

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PRECIOUS HOLDER, NOELLE HOGAN,
DARWIN WATTS, and CHERYL WATTS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ENBRIDGE ENERGY, L.P.,
ENBRIDGE PIPELINES LAKEHEAD, L.L.C,
ENBRIDGE PIPELINES (WISCONSIN), INC.,

Defendants.

Case No. 1:10-cv-752

HON. GORDON J. QUIST

**FIRST CONSOLIDATED
CLASS ACTION COMPLAINT AND JURY DEMAND**

The Plaintiffs named herein, on behalf of themselves and all others similarly situated, by their attorneys, for their First Consolidated Class Action Complaint and Jury Demand against Defendants, state as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Precious Holder is a citizen of the State of Michigan and resides in Battle Creek.
2. Plaintiff Noelle Hogan is a citizen of the State of Michigan and resides in Battle Creek.
3. Plaintiffs Darwin and Cheryl Watts are citizens of the State of Michigan, reside in this District and own commercial property in Battle Creek.
4. Plaintiffs Holder, Hogan and the Watts are collectively referred to herein as "Plaintiffs."

5. Defendant Enbridge Energy, L.P. is a Delaware corporation, which conducts business in the State of Michigan, including the cities of Marshall and Battle Creek in Calhoun County.

6. Defendant Enbridge Pipelines (Lakehead), L.L.C. is a Delaware limited liability company, which conducts business in the State of Michigan, including the cities of Marshall and Battle Creek in Calhoun County.

7. Defendant Enbridge Pipelines (Wisconsin), Inc. is a Wisconsin corporation, which conducts business in the State of Michigan.

8. All Defendants conduct regular and systematic business in this District and own and maintain oil pipelines in this District.

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) and also pursuant to 28 U.S.C. §§ 1332(d)(2) and (d)(6), commonly known as the “Class Action Fairness Act,” or “CAFA,” because there is diversity of citizenship and the claims of individual class members, in the aggregate, exceed the jurisdictional minimum of \$5,000,000, exclusive of interest and costs and the claims of individual class members exceed \$75,000 exclusive of interest and costs.

10. Venue in this judicial District is proper pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the acts and practices complained of herein occurred in this District.

GENERAL AND FACTUAL ALLEGATIONS

Tar Sands Oil

11. While oil from Saudi Arabia is liquid, the oil in the Canadian tar sands is a sticky form of crude oil, the significant majority of which is so heavy and viscous that it will not flow unless it is heated or diluted with lighter hydrocarbons. This oil in the tar sands is often referred

to as bitumen. Most bitumen extracted from the tar sands has an American Petroleum Institute gravity weight between 8 and 14, with anything over the gravity weight of 10 capable of floating on water.

12. With the increased price paid for crude in recent years, it has become economically practical to extract bitumen from the tar sands. The bitumen is extracted by vast strip-mining operations. Tar sands are processed with hot water or, more commonly, steam, to melt the bitumen so it can be separated from the sand. Once the bitumen is extracted, it is diluted with other materials to allow it to flow through pipelines. This product is frequently referred to as “diluted bitumen” or “DilBit.”

13. According to numerous sources, including a February 2011 report jointly issued by the Natural Resources Defense Council, The Pipeline Safety Trust, National Wildlife Federation and the Sierra Club, titled Tar Sands Pipelines Safety Risks (the “Report”), there are many indications that bitumen blends are significantly more corrosive to pipeline systems than conventional crude:

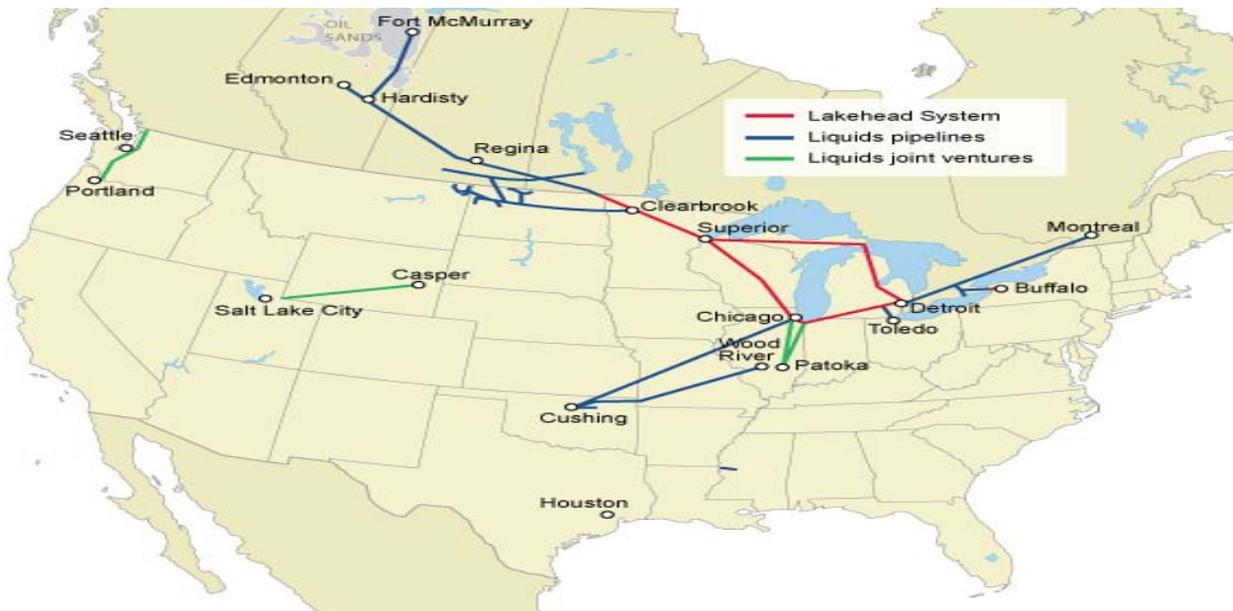
- a. Bitumen blends are more acidic, thick, and sulfuric than conventional crude oil. They contain 15 to 20 times higher acid concentrations than conventional crudes and 5 to 10 times as much sulfur as conventional crudes.
- b. Bitumen blends are up to 70 times more viscous than conventional crudes.
- c. The additional sulfur, acid and viscosity in the bitumen leads to the weakening or embrittlement of pipelines.
- d. Numerous other factors, including the temperature required to keep the blend flowing, increase its corrosive nature.

14. The Report states **that the rate of spills due to internal corrosion may be 16 times higher** in pipelines carrying the tar sands oil than those carrying conventional crudes.

Defendants’ Maintenance of the Pipeline

15. Defendants own, possess, manage, control and maintain a pipeline system on their “Lakehead System”, which was built in 1969, and includes Line 6B, a 30-inch 190,000 barrel per day pipeline (the “Pipeline”) that transports tar sands oil, DilBit, heavy and medium crude oil, and light synthetics (“petroleum products”) from Griffith, Indiana to Sarnia, Ontario, bound for refineries in Detroit, Toledo and Sarnia.

16. Defendants’ 1,900-mile Lakehead System, shown below, is the U.S. portion of a pipeline that transports petroleum products from Western Canada to the United States.



Map of U.S. pipelines (noting Canadian sources) owned or operated by Defendants. (found at <http://www.enbridgepartners.com/EEP/Main.aspx?id=210&tmi=1824&tmt=5>)

17. Defendants’ pipelines have had numerous oil spills, including:

- a. In January 2007, Defendants' pipeline cracked open and spilled approximately 50,000 gallons of oil onto farmland and into a drainage ditch in Clark County, Wisconsin.
 - b. In April 2007, approximately 261,000 gallons of crude was discharged from an Enbridge, Inc. pipeline in Saskatchewan.
 - c. In November 2007, a pipeline owned by Defendants exploded resulting in the deaths of two people and at least \$2 million in property damage in Clearbrook, Minnesota.
 - d. In January 2010, a pipeline owned by Defendants leaked approximately 126,000 gallons of oil near Neche, North Dakota.
 - e. On or about September 6, 2010, Defendants' Lakehead System Line 6A failed and spilled over 256,000 gallons of oil in and around Romeoville, Illinois.
18. In January 2009, Defendants agreed to pay a fine of \$1 million to Wisconsin after committing more than 500 violations of the state's wetland and waterway protection regulations while constructing a pipeline to export bitumen from Alberta to Chicago. In a press release issued at the time, Wisconsin Attorney General J. B Van Hollen stated that the "the incidents of violation were numerous and widespread and resulted in impacts to the streams and wetlands throughout the various watersheds."
19. According to Defendants' internal reports, between 1999 and 2008, Defendants were responsible for 610 spills that released more than 5.5 million gallons of oil into the environment.
20. Defendants improperly maintained and inspected the Pipeline. In August 2010, the U.S. Department of Transportation ("DOT"), which oversees pipelines in the US through the

Pipeline and Hazardous Materials Safety Administration (“PHMSA”), issued its official timeline, which highlights numerous problems with Defendants’ safety record.

21. The PHMSA timeline notes that “in June 2009, Enbridge conducted an integrity management assessment that covered Line 6B with an ultrasonic in-line inspection device. Enbridge found 250 anomalies and 35 were immediately repaired.”

22. Defendants did not repair the remaining 215 “anomalies.”

23. A July 28, 2010 Corrective Action Order from PHMSA to Defendants noted that the June 2009 inspection, which found numerous anomalies (not on the immediate section that failed), was the last Pipeline inspection performed by Defendants before the oil spill.

24. According to the PHMSA timeline, on February 4, 2010:

PHMSA called a meeting with Enbridge executive leadership from Calgary, including the top official responsible for Enbridge’s liquid pipelines to discuss performance issues with entire Lakehead pipeline system (not just Line 6B). PHMSA was concerned about Enbridge’s repair methodologies and a series of major failures. PHMSA requested that Enbridge review its methodologies and report back to PHMSA.

25. According to a July 31, 2010 Detroit Free Press article, the federal government “repeatedly warned Enbridge Energy Partners about safety issues along its Lakehead pipeline system, even calling company officials to Washington earlier [in 2010] for a meeting on what it deemed ‘a series of major failures.’”

26. An unnamed senior PHMSA official was quoted in that Detroit Free Press article as saying the government “repeatedly warned Enbridge in no uncertain terms that it needed to get its act together with regard to the safety of its Lakehead pipeline system.” According to the article, during their February 2010 meeting with Defendants, federal officials told Enbridge senior leadership to “overhaul their entire approach to safety.”

27. In the same Detroit Free Press article, chief counsel for PHMSA, Bizunesh Scott is quoted as saying, “Safety is our No. 1 priority ... That’s why we repeatedly pushed Enbridge to address the safety and performance of its entire Lakehead pipeline system.”

28. In a September 15, 2010 statement to a U.S. Congressional Committee, John D. Porcari, Deputy Secretary of Transportation, reported that:

Since the Obama Administration took office, the Department has repeatedly warned Enbridge to focus on the safety and performance of its entire Lakehead Pipeline system. In February [2010], PHMSA leadership met with members of Enbridge’s Executive Leadership team, including the top official for liquid pipelines to discuss PHMSA’s concerns about Enbridge’s repair methods and a series of major failures involving its pipeline system. PHMSA told Enbridge to review its approach to safety and report back. PHMSA expressed its concerns to Enbridge about the operator’s repair methods, and a series of major failures involving its pipeline system. [In 2010], PHMSA also conducted eleven inspections of Enbridge’s Lakehead system and initiated five enforcement actions. Last month, PHMSA issued a final order assessing a \$2.4 million civil penalty against Enbridge and requiring it to revise maintenance and repair procedures and to train and re-qualify employees, in connection with an incident near Clearbrook, Minnesota where two workers died as a result of Enbridge’s failure to follow safety regulations while repairing a pipeline.

29. A June 3, 2011 article in the Montreal Gazette reported - for the first time - that in October 2010, Canada’s “National Energy Board, which was monitoring the U.S. investigation [of the Enbridge Oil Spill], quietly ordered a 20 per cent pressure reduction on Enbridge’s Line 2 Canadian pipeline, which links Edmonton to Superior, Wisconsin along sections that contained pre-1970s flash-welded pipe.”

30. According to the article, the National Energy Board “had noted a correlation between [the Line 2] sections and ‘cracking related incidents’ on Enbridge’s Canadian system,” and the Board gave “Enbridge two months to provide an up-to-date integrity status report on cracking on its system; four months to re-analyse its cracking inspections, do integrity inspections and file an independent report.”

31. According to the article, Enbridge was “required to file short-term and long-term integrity improvement plans and would not be allowed to increase the pressure in its system without permission from the [National Energy Board].”

32. The article quoted National Energy Board spokeswoman Carole Leger-Kubeczek as confirming “that the order to reduce pressure was still in effect [as of June, 2011] since the regulator had found that the company’s ‘hazard identification practices’ were not consistently reliable.”

33. Ms. Leger-Kubeczek is quoted in the article as stating that “Enbridge would not be allowed to return to full operations until it demonstrated ‘the adequacy and effectiveness of its programs in preventing cracking incidents from occurring.’”

34. Defendants were on notice from numerous sources that their safety and inspection practices were inappropriate and that there was significant risk of catastrophic failure of the over 40-year old Pipeline. Defendants should have known that the transportation of tar sands oil significantly increased the risk.

35. Despite this, Enbridge failed to take all necessary and appropriate steps to ensure that the Pipeline would not fail.

The Enbridge Oil Spill

36. On or about July 25, 2010, a massive amount of oil was released from the Pipeline near Defendants’ pump station located at 16000 Division Drive in Marshall, Michigan, causing extensive and continuing damages to Plaintiffs and others similarly situated. (“Enbridge Oil Spill”).

37. According to the Defendants’ own estimates, the Enbridge Oil Spill caused more than 840,000 gallons of petroleum products to flow into the Talmadge Creek and the Kalamazoo

River, contaminating the air, waterways and wetlands, creating a noxious and toxic stench and killing or injuring wildlife.

38. The Enbridge Oil Spill continued uninterrupted for approximately 12 hours. Defendants did not notify any residents, law enforcement, governmental agencies, or other responders about the spill for approximately 19 hours.

39. On July 27, 2010, Patrick Daniel, the President and CEO of Enbridge, Inc., told the Associated Press: “this is [Enbridge’s] responsibility” ... “this is our mess.”



Ruptured Section of Pipeline 6B (Photo from National Transportation Safety Board)

The Ensuing Devastation

40. According to a report Enbridge filed with the Michigan Department of Environmental Quality, the oil spill “may have occurred at or about the time that the latter end of a batch of Western Canadian Select (WCS) was passing through Marshall, Michigan and a batch of Cold Lake Blend (CL) crude had begun. The composition of the crude oil released was

approximately 77.5 % CL and 22.5 % WCS. CL is a heavy crude of bitumen and blended with diluents, produced by a number of oil companies and originating from the production field at Cold Lake, Alberta, Canada, which is located approximately 185 miles northeast of Edmonton, Alberta, Canada. WCS is a blend of existing Canadian heavy conventional and bitumen crude oils blended diluents, produced by various oil companies in Western Canada.”¹

41. As a result of the Defendants’ delay in detecting the oil spill and their failure to take prompt measures to stop the spill and report the discharge, all necessary and proper measures to control and contain the release of oil were not timely instituted, which severely aggravated injuries and damages to waterways, air, land and wildlife including and surrounding the Kalamazoo River watershed.

42. The effects of the Enbridge Oil Spill upon Talmadge Creek, the Kalamazoo River, surrounding wetland and adjacent and nearby property are devastating.

43. On the morning of July 27, 2010, local officials declared a “state of emergency,” and Michigan Governor Jennifer Granholm declared a state of disaster in Calhoun County and the potentially affected areas along the river.

44. Government officials barred residents, businesses and members of the general public from accessing the Kalamazoo River and instructed them not to use the river water for

¹ While the report correctly acknowledges that the released oil contained blends of bitumen crude, it states that the “American Petroleum Institute (API) gravity of a sample of the crude oil was 11”, concluding that “[m]uch of the released crude oil was therefore slightly less dense than water and would be classified by the petroleum industry as a “heavy crude.” The API gravity scale is a measure of how light or heavy petroleum is compared to water. Most values fall between 10 and 70 API gravity degrees, with anything under 10 considered heavier than water. As a point of comparison to the spilled oil’s API gravity of 11, West Texas Crude, the U.S. benchmark to set prices and to which other oil is compared, has an API gravity between 38 and 40. Regardless of the nomenclature, the oil released during the Enbridge Oil Spill is specifically identified in the National Resources Defense Council Report as the type of oil that is more corrosive to pipelines and as otherwise more hazardous than conventional crude oil.

livestock, crops or recreation. These warnings remain in effect and 30 miles of the river remains closed.

45. Many residents were forced to flee the affected area, evacuating their homes and property due to unbearable environmental conditions, including noxious air, noise intrusion and the lack of potable water.

46. As a result of the Enbridge Oil Spill, the status of the area's air quality has been greatly affected and a bottled water advisory was in effect for several months. At the direction of the EPA, Enbridge is required to conduct well water testing and monitoring for residents within 200 feet of the floodplain.

47. As a result of the Enbridge Oil Spill, citizens of Marshall, Battle Creek and other affected areas find themselves with severely damaged property and, in some instances citizens were unable to live in their homes.

48. As a result of the Enbridge Oil Spill, citizens of Marshall, Battle Creek and the surrounding communities have been forced to endure ongoing and offensive noise pollution caused by the cleanup efforts.

49. As a result of the Enbridge Oil Spill, there has been a significant decrease in residential and commercial real property values in the affected areas.

50. As a result of the Enbridge Oil Spill, numerous toxins were released into the environment and onto Plaintiffs' property. The released oil contained high concentrations of known carcinogens, including but not limited to, benzene and polycyclic aromatic hydrocarbons. The oil also contained hydrogen sulfide, n-hexane and other toxins that can affect the human central nervous system. There is no safe level of exposure to many of these toxins; they cause mutations and cancer, even at very low exposure levels. The released oil also contained

vanadium, nickel, arsenic, and other heavy metals in significantly larger concentrations than occur in conventional crude oil. These heavy metals have a variety of toxic effects, are not biodegradable and can accumulate in the environment to become health hazards to people and wildlife.

51. Mark Durno, the Deputy Incident Commander with the EPA, who is charged with overseeing the cleanup, was quoted in an April 12, 2011 Michigan Public Radio report as stating “The islands were heavily contaminated, we didn’t expect to see as much oil as we did. If you’d shovel down into the islands you’d see oil pool into the holes we’d dig.”

52. Mr. Durno further stated, “I truly believe the characteristics of this material is (sic) the reason we still have such a heavy operation out here. Because it was a very heavy crude, we ended up with a lot more submerged oil than we anticipated having to deal with.”

53. According to Mr. Durno, the cleanup could continue until April 2012, excluding restoration of habitat, which will take longer. Even then, he stated, “workers will not be able to clean up every last drop of oil, so it’s possible some oil will turn up years down the road.”

54. According to a website created by Defendants relating to the oil spill, Defendants state that they accept “full responsibility for all for the costs related to the emergency response and for any property damage as a result of the spill.”

CLASS ACTION ALLEGATIONS

55. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated, pursuant to Fed.R.Civ.P. 23(b)(3). Plaintiffs propose to represent the following classes:

Subclass 1: All persons who own commercial property who have suffered damage to property, loss of enjoyment of their property or loss of the use of their property at any time from July 25, 2010 up to the date of trial (the “Class Period”), as a result of the Enbridge Oil Spill.

Subclass 2: All persons who own residential homes or property who have suffered damage to property, loss of enjoyment of their property or loss of the use of their property at any time during the Class Period, as a result of the Enbridge Oil Spill.

Subclass 3: All non-owner occupants of residential properties who have suffered loss of enjoyment of their property or loss of the use of their property at any time during the Class Period, as a result of the Enbridge Oil Spill.

56. Rule 23(c)(1) permits class certification orders to be conditional and to be altered or amended at any time before a decision is rendered on the merits. As evidentiary facts are developed, the trial court may decertify, subclassify, or modify a previously certified class action. **Plaintiffs expressly reserve the right to modify the class definitions as the litigation proceeds**

57. **Plaintiffs are not asserting any present personal injury claim as a result of the Enbridge Oil Spill.** Plaintiffs specifically exclude from their class definitions any persons with an accrued claim for personal injuries as a result of the Enbridge Oil Spill. Plaintiffs request that the Court reserve any claims for personal injury that any Plaintiff or Class Member may have beyond those claims for which certification is sought.

58. The putative classes are composed of thousands of persons, the joinder of whom is impracticable. The disposition of their claims in a class action will benefit both the parties and the Court. The Enbridge Oil Spill has affected properties along a stretch of Talmadge Creek and the Kalamazoo River extending more than 30 miles, and thus the classes are sufficiently numerous to make joinder impracticable, if not impossible.

59. Plaintiffs' claims are typical of the claims of the proposed class members as all are based on the same legal and equitable theories arising from damage caused by the Enbridge Oil Spill.

60. There are numerous questions of law and fact which are common to the class which questions predominate over any question affecting only individual class members. One of, but not the sole, principal common issue with regard to the putative classes is whether the Defendants are liable for the damage caused by the Enbridge Oil Spill.

61. The only individual questions concern the identification of class members and the computation of each class member's damages, which are either irrelevant to FRCP 23 or do not predominate over common issues of fact and law.

62. Plaintiffs will fairly and adequately protect the interests of all class members in the prosecution of this action and in the administration of all matters relating to claims stated herein. Plaintiffs are similarly situated with, and have suffered injuries similar to, the members of the classes whom Plaintiffs seek to represent. Plaintiffs wish to obtain redress of the common wrongs, and seek to enjoin Defendants from perpetrating similar wrongs on others. To that end, Plaintiffs have retained counsel experienced in handling class action suits. Neither the named Plaintiffs nor Plaintiffs' counsel have any interest, conflicting or otherwise, which might cause them not to vigorously pursue this action.

63. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation render it impossible for class members to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

64. Proper and sufficient notice of this action may be provided to the Class members through the mail, published in appropriate publications and/or broadcast in appropriate media, and/or posted on internet web site(s).

65. Plaintiffs and the members of the putative class have suffered damages as a result of the Defendants' wrongful conduct as alleged herein and are entitled to recover for those damages. Absent representative action, Plaintiffs and the members of the class will continue to suffer losses, thereby allowing these violations of law to proceed without remedy.

COUNT I - NEGLIGENCE

66. Plaintiffs incorporate by reference all preceding paragraphs.

67. Defendants owed Plaintiffs and all others similarly situated a duty to exercise reasonable conduct, to follow all applicable laws and standards and to prevent and minimize any release of oil, petroleum products, toxic and hazardous substances, odors and wastes.

68. Defendants failed to exercise due care in their maintenance, monitoring and repair of the Pipeline so as to prevent the uncontrolled release of petroleum products, toxic and hazardous substances, odors and wastes to the environment.

69. Defendants failed to exercise due care by failing to hire, retain, supervise and train appropriate personnel to monitor and maintain the Pipeline.

70. Defendants failed to exercise due care by failing to properly design, construct, maintain, inspect or monitor their facilities, procedures and equipment, including the Pipeline, and by failing to ensure that the Pipeline could safely transport the type of petroleum products flowing through the Pipeline, thus causing the Enbridge Oil Spill and the release of petroleum products, toxic and hazardous substances, odors and wastes.

71. Defendants knew or should have known that the Pipeline was operating under hazardous conditions, not in compliance with Michigan, federal and industry standards, therefore causing the Enbridge Oil Spill and the attendant release of noxious, dangerous, and hazardous chemicals and other substances into waterways, drinking water, air and land.

72. Defendants failed to take reasonable steps during and after the Enbridge Oil Spill, thereby allowing additional petroleum products to spill.

73. Defendants knew that the Enbridge Oil Spill resulted in the release of petroleum products and other substances which were noxious, dangerous, and hazardous and would have harmful effects on waterways, drinking water, air and land.

74. Defendants failed to timely and properly clean up or remediate the oil and other contaminants or to prevent the hazards associated with the Enbridge Oil Spill.

75. As a direct and proximate result of the Defendants' breaches of their duties, Plaintiffs, and others similarly situated, were harmed and continue to be harmed.

WHEREFORE, Plaintiffs respectfully request entry of a Judgment against the Defendants in whatever amount Plaintiffs and class members are found to be entitled, including for actual damages, diminution in property value and all other relief this Court deems just and appropriate, including but not limited to, all costs and attorneys' fees associated with bringing this action and interest from the date of the filing of this Complaint until the date of judgment at the statutory rate.

COUNT II – NUISANCE

76. Plaintiffs incorporate by reference all preceding paragraphs.

77. Defendants' acts or omissions have interfered with the Plaintiffs' property rights, privileges, and use and enjoyment of property so as to constitute a nuisance.

78. Defendants' acts or omissions created an unreasonable, offensive and toxic odor.

79. Defendants' acts or omissions created an unreasonable and wrongful release of hazardous and non-hazardous substances into the waterways, drinking water, air and land, including onto the property of Plaintiffs and others similarly situated.

80. Defendants' release of toxins into the waterways, air and land resulted in and continues to result in significant harm to Plaintiffs and all others similarly situated.

81. Plaintiffs' interest in the use and enjoyment of their property was diminished by Defendants' acts or omissions, which caused, among other things: the invasion of petroleum products and other metals and chemicals onto Plaintiffs' property or into the groundwater or Plaintiffs' water sources; the noxious odors and fumes from the spill; the noise attendant to the cleanup which includes, but is not limited to, excessive noise coming from cleanup crews, trucks, equipment, aircraft and airboats at all times of the day and night; the loss of privacy; the forced witnessing and ongoing observation of cleanup crews, equipment, trucks and governmental and law enforcement personnel engaged in testing, cleanup and remediation efforts on and around their property; the entry of Enbridge and its agents on to Plaintiffs' property for inspection and testing of water, air and soil; and, by the failure to properly remove the spilled oil in a manner which would protect the areas surrounding it, including Plaintiffs' properties.

82. The release of petroleum products and other toxic substances into the waterways, air and land directly has resulted in the diminution in value of property owned by the Plaintiffs and all others similarly situated.

83. Plaintiffs did not consent to the Defendants' actions as described herein.

84. Defendants' actions as alleged herein constitute an unreasonable interference with the safety, peace, comfort and convenience of the Plaintiffs and all others similarly situated.

85. Defendants' actions and omissions have caused and continue to cause harm to Plaintiffs and all others similarly situated.

WHEREFORE, Plaintiffs respectfully request entry of a Judgment against the Defendants in whatever amount Plaintiffs and class members are found to be entitled, including for actual damages, diminution in property value and all other relief this Court deems just and appropriate, including but not limited to, all costs and attorneys' fees associated with bringing this action and interest from the date of the filing of this Complaint until the date of judgment at the statutory rate.

**COUNT III – STRICT LIABILITY
FOR ABNORMALLY DANGEROUS ACTIVITY**

86. Plaintiffs incorporate by reference all preceding paragraphs.

87. Defendants have engaged in an abnormally dangerous activity by transporting tar sands oil and petroleum products through the Pipeline, which is antiquated and which was not designed for the transport of DilBit or tar sands petroleum.

88. The corrosive nature of tar sands oil and/or DilBit gives rise to a high degree of risk attendant with transporting petroleum products through the Pipeline.

89. The toxicity and chemical composition of the petroleum products transported through the Pipeline create a great likelihood of harm from any spill.

90. Transporting tar sands oil and/or DilBit near sensitive waterways – such as the Kalamazoo River – significantly increases the risk of potential harm from any spill.

91. Pleading in the alternative to Plaintiffs' Negligence Count, Defendants' exercise of reasonable care could not have eliminated the risk of harm caused by transporting tar sands oil and petroleum products through the Pipeline, which was over 40 years old and susceptible to breakage.

92. There is little or no value to the affected communities in having these petroleum products transported through aging pipelines immediately adjacent to sensitive waterways.

93. As a direct and proximate result of the Defendants' conduct in engaging in the abnormally dangerous activities alleged above, substantial amounts of petroleum products and other toxins have been released.

94. The harm sustained by Plaintiffs and the class is exactly the kind of harm posed, the possibility of which made the activities of the Defendants abnormally dangerous.

95. Defendants are strictly liable for all damages and injuries to Plaintiffs and all others similarly situated, resulting from the abnormally dangerous activities.

WHEREFORE, Plaintiffs respectfully request entry of a Judgment against the Defendants in whatever amount Plaintiffs and class members are found to be entitled, including for actual damages, diminution in property value and all other relief this Court deems just and appropriate, including but not limited to, all costs and attorneys' fees associated with bringing this action and interest from the date of the filing of this Complaint until the date of judgment at the statutory rate.

Respectfully submitted,

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

Respectfully submitted,

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