with the transmission and distribution of electricity through overhead powerlines in
17 vegetated areas requires Defendants to exercise an increased level of care to protect the public and
18 the communities through which their powerlines run. Indeed, Defendants have a level of expertise
19 with regard to the operation of an electric utility far beyond that of a layperson and, as such, owe a
20 heightened duty commensurate with this expertise.

21 24.

22 Oregon law recognizes the inherent dangers in providing electricity to the public, mandating that public
23 utilities, like Defendants, “furnish adequate and safe service, equipment and facilities.” ORS §
24 757.020.

25 25.

26 Oregon lawmakers have, moreover, recognized the state’s electrical infrastructure poses real and
27 significant fire threats. As Governor Kate Brown’s Wildfire Counsel explained in its

1 Recommendations on Utility Preparedness, “As the frequency, intensity and duration of wildfires has
2 increased in the West, there is a need to have electrical companies take measures to reduce the risk of
3 these events. For example, powerline fires are on average 10 times larger than fires from other causes.”
4 In California, of the top twenty most destructive wildfires in state history, at least eight were caused by
5 electric utilities and seven occurred between 2015 and 2018—including the devastating Camp Fire in
6 November 2018 that resulted in eighty-five deaths, the destruction of 18,804 structures, and a total of
7 153,336 acres burned.

8 26.

9 Pacific Power itself recognized the high risk of fires prior to Labor Day 2020. In a May 21, 2020
10 report, Pacific Power explained, “Utilizing fire threat modeling concepts, areas were identified in
11 Oregon where there is an elevated risk of utility-associated wildfires to occur and spread rapidly, and
12 where communities face an elevated risk of damage or harm from wildfires.” The Santiam Canyon
13 area should have been one of these identified areas.

14 27.

15 In addition to being aware of the risks, Defendants were also aware of various preventive actions that
16 would reduce the risk of powerline caused fires, including monitoring fire weather conditions,
17 implementing operational control strategies during fire risk periods, and installing fire-safe fuses that
18 would reduce the risk of powerline caused fires.

19 28.

20 Critically, Defendants knew, prior to Labor Day 2020, that deenergizing powerlines is an effective
21 measure to reduce fire risk during periods of elevated fire danger, including high wind events. Utilities
22 on the West Coast have long used preventive outages to reduce or eliminate the risk that fires. Indeed,
23 many utilities in Oregon deenergized their powerlines in anticipation of the high winds that would blow
24 through on Labor Day 2020.

25 29.

26 Defendants have a duty to adequately design, construct, operate, monitor, maintain, and repair their
27 electrical infrastructure, equipment, and systems to ensure they do not cause fires—including

1 deenergizing powerlines during periods of critical fire risk to prevent fires and to allow first responders
2 to safely travel on roads to put out fires. Defendants duty further includes maintaining the land and
3 vegetation around their infrastructure and equipment to ensure that vegetation, objects, and structures
4 will not come into contact with electrical lines and equipment.

5 **C. Defendants Breached Their Duty, Igniting Fires**

6 30.

7 Other owners and operators of powerlines in Oregon deenergized their powerlines on Labor Day
8 weekend because of the fire danger. These other owners and operators made public announcements
9 well in advance of the shutoffs, including in major media outlets, alerting everyone (including
10 Defendants) that because of the elevated risk of wildfire, electricity would be temporarily shut off.

11 31.

12 Defendants failed to deenergize powerlines, despite the National Weather Service's warnings, and
13 despite all the other information Defendants knew about the elevated risk of fire on Labor Day.
14 Defendants further failed to use reasonable care in maintaining the vegetation and land surrounding
15 electrical infrastructure and equipment.

16 32.

17 The commander of a fire team stationed in Gates, Oregon, said at a news conference that, at
18 approximately 9:45 p.m. on Labor Day, powerlines came down in the fire incident command post,
19 causing rapid fire growth. Firefighters and others saw downed powerlines start fires, including in
20 Gates.

21 33.

22 As it turned out, Defendants' powerlines ignited multiple fires the night of Labor Day and the next day,
23 September 8, 2020, Pacific Power acknowledged "low humidity and long term drought conditions"
24 contributed to the fires' fast-spreading nature.

25 **D. Fires Harmed Plaintiffs**

26 34.

27 The fires caused by Defendants' powerlines sent flames, smoke, embers, ash, odors, gases, and airborne
28

1 particles throughout Oregon, causing very hazardous and unhealthy conditions. The flames, smoke,
2 embers, ash, odors, gases, and airborne particles came into contact with, were deposited on, damaged,
3 destroyed, and/or otherwise trespassed on Plaintiffs' real and personal property, and/or interfered with
4 Plaintiffs' ability to enjoy their properties.

5 35.

6 The fires caused Plaintiffs to suffer substantial harms, including: damage to and/or destruction of real
7 property; damage to and/or loss of personal property, including cherished possessions; out-of-pocket
8 expenses directly and proximately incurred as a result of the fire; alternative living expenses;
9 evacuation expenses; personal injuries; wrongful death; medical bills; lost wages; loss of earning
10 capacity; loss of business income and/or goodwill; and various types of emotional distress, annoyance,
11 inconvenience, disturbance, mental anguish, and loss of quiet enjoyment of property. The harms
12 caused by the Defendants are extensive and ongoing.



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27 **Aftermath of Santiam Fire, Photo by Mark Ylen of Albany Democrat-Herald**

1 **V.**

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **Negligence**

5 **(Against All Defendants)**

6 36.

7 All previous paragraphs are incorporated into this cause of action.

8 37.

9 Defendants each have special knowledge and expertise far beyond that of a layperson with regard to the
10 safe design, construction, operation, maintenance, and repair of electrical lines, infrastructure,
11 equipment, and vegetation management efforts. The provision of electrical services involves a peculiar
12 and inherent danger and risk of fires.

13 38.

14 Prior to and on September 7, 2020, Defendants had a non-delegable duty to apply a level of care
15 commensurate with, and proportionate to, the inherent dangers in designing, constructing, operating,
16 maintaining, and repairing electrical transmission and distribution systems. This duty also required
17 Defendants to maintain appropriate vegetation management programs, for the control of vegetation
18 surrounding Defendants' exposed power lines. This duty also required Defendants to consider the
19 changing conditions of Defendants' electrical transmission and distribution systems, as well as
20 changing geographic, weather, and ecological conditions. This duty also required Defendants to take
21 special precautions to protect adjoining properties from wildfires caused by Defendants' electrical
22 equipment.

23 39.

24 Defendants each breached these duties by, among other things:

- 25 a. Failing to design, construct, operate, maintain, and repair Defendants' high-voltage
26 transmission and distribution lines and associated equipment, in a way that would withstand
27 the foreseeable risk of fires;

- 1 b. Failing to prevent electrical transmission and distribution lines from improperly sagging or
2 making contact with other metal;
- 3 c. Failing to properly inspect and maintain vegetation within proximity to energized
4 transmission and distribution lines to mitigate the risk of fire;
- 5 d. Failing to conduct reasonably prompt, proper, and frequent inspections of Defendants’
6 power lines and associated equipment;
- 7 e. Failing to promptly deenergize exposed power lines during fire-prone conditions;
- 8 f. Failing to properly train and supervise employees and agents responsible for maintenance
9 and inspection of power lines; and/or
- 10 g. Failing to implement and follow regulations and reasonably prudent practices to avoid fire
11 ignition.

12 40.

13 Defendants’ failure to comply with applicable provisions of the Oregon Revised Statutes, including
14 section 757.020, and applicable administrative rules, regulations, and orders, is negligence per se
15 because these statutes, rules, regulations, and orders are aimed at preventing the exact type of harm that
16 Plaintiffs suffered because of Defendants’ failure to comply with these statutes, rules, regulations, and
17 orders. That is, Plaintiffs are within the class of individuals these statutes, rules, regulations, and orders
18 were implemented to protect.

19 41.

20 Defendants’ negligence, including Defendants’ negligence per se, was a substantial factor in causing
21 Plaintiffs to suffer foreseeable harms including, but not limited to, destruction of and damage to real
22 property, destruction of and damage to structures, destruction of and damage to personal property and
23 cherished possessions, discomfort, annoyance, inconvenience, mental anguish, loss of quiet enjoyment,
24 and emotional distress. Plaintiffs each seek damages to be determined, on an individual basis,
25 according to proof at trial.

26
27
28

1 **SECOND CAUSE OF ACTION**

2 **Trespass**

3 **(Against All Defendants)**

4 42.

5 All previous paragraphs are incorporated into this cause of action.

6 43.

7 On September 7, 2020, Plaintiffs were the owners, tenants, and/or lawful occupiers of real properties in
8 the Santiam Canyon area of Oregon. Plaintiffs' possessory interests in their properties was exclusive.

9 44.

10 Defendants negligently, recklessly, and/or intentionally allowed fire to ignite and/or spread out of
11 control, which caused damage to Plaintiffs' properties. Flames, smoke, embers, ash, odors, gases, and
12 airborne particles came into contact with, were deposited on, damaged, destroyed, and/or otherwise
13 trespassed on Plaintiffs' real and personal property.

14 45.

15 Defendants knew that a trespass would result from their actions and failures to act. Defendants' actions
16 and inactions in setting in motion the unauthorized entry and trespass were undertaken knowing that a
17 trespass would result, and a trespass occurred as a result of those actions and inactions.

18 46.

19 Plaintiffs did not grant permission for any fire to enter their properties.

20 47.

21 This trespass caused Plaintiffs to suffer foreseeable harms including, but not limited to, destruction of
22 and damage to real property, destruction of and damage to structures, destruction of and damage to
23 personal property and cherished possessions, discomfort, annoyance, inconvenience, mental anguish,
24 loss of quiet enjoyment, and emotional distress. Plaintiffs each seek damages to be determined, on an
25 individual basis, according to proof at trial.

1 **THIRD CAUSE OF ACTION**

2 **Nuisance**

3 **(Against All Defendants)**

4 48.

5 All previous paragraphs are incorporated into this cause of action.

6 49.

7 On November 8, 2018, Plaintiffs were the owners, tenants, and/or lawful occupiers of real properties in
8 the Santiam Canyon area.

9 50.

10 Defendants' negligent, reckless, and/or intentional actions and inactions created conditions and/or
11 permitted conditions to exist that (i) were harmful to health and offensive to the senses; (ii) created an
12 obstruction to the free use of property, so as to substantially interfere with the comfortable enjoyment
13 of life and property; and (iii) unlawfully obstructed the free passage or use, in the customary manner, of
14 public streets and highways. These conditions, including flames, smoke, embers, ash, odors, gases, and
15 airborne particles, interfered with Plaintiffs' ability to enjoy their properties.

16 51.

17 At no time did Plaintiffs consent to Defendants' actions and inactions in creating these conditions.

18 52.

19 An ordinary person would be reasonably annoyed and disturbed by Defendants' actions and inactions
20 in creating these conditions.

21 53.

22 Defendants' actions and inactions in creating these conditions were a substantial factor in causing
23 Plaintiffs to suffer foreseeable harms including, but not limited to, destruction of and damage to real
24 property, destruction of and damage to structures, destruction of and damage to personal property and
25 cherished possessions, discomfort, annoyance, inconvenience, mental anguish, loss of quiet enjoyment,
26 and emotional distress. Plaintiffs each seek damages to be determined, on an individual basis,
27 according to proof at trial.

1 54.

2 Plaintiffs suffered each a special injury from this nuisance when their properties were damaged and/or
3 destroyed by fires caused by Defendants.

4 55.

5 The seriousness of the harm Defendants have caused Plaintiffs outweighs any public benefit that
6 Defendants may provide.

7 56.

8 **VI.**

9 **PRAYER FOR RELIEF**

10 For each of their negligence, trespass, and nuisance causes of action, Plaintiffs seek the following
11 remedies:

- 12 a. Special and compensatory damages determined on an individual basis according to proof,
13 including:
- 14 i. Loss of the value, use, benefit, goodwill, and enjoyment of Plaintiffs' real
15 and/or personal property;
 - 16 ii. Loss of wages, earning capacity, goodwill, and/or business profits or proceeds
17 and/or any related displacement expenses;
 - 18 iii. Evacuation expenses and alternate living expenses;
 - 19 iv. Erosion damage to real property;
 - 20 v. Past and future medical expenses and incidental expenses;
- 21 b. General and consequential damages for physical injury, mental suffering, emotional
22 distress, fear, annoyance, disturbance, inconvenience, mental anguish, and loss of quiet
23 enjoyment of property;
- 24 c. Attorneys' fees, expert fees, consultant fees, and litigation costs and expense, as allowed by
25 law;
- 26 d. Prejudgment interest as authorized by ORS § 82.010(1)(a);
- 27 e. Plaintiffs reserve the right to amend this complaint to add a claim for punitive damages as
28

1 required by ORS § 31.725;

2 f. Any and all other and further such relief as the Court shall deem proper, all according to
3 proof.

4 57.

5 **VII.**

6 **JURY TRIAL DEMAND**

7 Plaintiffs demand a jury trial on all causes of action for which a jury trial is available under the law.

8
9 Dated: October 20, 2020

Greenspoon Marder LLP
Singleton Law Firm, APC

10
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J. Ross Peabody, *Pro Hac Vice pending*
Timothy A. Scott, *Pro Hac Vice pending*

1 **CERTIFICATE OF SERVICE**

2
3 I hereby certify that I have served a true copy of the foregoing Complaint for Damages upon the
4 registered agent for Defendant:

5
6 C T CORPORATION SYSTEM
7 780 COMMERCIAL STREET SE, SUITE 100
8 SALEM, OR 97301

9
10 on the date set forth below by:

11 X mailing to said person a complete and correct copy thereof, contained in a sealed
12 envelope, addressed as set forth above and deposited in the United States mail in Portland, Oregon, with
13 postage thereon prepaid, on said day.

14 telephonic facsimile communication device, at the telephone number set forth above,
15 which device was working at the time service was made. A printed confirmation of receipt of the
16 message generated by the transmitting machine is attached hereto.

17 hand delivering to said attorneys a complete and correct copy thereof, contained in a
18 sealed envelope, at the address set forth above, on said day, and leaving it with the attorneys' clerk, or
19 person apparently in charge of the office, or in a conspicuous place therein if no one was apparently in
20 charge of the office.

21 DATED this 22 day of October, 2020.

22 GREENSPOON MARDER LLP

23
24 By: /s/ Kristin Stankiewicz
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27 Of Attorneys for Plaintiff