

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

ELLEN BURGESS, KATHY OUELLETTE, and  
HOWARD SENTENEY and MARGARET ROBERTS,  
husband and wife, on behalf of themselves  
and all others similarly situated,

*Plaintiffs*

v.

Civil Case No. 4:13-CV-199 BSM

EXXON MOBIL CORPORATION  
d/b/a EXXONMOBIL®  
EXXONMOBIL PIPELINE COMPANY  
MOBIL PIPE LINE COMPANY

**Jury Trial Demanded**

*Defendants.*

**AMENDED COMPLAINT – CLASS ACTION**

Come now the Plaintiffs, pursuant to Fed. R. Civ. P. 23(a) & (b), and U.S. E.D. L.R. 23.1, on behalf of themselves, and all others similarly situated, and for their Amended Complaint – Class Action, state as follows:

**I. INTRODUCTION & STATEMENT OF CASE**

1. This Arkansas case involves a class action for all real property owners who have real property abutting Lake Conway, its coves and inlets (hereafter "Lake Conway"), which has been physically contaminated and polluted by ExxonMobil's toxic and dangerous Tar Sands (hereafter "Tar Sands") released from ExxonMobil's unsafe and deficient oil and gas pipeline. This lawsuit is a class action lawsuit brought under Arkansas state common law claims seeking

private monetary damages for real property damage suffered by Plaintiffs and putative class members who have real property around Lake Conway.<sup>1</sup>

2. Lake Conway spans approximately 6,700 acres making it the largest man-made lake in the United States and is located near Mayflower, Faulkner County, Arkansas. Lake Conway is fed by Stone Dam Creek, Palarm Creek, Panther Creek, Little Cypress Creek and Gold Creek. Lake Conway is a tributary of the Arkansas River. Lake Conway is used for recreational activities, including fishing and boating and for residential living.

3. On March 29, 2013, the worst Tar Sands spill in Arkansas history, occurred as the result of the fracturing, rupturing and failure of ExxonMobil's Tar Sands pipeline<sup>2</sup>, resulting in the tortious and unlawful release, discharge, spilling and migration of hydrocarbons, poisonous, carcinogenic and toxic chemicals, including, but not limited to, benzene, toluene and other highly dangerous chemicals, along with the black, tar like substance directly from the pipeline thereby polluting and contaminating Lake Conway, its coves, inlets and real property. *See* Exhibit "1." In addition to impacting and contaminating surface water, ground water and soil, the hazardous and toxic chemicals released from ExxonMobil's bad pipeline contaminated and polluted the air by releasing and emitting hydrogen sulfide, a poisonous and toxic gas, which migrated onto and into Plaintiffs' and putative class members' real property and directly interfered with and physically impacted Plaintiffs' and putative class members' real property.

---

<sup>1</sup> The United States Department of Justice and Arkansas Attorney General have filed a separate lawsuit against Defendants ExxonMobil Pipeline Company and Mobil Pipe Line Company for *inter alia* violations of the federal Clean Water Act, 33 U.S.C. § 1321(b)(7)(A) and 33 U.S.C. § 1319(b) and Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101, *et seq.*, seeking civil penalties and injunctive relief. This case is styled: *United States of America and State of Arkansas v. ExxonMobil Pipeline Company, et al.*, Civil Case No. 4:13cv00355-JMM.

<sup>2</sup> ExxonMobil and its affiliated, wholly-owned pipe companies, call the pipeline "Pegasus" (hereafter "Pegasus Pipeline").

4. Arkansas is known as the "natural" state for its pristine environment and safe living conditions for people who reside around clean surface water resources, such as Lake Conway. Named Plaintiffs and putative members have real property around Lake Conway, and prior to the March 29, 2013 Tar Sands and toxic chemical spill, enjoyed the use and benefits of their real property situated around Lake Conway and the Lake Conway shoreline. As the result of Defendants' Pegasus Pipeline Tar Sands spill, Plaintiffs and putative class members' have experienced direct physical pollution, contamination and real property physical impact from the Defendants' Pegasus Pipeline Tar Sands and chemical toxins, which have directly migrated into and polluted Lake Conway and physically harmed, intruded upon and contaminated Plaintiffs' and putative class members' real property.

5. Tar Sands is a heavy, high sulfur material, with a consistency of cold molasses that is so heavy and thick that it will not flow. Tar Sands is often called bitumen, which is heavy, abrasive and has a low gravity weight assigned to it under the American Petroleum Institute (API) classification system. The low gravity weight classification given to bitumen means it is heavy or a difficult product to pump or flow through a pipeline. Tar Sands must be diluted by adding toxic diluting chemicals because in its natural state, it will not flow through a pipeline. Once the toxic fluids are added to the tar, the product is known as diluted bitumen or "dilbit" for short, which is highly volatile, detrimental and toxic to air quality, water and property when released from a pipeline. Further, Tar Sands sinks in water.

6. Bitumen blends are significantly more corrosive to pipeline systems than conventional crude (which originally ran through the Pegasus Pipeline). Bitumen blends are more acidic, thick and sulfuric than conventional crude oil. The bitumen contains 15 to 20 times higher acid concentrations than conventional crudes and five to ten times as much sulfur.

Bitumen blends are up to 70 times more viscous (having a high resistance to flow) than conventional crudes. Additional sulfur, acid and viscosity in the bitumen leads to the weakening or embrittlement of pipelines. Various other factors, including the type of diluents and the temperature required to keep the heavy blend flowing, increase its corrosive nature. Significantly, the Pegasus Pipeline was not designed to transport toxic and corrosive substances such as Tar Sands.

7. The ExxonMobil Pegasus Pipeline was built in the 1940's and originally ran from Patoka, Illinois through Corsicana, Texas. The Pegasus Pipeline is a low frequency electric resistance welded pipe ("ERW"), which the oil and gas industry and ExxonMobil has known for decades is an unsafe and deficient pipe. The Pegasus Pipeline had a thirty-year life span. After it was constructed, the Pegasus Pipeline originally pumped light, sweet crude oil (which is liquid) from Texas to the northern United States. Almost sixty years later, Defendants shut the pipeline down. The Pipeline remained unused and dormant for several years during which time Defendants made a corporate decision to materially change the use of the Pipeline. The change involved reversing the direction of flow in the pipeline. Additionally, the change involved pumping Tar Sands from Western Canada through the pipeline, from Patoka, Illinois to Corsicana and then through a southern section of pipeline connected to Nederland, Texas for refining on the Gulf Coast. At the time of ExxonMobil's corporate decision to pump Tar Sands southward through Arkansas, ExxonMobil knew its pipeline was unsafe and deficient. After implementing its corporate plan to pump Tar Sands southward through the Pipeline, ExxonMobil considered a joint venture with another large pipeline company, Enbridge, Inc., to replace the pipeline. However, ExxonMobil discarded this joint plan for a new, safer and larger pipeline to replace the sixty-seven year old ERW Pegasus Pipeline. Instead, ExxonMobil, in order to increase its profits

at the expense of public safety, made a deliberate corporate decision to increase the capacity of the unsafe and deficient Pegasus Pipeline by 50%, from 66,000 barrels per day to 99,000 barrels per day of Canadian Tar Sands. Furthermore, ExxonMobil failed to upgrade or replace the pipeline for this new use, at all relevant times, being aware that the Pipeline had a thirty-year life span and had experienced pipeline seam and leak problems.

8. After increasing the capacity of the Pipeline and piping Tar Sands southward, approximately four (4) years later, on March 29, 2013, the sixty-seven year old Pipeline fractured and ruptured near Mayflower, Faulkner County, Arkansas and spilled toxic, carcinogenic and poisonous pollutants into Lake Conway, its coves and inlets. The Pegasus Pipeline runs under the surface of physical property throughout the State of Arkansas, through Lake Conway, near major watersheds, water resources and under the Arkansas River. The Pipeline runs under and through the Maumelle watershed, which supplies water to over 400,000 citizens in Central Arkansas and crosses through Lake Conway, which is now contaminated and polluted. Sadly, the incident in Mayflower was **not** the first fracture of the Pegasus Pipeline. In 1987, there was a major rupture of the Pipeline near Corsicana, Texas, spilling hazardous material and causing a fire. Also, in 1990, the Pipeline "ruptured due to corrosion" along the easement in Bragg, Texas, and in 1995, the Pipeline leaked alongside the easement outside of Hot Springs, Arkansas. Most recently, in 2013, the Pipeline failed, releasing fluid along the easement outside of Doniphan, Missouri.

9. The unsafe and deficient Pegasus Pipeline running throughout the State of Arkansas is similarly situated and maintained under a predominating, common course of corporate policy, pattern, practice and conduct, which includes, but is not limited to the same or similar inspection, maintenance, evaluation, operation and analysis. Exxon's common course of

corporate policy, pattern, practice and conduct concerning the unsafe and defective Pegasus Pipeline, including its historical use of the Pegasus Pipeline, tortious, and unlawful inspection, maintenance, evaluation, operation and analysis, specifically caused damages to the Plaintiffs and putative class members. Plaintiffs bring this lawsuit on behalf of themselves and all others similarly situated seeking common law monetary damages pursuant to Arkansas state law strict (absolute) liability, nuisance and negligence claims.

## **II. PARTIES**

10. Plaintiff Ellen Burgess resides in Pulaski County, Arkansas, and owns real property bordering Lake Conway, located at 26 Dam Road, Faulkner County, Arkansas. Plaintiff Burgess has directly experienced physical property damage, interference, aggravation, annoyance, inconvenience and intrusion from the Tar Sands and toxic chemical contaminants and pollution, which also migrated into the air and into Lake Conway, its coves and inlets, after the March 29, 2013 Pegasus Pipeline fracture and rupture.

11. Plaintiffs Howard Senteney and Margaret Roberts reside at #39 Meadowlark Loop, Mayflower, Faulkner County, Arkansas. Plaintiffs Howard Senteney and Margaret Roberts' real property borders Lake Conway. Plaintiffs Howard Senteney and Margaret Roberts have directly experienced physical property damage, interference, aggravation, annoyance and intrusion from the Tar Sands and toxic chemical contaminants and pollution, which also migrated into the air and ground and into Lake Conway, its coves and inlets, after the March 29, 2013 Pegasus Pipeline fracture and rupture.

12. Plaintiff Kathy Ouellette resides in Texas and has real property located at 28 North Dogwood Drive, Mayflower, Faulkner County, Arkansas. Plaintiff Ouellette's real property borders Lake Conway. Plaintiff Ouellette has directly experienced physical property

damage, interference, aggravation, annoyance and intrusion from the Tar Sands and toxic chemical contaminants and pollution, which also migrated into the air and into Lake Conway, its coves and inlets, after the March 29, 2013 Pegasus Pipeline fracture and rupture.

13. Exxon Mobil Corporation, also known as ExxonMobil® (hereafter "Exxon" or "ExxonMobil"), has common proprietary interests, ownership interests, or joint ventures with separate Defendants ExxonMobil Pipeline Company and Mobil Pipe Line Company, all of whom are involved with the ownership, operation and maintenance (or lack thereof) of the defective and unsafe Pegasus Pipeline.

14. Exxon is headquartered in Irving, Dallas County, Texas at 5959 Las Colinas Boulevard, Irving, Texas 75039-2298. Exxon is incorporated in Delaware, and is identified by the Texas Secretary of State to be found at 800 Bell Street, Room 2605, Houston, Harris, County, Texas. Exxon may be served through the Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218. Exxon publicly promotes and markets itself as the "world's largest publicly traded international oil and gas company." Exxon engages in oil exploration, development, marketing, production, refining, transportation, piping and exportation. It amasses revenues in the hundreds of billions each year and is considered the number one or one of the top revenue earning companies in major financial magazines and reports. Exxon has had previous major oil spills and failures in other parts of the United States and has been fined by governmental agencies.<sup>3</sup>

---

<sup>3</sup> Just days before the Mayflower, Arkansas oil spill, the federal government, Pipeline and Hazardous Materials Safety Administration issued a Notice of Probable Violation and Civil Penalty on March 25, 2013, for Exxon's failure on its older pipeline system (1950's) located alongside the Yellowstone River, a nationally recognized, important water resource and

15. ExxonMobil Pipeline Company (collectively EMPCO) and Mobil Pipeline Company are companies that own, maintain or operate the Pegasus Pipeline and are directly related to or are affiliated with each other, Exxon and ExxonMobil. EMPCO and Mobil Pipeline Company have ownership interests in joint interest pipelines and operate proprietary and joint venture distribution terminals in the United States. Upon information and belief, EMPCO is located and headquartered at 800 Bell Street, Houston, Harris County, Texas. Mobil Pipeline Company is an affiliate of ExxonMobil Pipeline Company and operates a facility in Patoka, Illinois where it maintains documents pertaining to the corporate activities. It is also located at 800 Bell Street in Houston, Harris County, Texas. Exxon, EMPCO and Mobil are collectively referred to hereinafter as Defendants.

16. At all relevant times alleged herein, Defendants owned, operated and failed to maintain, service, repair and replace the Pegasus Pipeline, which transports hazardous liquids through the States of Arkansas, Texas, Missouri and Illinois.

---

navigable river. The fine was \$1.7 million. The federal government found that Exxon failed "over an extended period of time" to recognize threats to the safety of its pipeline as part of its risk analysis and that this was a major cause of the pipeline failure. The federal government further found that Exxon "failed to establish and conduct a continuing training program to instruct emergency response personnel to recognize conditions likely to cause emergencies, to predict the consequences of crude oil spills, or to take appropriate corrective actions." The federal government further found that "the company did not effectively train the controllers and supervisors at the OCC to recognize conditions likely to cause emergencies during flooding, to predict the consequences of facility malfunctions, failures, or hazardous liquid spills, or to take appropriate corrective action." *Id.*

### **III. JURISDICTION AND VENUE**

17. This Court has specific and general *in personam* and *in rem* jurisdiction over Defendants. Defendants earn millions (if not billions) in revenue and profits from their economic activities in Arkansas and have real and personal property throughout the State of Arkansas, including this federal district. A substantial part of the wrongdoing alleged in this Amended Complaint took place in Arkansas. Defendants are authorized to conduct business in the State of Arkansas and purposefully and systematically avail themselves of the oil commodity, transportation and sale markets of the State of Arkansas, which are sufficient bases for this Court to exercise jurisdiction over Defendants under traditional notions of fair play and substantial justice.

18. Venue is proper in this district pursuant to 28 §§ U.S.C. 1391(a) and (b) because a substantial part of the events, acts and omissions giving rise to the claims occurred in the Eastern District of Arkansas where Defendants have a substantial, ongoing, systemic physical and economic presence.

19. This Court has subject matter jurisdiction over this lawsuit. Plaintiffs bring only state law claims and do not raise any federal claim or federal question. There is complete federal diversity pursuant to 28 U.S.C. § 1332, because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and there is a complete diversity of citizenship among the parties. Further, pursuant to the Class Action Fairness Act ("CAFA"), and 28 U.S.C. § 1332(d), there are more than 100 class members in the states involved and the damages alleged are in excess of \$5,000,000.00, exclusive of interest and costs, in the aggregate amount in controversy, thus, original jurisdiction in this court is proper.

#### **IV. FACTUAL ALLEGATIONS**

20. Defendants own, operate and maintain the Pegasus Pipeline, which transports Tar Sands through the State of Arkansas. The Pegasus Pipeline between Corsicana, Texas and Patoka, Illinois was originally constructed in 1947 and 1948, encompassing approximately 650 miles. It is 20-inch diameter pipeline, with a 0.312" wall thickness that has a 95,000 barrels per day capacity (a barrel of crude oil contains 42 gallons or 159 liters). The Pipeline is publicly held out by ExxonMobil to be an API 5LX-42 pipe and contains both seamless pipe and low frequency electric resistance welded (ERW) pipe. The Pipeline is buried two feet or twenty-four inches underground through the four contiguous states with a distance of approximately 18 miles between isolation valves.

21. Today, the Pipeline traverses from Corsicana, Texas through Arkansas, near Mayflower, north of Little Rock and continues upwards through Northeast Arkansas into Missouri and into Patoka, Illinois. Further, there is an additional section of pipeline, which connects the Pipeline to the Gulf through Netherlands, Texas. The Pipeline runs underground including under or abutting major watershed resources throughout the State of Arkansas, which includes drinking water and recreational activities for large populations of people residing near the Pipeline, including, but not limited to: Lake Conway, Lake Maumelle, the Arkansas River, Red River, Lake Ouachita, White River and Mississippi River.

22. In 2006, in order to maximize profits, the Defendants reversed the Pegasus Pipeline to increase the flow of crude oil southward from Canada to the Gulf Coast for refining. The Defendants desired to transport larger amounts of Canadian crude Tar Sands, which is more abrasive, to the Gulf Coast through the Pegasus Pipeline running through Illinois, Missouri,

Arkansas and Texas. It is known in the industry that a change in the direction of oil flow in a pipeline can affect the hydraulic and stress demands on the pipeline and the abrasive quality of the hydrocarbon product can increase corrosion and deteriorate the quality of the pipe. Further, the sixty-seven year old Pipeline was in a defective, unsafe condition, decades past its thirty-year life span, and revealed numerous seam leak problems. Nonetheless, the Defendants made a corporate profit-enhancing decision to run a higher volume and more abrasive heavy, high-sulfur, crude hydrocarbon through the Pipeline and further stressed the sixty-seven year old defective and unsafe pipe.

23. In 2009, Defendants increased the capacity of the Pipeline by 50% or 30,000, barrels including the reactivation of several pump stations along the pipeline. This reactivation and enhancement was to enable the transportation of additional Canadian Tar Sands from the Midwest to Gulf Coast refineries and fully maximize profits by running higher capacity volume of Tar Sands through a pipeline that should have been replaced for decades and was experiencing numerous seam leaks in the northern section of the pipeline. The Defendants knew the transportation of Canadian Tar Sands imposed greater risks to oil pipeline integrity, including greater corrosive effects on oil pipelines, which are already defective and unsafe, and pose serious safety risks and danger to people and property in close proximity to the Pegasus Pipeline. After Defendants' reversal of flow and increase in Tar Sands capacity, hydraulic pressure and stress demands increased on the Pipeline thereby weakening the already deficient Pipeline and creating a further unsafe and unreasonably dangerous condition, which major disaster, pipeline fracture and rupture and release of toxic, poisonous and dangerous liquid were inevitable.

24. The Pegasus Pipeline was and has not been properly and adequately inspected or maintained or replaced to ensure the safe transport of Canadian heavy crude oil and/or Tar Sands through the entire route of the Pegasus Pipeline.

***I. Chronology of Oil Spill***

25. On or around March 29, 2013, a major, catastrophic break occurred in the Pipeline near Mayflower in Faulkner County, Arkansas, near mile-post 315, causing several thousands of barrels of Tar Sands and contaminant (in excess of 27,000 barrels of Tar Sands and contaminant) to gush and be released into the nearby community adjacent to the Pipeline. This pipeline spill created over 1.1 million gallons of contaminated liquid in the Mayflower Community, including in and around Lake Conway, its coves and inlets. Originally, the scene around the oil spill and Mayflower was secured and clamped down by ExxonMobil. Local citizens were not provided material information about the danger and extent of damage and a "no-fly" zone was instituted over the Mayflower area, including relevant geographic zones alleged herein.

26. Defendants, as a course of ongoing corporate conduct, suppressed, concealed and omitted material facts from their website and reports to the media and public, including Plaintiffs, and class members living in Mayflower and around Lake Conway, about the nature and extent of the Tar Sands spill, contents of the hazardous material in the Pipeline, Defendants' response to the Pipeline's failure and Defendants' ultimate clean-up and exit strategy to leave Mayflower. After the Pipeline's failure, Defendants gave false, inconsistent and misleading factual assurances to the media and public, including the Plaintiffs and class members. Exxon's suppression, concealment and omission of material facts gave a false impression to the public that the Pipeline had only experienced a three (3) inch gash, was shut down in approximately 16

minutes to isolate the affected section of the Pipeline, and that there was no bitumen in the oil. However, the facts reveal otherwise. The Pegasus Pipeline experienced a major failure crack. The crack was twenty-two (22) feet in length. *See* Exhibit "1." Moreover, a detailed timeline of the facts from the day of the oil spill and days afterward evidences Defendants' corporate conduct, pattern and practice of suppressing, concealing and omitting facts and misleading the public about the Pipeline, the oil spill, the contents of the liquid, and Exxon's response to the oil spill. As part of their corporate conduct in suppressing facts, ExxonMobil informed government agencies that they had to "discipline the press." In short, ExxonMobil concealed, minimized, suppressed and omitted material facts pertaining to the Pipeline.

27. At approximately 1:15 p.m. on March 29, 2013, a drop in the Pegasus Pipeline pressure was discovered according to Exxon's report to the National Response Center. Exxon is required by law to "immediately" report oil pipeline spills to the National Response Center. Exxon failed to report the Mayflower oil spill until 4:06 p.m., nearly three hours after the drop in pressure. Why did Exxon wait so long to report the oil spill? Exxon failed to act because it did not immediately report the problem to the National Response Center so local officials in Arkansas could be notified and mobilize to Mayflower, Exxon failed to act. Local citizens living in Mayflower called 911, reported the oil rupture and the fact that crude oil was leaking through Mayflower. Local personnel and the Arkansas Department of Environmental Quality ("ADEQ") then responded to the local calls and made efforts to evacuate citizens while Defendants were still deciding what to do with their information about the Pipeline failure and how to suppress the truth from the public, including Plaintiffs and class members affected by the oil spill. The timeline of events reveals that Exxon did not immediately report the event as required by law, despite having knowledge of an incident.

### *Timeline*

#### **Friday March 29, 2013**

- **1:15 PM** – Exxon discovers a drop in pressure in its Pegasus pipeline and Exxon's field regulatory specialist reports to the National Response Center (NRC).
- **2:37 PM** - Exxon representation of time the oil spill was detected on their web site.
- **2:43 PM** – First 911 call from resident, Jennifer Dement of 50 Starlite Road, that “a pipe busted and oil is spilling throughout neighborhood” (Exhibit "2").
- **3:02 PM** – 911 contacts ADEM who “is going to call all agencies needed.” (Exhibit "2").
- **3:03 PM** –ADEQ notifies Exxon. Exxon responds “aware of a line pressure drop and have isolated the line.” (Exhibit "3").
- **3:09 PM** – ADEQ updated by Exxon that Exxon’s “crew will be on scene in about 30 minutes from Jessieville, Arkansas” (Exhibit "3").
- **3:19 PM** – Faulkner Co. Sheriff reports “Exxon mobil contacted and enroute / 30 minutes eta.” (Exhibit "2").
- **3:43 PM** – Exxon Mobil is on scene (Exhibit "2").
- **4:06 PM** – Exxon **first** reports to NRC (3 hours after discovery) by its field regulatory specialist Larry Hawthorne that “an unknown amount of Crude Oil has been discharged.” (Exhibit "4").
- **6:04 PM** – Thad Massengale, Exxon Pipeline Safety Advisor, reports to NRC incident occurs at 3:20. “There was a release of an unknown amount of crude oil”; “cause unknown”, “amount unknown” but release duration **three (3) hours**. (Exhibit "5").
- **10:30 PM** – EPA arrives on scene (Exhibit "6").

#### **Saturday March 30, 2013**

- **3:25 AM** – Thad Massengale calls NRC again and "corrects" drop in pressure discovery time from 3:20PM to 1:15PM. (Exhibit "7").

#### **Sunday March 31, 2013**

- **3:00 AM** – “Mark” from Exxon “seemed to think” that the pipeline stopped leaking on Sunday March 31, 2013 at 3:00 AM. Dean VanDerhoff of ADEQ observed that the Pipeline did not stop leaking until 3:00 AM on March 31, 2013. (Exhibit "8").

28. The above timeline reveals that ExxonMobil, despite learning of the drop in pressure in the Pegasus Pipeline, as early as 1:15 PM, did not immediately report the incident to the National Response Center as required by law. Instead, ExxonMobil waited approximately three (3) hours until its employees were on the scene, reporting at 4:06 p.m.

29. Once the Pipeline failed, the Canadian Tar Sands with toxins spread quickly through residents and affected a large area around Mayflower, including the Plaintiffs' and class members' property. The Tar Sands migrated into a storm drain and by 3:09 p.m. was migrating toward Lake Conway. *Id.* The Canadian Tar Sands released from the Pegasus Pipeline emitted dangerous and poisonous toxins into the air contaminating the air quality, making it difficult to breath and violating air quality standards for residents in the community forcing residents to evacuate their homes. Local emergency personnel began evacuating homes because the release of Tar Sands was harmful to people and their real property. *Id.* The hazardous Tar Sands substance flowed and migrated into the Northwoods Subdivision along North Starlite Road into a bar ditch adjacent to a Union Pacific Railroad line, into a creek and into a tributary to a cove of Lake Conway, which is also a tributary to the Arkansas River. Poisonous hydrogen sulfide released into the air and polluted houses and real property in the Mayflower, including Lake Conway, its coves and inlets. The Tar Sands and toxic chemicals physically entered contaminated and polluted Lake Conway, exhibiting residue within Lake Conway, and contaminated, polluted and migrated onto homes and real property surrounding Lake Conway, its coves and inlets, including Plaintiffs' and putative class members' real property.

30. The Pipeline Pumps were not shut down for well over 98 minutes, contrary to Exxon's information provided to the public that they were shut down in 16 minutes. The full volume of heavy Tar Sands remained in the Pipeline and the Tar Sands flow to the Pipeline was

not shut off until several hours later. (*See* Exhibit "9"). The Pipeline continued leaking for two days, contrary to information publicly provided by the Defendants to the public and media. *Id.* Defendant suppressed material facts about the Tar Sands spill, omitted significant material information provided to the public, and failed to provide full disclosure of relevant and material information. Defendants' actions are consistent with and part of their corporate practice in Arkansas of not reporting prior problems with the Pipeline, including prior oil spills in Arkansas and other other states where the ExxonMobil Pipeline runs underground.

31. The release of toxic Canadian Tar Sands on March 29, 2013, due to Defendants' unsafe and defective pipeline running through the State of Arkansas, caused an extensive, continuous and nationally publicized evacuation of people from the real property in the community of Mayflower, contaminated and physically harmed real property, migrated into water sources and impacted air quality for citizens located in Mayflower, including the Plaintiffs' and putative class members' real property, which was physically intruded upon, interfered with and physically harmed by the toxic Tar Sands and contaminant.

32. Notably, ExxonMobil Pipeline representatives gave vastly different accounts of the initial start of the leak and the time it ended. Exxon attempted to report to the NRC that the start time of the leak was 3:20 p.m. Exxon's "reported" leak time was more than 36 minutes after 911 calls were made by local Mayflower citizens, more than two hours after Exxon detected a pressure drop in the Pipeline, and well after oil was already heading toward Lake Conway.

33. After the Mayflower oil leak, Exxon commandeered and controlled the entire scene, including fly-zone and media, and information about the Pipeline, rupture and clean-up, through its "command center." Exxon executed decisions on whether to test air and water quality, determining what type of air and water sampling to take through its contractors. Exxon

failed to take proper water samples within Lake Conway, its coves and inlets. Additionally, Exxon suppressed information about the nature and magnitude of the rupture in the Pegasus Pipeline, problems with the unsafe and defective Pipeline and regarding the type of clean-up and remediation it was going to perform in Faulkner County. Further evidencing this ongoing real property concern, several days after the Mayflower oil spill, the Pegasus Pipeline, in its continuing unsafe, defective and hazardous condition, also leaked Tar Sands into a residential neighborhood in Doniphan, Missouri.

34. Canadian oil from Alberta Tar Sands formations is different than conventional crude oil. Tar Sands contain higher sulfur and are very viscous and difficult to pump through a pipeline. In order to be transported long distances, Canadian crude oil from Alberta must be diluted with toxic chemicals. This diluted hazardous liquid material is referred to as "dilbit." Tar Sands are toxic and dangerous to air, water and real property. Defendants have, nevertheless, denied the Pegasus Pipeline contained bitumen on their website. However, Canadian oil producers and government officials in Alberta, Canada confirmed that the mixture was bitumen, which is not formulated like crude from the Southern United States. *See* Exhibit "10" (page 2). Defendants have continued to deny and mislead the public, including Plaintiffs and putative class members about the content of the Pegasus Pipeline, which has polluted Lake Conway, its coves and inlets, and has physically intruded upon and harmed Plaintiffs' and putative class members' real property.

35. Data provided by Exxon indicates the ultra-hazardous material being transported through the Mayflower area, includes, but is not limited to: Benzene, Cyclohexane, Ethyl Benzene, Hydrogen Sulfide, N-Hexane, Napthlalene, Polynuclear Aromatic Hydrocarbons, Sulfur, Toluene and Xylenes. The hazardous materials being transported through Arkansas and

which Mayflower citizens were exposed to are known to pose serious health effects, including lung damage if aspirated, skin cancer, irritant to eyes, mucous membranes and lungs, nausea, unconsciousness, loss of coordination, central nervous system depression, narcosis and death. Benzene is associated with cancer (acute myeloid leukemia and myelodysplastic syndrome). Hydrogen sulfide is the chemical compound with the formula H<sub>2</sub>S. It is a colorless gas with the characteristic foul odor of rotten eggs, which is the horrendous smell that engulfed the Mayflower community after the oil spill. Hydrogen sulfide is heavier than air, very poisonous, corrosive, toxic, flammable and explosive. Hydrogen sulfide often results from bacterial breakdown of organic matter in the absence of oxygen. It is considered a broad-spectrum poison, meaning it can poison several different systems in the body, although the nervous system is the most affected. The toxicity of hydrogen sulfide is similar to hydrogen cyanide. The hazardous crude oil substance also contains polycyclic aromatic compounds (PACs), which may cause cancer to skin, lung and other sites on the body and are toxic. Moreover, the crude oil and Tar Sands mixture is also highly flammable, which can release vapors that readily form flammable mixtures and can flash or explode if ignited or can ignite by accumulation of static charges.

36. The environmental footprint of the Pegasus Pipeline includes real property owners surrounding Lake Conway, its coves and inlets. The ultra-hazardous, peculiar, uncommon and toxic nature of the heavy Canadian crude oil and liquid hydrocarbons diluting the Tar Sands resulted in immediate air quality and water contamination and pollution after the Mayflower Tar Sands spill, resulting in direct physical intrusion, interference with and entry onto Plaintiffs' and putative class members' real property.

## *II. Pattern and Practice of Pipeline Failure*

37. Defendants have mandatory inspection and safety requirements imposed by federal law and industry standards for operating a pipeline carrying hazardous liquid, such as the liquid contained in the Pegasus Pipeline. These non-delegable duties include the creation of an overall pipeline operating and safety plan, integrity management and inspection requirements. Further, the oil and gas industry has created internal rules and policies pertaining to the maintenance, inspection and integrity management of hazardous, liquid pipelines, such as the Pegasus Pipeline. These duties to maintain a safe pipeline are non-delegable and require the owner and operator of the pipeline to ensure that it is safe throughout the entire course of the pipeline and not omit, suppress or conceal information about its use or condition. The Pegasus Pipeline running throughout the State of Arkansas is maintained in a defective, unsafe condition under a predominating, common course of corporate policy, pattern, practice and conduct, which includes, but is not limited to, the same or similar inspection, maintenance, evaluation, operation and analysis.

38. The Pegasus Pipeline is an ERW pipeline, which was manufactured before the 1970's. ERW Pipelines manufactured before the 1970's are known in the industry to have problems with fractures along weld seams and have been the source of studies and analysis for excessive failures involving the transportation of oil and gas and hazardous substances. Oil and gas pipeline owners have been on notice for decades that that ERW pipelines were known to have problems with ERW seams and handling increased pressure resulting in catastrophic pipeline fractures and significant spills.

39. The Pegasus Pipeline has experienced multiple prior failures, including a prior pipeline failure in Corsicana, Texas in 1987, spilling hazardous material and causing a fire.

Moreover, significantly, the Pegasus Pipeline has previously experienced leaks in the State of Arkansas in Garland County, in Marion County, Illinois, in Texas, and after the Mayflower oil spill, near Doniphan, Missouri.

40. The unsafe, outdated and defective Pegasus Pipeline has polluted and contaminated Lake Conway with Defendants' Tar Sands. The Tar Sands and its poisonous toxins and chemicals are present in Lake Conway and continue to negatively impact existing water uses, have increased true colors of the water, have resulted in offensive odors and have interfered with reasonable use and enjoyment of the water and the surrounding real property.

41. Defendants' Tar Sands release and migration introduced toxic substances into Lake Conway, its coves and inlets, and has produced globules, residue, film and sheen on the water and on the real property surrounding Lake Conway. The surface water, ground water, soil and air pollution and contamination affects real property owners surrounding Lake Conway.

42. The air and water pollution have unreasonably interfered with Plaintiffs' and putative class members' enjoyment of life and use and enjoyment of their property surrounding Lake Conway, its coves and inlets.

43. Federal and state law protects water resources, including surface water, such as Lake Conway, its coves, inlets, ground water and wetlands, from air and water pollution.

44. Under federal and state law, it is unlawful to cause pollutants, such as Tar Sands and toxic and poisonous chemicals to discharge in waters without a permit. Pursuant to 33 U.S.C. § 1251, the national objective of the Clean Water Act is "to restore and maintain the chemical, physical and biological integrity of the Nation's waters." Further, it is a national goal that the discharge of pollutants into navigable waters be eliminated. 33 U.S.C. § 1251(a)(1). Further, the goal of water quality is to provide for the protection of fish, aquatic life and

recreation on water sources. 33 U.S.C. § 1251(a)(2). Moreover, it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited. 33 U.S.C. § 1251(a)(3).

45. Under Arkansas law, it is unlawful for any person to cause pollution in any of the waters of this state or to cause to be placed wastes in a location where it is likely to cause pollution of any waters of this state. Ark. Code Ann. § 8-4-217. "Pollution" under Arkansas law is defined as the "contamination or other alteration of the physical, chemical, or biological properties of any waters of the State, or such discharge of any liquid, gaseous, or solid substances in any waters of the State as will, or is likely to, render the waters harmful, detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish, or other aquatic life." Ark. Code Ann. § 8-4-102(6).

46. Regulation 2 of the Arkansas Pollution Control & Ecology Commission Water Quality Standards of the State of Arkansas, administered by the State ADEQ provides water quality standards for Lake Conway.

47. Under Regulation 2, existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Reg. 2.201.

48. Pursuant to Regulation 2, the true color of any water shall not be increased to the extent that it will interfere with present or projected future uses of the waters. Reg. 2.406.

49. Pursuant to Regulation 2, taste and odor-producing substances shall be limited to receiving waters to concentrations that will not interfere with the production of potable water by reasonable water treatment processes; impart unpalatable flavor to food or fish; result in offensive odors arising from the waters; or otherwise interfere with the reasonable use of the water. Reg. 2.407.

50. Pursuant to Regulation 2, discharges shall not be allowed into any waterbody which, after consideration of the zone of initial dilution, the mixing zone, and critical flow conditions, will cause toxicity to human, animal, plant, or aquatic life or interfere with normal propagation, growth, and survival of aquatic life. Reg. 2.409.

51. Pursuant to Regulation 2, oil, grease, or petrochemical substances shall not be present in receiving waters to the extent that they produce globules; other residue; any visible, colored film on the surface; coat the banks or bottoms of the waterbody; or adversely affect any of the associated biota. Reg. 2.410.

52. Pursuant to Regulation 2, there shall be no distinctly visible increase in turbidity of receiving waters attributable to municipal, industrial, agricultural, other waste discharges, or instream activities. Reg. 2.503.

53. Pursuant to Regulation 2, as a result of waste discharges, the pH of water in streams or lakes must not fluctuate in excess of 1.0 unit over a period of 24 hours and pH values shall not be below 6.0 or above 9.0. Reg. 2.504.

54. Pursuant to Regulation 2, dissolved oxygen in lakes and reservoirs shall not exceed 5 mg/l, unless otherwise permitted by the ADEQ. Reg. 2.505.

55. Pursuant to Regulation 2, toxic substances shall not be present in receiving waters, after mixing, in such quantities as to be toxic to human, animal, plant or aquatic life or to interfere with the normal propagation, growth, and survival, or the indigenous aquatic biota. Reg. 2.508.

56. Pursuant to Regulation 2, oil, grease, or petrochemical substances shall not be present in receiving waters to the extent they produce globules or other residue; any visible, colored film on the surface; coat the banks or bottoms of watercourses; or adversely affect any of

the associated biota. As a guideline, oil and grease shall not exceed 10 mg/l average or 15 mg/l maximum when discharging to surface waters. Reg. 2.510.

57. Defendants' Tar Sands, toxins, pollutants and poisons are present in Lake Conway and continue to negatively impact existing water uses, have affected the water color, have resulted in offensive odors, and have interfered with private citizens' reasonable use and enjoyment of Lake Conway, Lake Conway shoreline and the surrounding real property.

58. Defendants' unlawful and predominating, systemic and common course of corporate policy, pattern, practice and conduct concerning the Pegasus Pipeline specifically caused damage and injury to real property in the Mayflower area and community, including real property surrounding Lake Conway. Further, Defendants' negligent inspection, maintenance, evaluation, operation and analysis and predominating, systemic and common course of corporate policy, pattern, practice and conduct concerning the Pegasus Pipeline places others similarly situated at risk because of the unsafe, defective and unreasonably dangerous condition of the Defendants' Pipeline.

59. The citizens in Arkansas along the Pegasus Pipeline in the Mayflower community and surrounding Lake Conway have experienced real property injuries from the Mayflower oil spill because their property is located in close proximity to the Pegasus Pipeline, an unsafe and defective pipeline far past its thirty year lifetime, which has caused the well-publicized worst dangerous, toxic and poisonous Tar Sands spill in Arkansas history. The Tar Sands Spill contaminated and polluted soil, impacted neighborhoods, forced evacuation from residences, polluted surfaces and underground water sources and poisoned and polluted air quality in the Mayflower, Faulkner County area.

60. Defendants' systemic corporate breakdown, failure to predict consequences and failure to take appropriate remedial and corrective action before and immediately after the oil spill in Mayflower, Arkansas has also physically interfered with, harmed and damaged the Plaintiffs and other similarly situated real property owners in Mayflower, and surrounding Lake Conway. Defendants have suppressed, omitted and concealed information from Plaintiffs and other property owners and residents by reporting misleading information about the Pipeline rupture, containment and clean-up and by falsely assuring that air and water quality, property values and overall personal health are safe from hazardous contaminants from the unsafe and defective Pipeline. ExxonMobil continues to deny access to the contaminated debris, liquid, soil, booms, media, residue, material, matter, oil and evidence of Tar Sands in their possession for independent examination.

#### **V. TOLLING OF THE STATUTE OF LIMITATIONS**

61. Throughout the time period relevant to this action, Defendants affirmatively suppressed, concealed and omitted from Plaintiffs' and other class members the defects with the Pegasus Pipeline described herein and its unsafe condition. Defendants kept Plaintiffs and other class members ignorant of vital information essential to the pursuit of their claims, and as a result, neither Plaintiffs, nor the other class members could have discovered the defect, even upon reasonable exercise of diligence.

62. Defendants were aware of the problem with their Pipeline and continued to utilize the Pipeline with increased capacity under circumstances where they knew or should have known that the pipeline was defective and unsafe in its condition to transport Canadian heavy crude oil southward from Patoka, Illinois to the Gulf Coast.

## **VI. CLASS ACTION ALLEGATIONS**

63. Plaintiffs bring this claim for themselves and for all others similarly situated to obtain monetary relief pursuant to Fed. R. Civ. P. 23(a) and (b) and U.S. E.D. Ark. L.R. 23.1. Plaintiffs seek to certify this lawsuit as a class action and to be appointed as the class representatives to bring this collective action.

64. The class does not include any personal injury claims and is defined as "all persons and entities who owned real property as of March 29, 2013, bordering Lake Conway, its coves and inlets, without an Exxon Pegasus Pipeline easement on their real property" (referred to as the "Lake Conway Class").

65. The exact number of class members is unknown at this time, but the approximate size of the class is anticipated to be several hundred or thousands of people and entities. Thus, under Fed. R. Civ. P. 23(a)(1), the class is so numerous that joinder of all members is impracticable.

66. Pursuant to Fed. R. Civ. P. 23(a)(2) and E.D. L.R. 23(2)(b)(iii), there are questions of law or fact common to the class members. The class members reside by Defendants' unsafe and defective Pipeline, which is hazardous to life, property and the environment. The claims of the Plaintiffs and class members arise from a common nucleus of operative facts relevant to each class member and each member of the designated class sues under common legal theories. Common issues of law or fact for the class include, but are not limited to:

- (a) Whether Defendants are strictly liable?
- (b) Whether the Pegasus Pipeline is a private nuisance?

- (c) Whether the Pegasus Pipeline was operated and maintained in a safe condition?
- (d) Whether the Defendants were negligent?
- (e) Whether the Defendants polluted Lake Conway?
- (f) What is the measure of class-wide damages?

67. Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of the proposed class representatives are typical of the claims for the rest of the class members. There is common liability and a common wrongful conduct by the Defendants applicable to all class members. Further, the defenses interposed by the Defendants are expected to be common toward the class members.

68. Pursuant to Fed. R. Civ. P. 23(a)(4), the representative parties will fairly and adequately represent and protect the interests of the class members. Pursuant to E.D. L.R. 23.1(b)(ii), the proposed class representatives will fairly and adequately represent the interests of the class members because the class members reside near the Pegasus Pipeline, their real property value has declined due to the Defendants' defective unsafe Pipeline and common course of corporate policy, pattern, practice and conduct concerning the Pegasus Pipeline and because the class representatives bring this lawsuit for the benefit of and to recover for affected class members in one contained geographic area, Lake Conway.

69. Moreover, the class representatives have retained counsel to represent themselves and class members who have extensive experience representing parties and class actions involving mass torts and property claims and who have knowledge and experience of the law and claims presented in this lawsuit and the procedural nature of Rule 23, as a procedural mechanism

to bring a lawsuit to decide a common liability for and bring relief for a group of affected persons.

70. Pursuant to Fed. R. Civ. P. 23(b)(1)(A) & (B), this lawsuit should be certified as a class action because individually affected members who prosecute separate actions would cause multiplicity of litigation, there would be risk of inconsistent findings on the same set of operative facts of liability, there would be inconsistent and varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendants and individual adjudications would as a practical matter affect the interests and rights of individual persons not made a party to this lawsuit.

71. Pursuant to Fed. R. Civ. P. 23(b)(3), the common questions of law and fact predominate over any questions affecting individual members. Further, maintaining this lawsuit as a collective action is a superior means of litigating this case because it eliminates multiple lawsuits involving the same operative set of liability facts, multiple litigation with the same witnesses and Defendants, risk of inconsistent adjudication and standards and preserves the rights of individuals who might be affected by disposition of an individual lawsuit, of which they are not a party.

72. Plaintiffs respectfully bring the following Arkansas state law claims to recover damages for themselves and the Lake Conway Class.

## **VII. CLAIMS FOR RELIEF**

### ***A. Strict (Absolute) Liability***

73. Plaintiffs reallege the preceding paragraphs and incorporate them by reference herein as though stated word-for-word.

74. Prior to 2006, ExxonMobil knew that Canadian Tar Sands was a dangerous commodity and that existing infrastructure in the United States was not safe to pump the commodity to the Gulf through its already bad, unreasonably dangerous, deficient and unsafe ERW Pegasus Pipeline ("bad pipeline"), which had already exceeded its thirty-year lifetime by decades, and should have been replaced with a modern, state-of-the-art larger capacity pipeline. With their corporate knowledge, ExxonMobil studied existing infrastructure in the United States and determined that its existing infrastructure could not handle Tar Sands as a commodity from Canada and that to proceed ahead and to attempt to pump or transport such a product southward to the Gulf of Mexico would cause:

- (a) Internal and external pipeline coating issues;
- (b) External corrosion;
- (c) Third party damage;
- (d) Weld seam failures; and
- (e) Specific integrity issues around flash welded pipe.

75. Exxon knew that because Tar Sands are so peculiar and uncommon in nature, volatile, dangerous and toxic as a commodity, it is not a matter of common usage to handle such ultra-hazardous commodities and a very limited number of pipelines in the United States pump or transport Tar Sands southward to the Gulf of Mexico. Furthermore, existing pipelines that have pumped Tar Sands through the existing structure have experienced massive failure and enormous damage to water resources and real property and obvious and ultra-hazardous risk and danger to the public safety.

76. Prior to March 29, 2013, ExxonMobil:

- (a) knew that its "bad" pipeline was not designed for Tar Sands;

- (b) knew that the risk of serious harm to water resources and persons living near the Pipeline could not be eliminated entirely by the exercise of the utmost care;
- (c) knew that pumping dangerous, toxic and poisonous Tar Sands through its existing, unsafe pipeline infrastructure was not a matter of common usage;
- (d) knew that its sixty-seven year old bad pipeline was already experiencing numerous seam leaks exposing its deficient and dangerous condition; and
- (e) knew that pumping dangerous and toxic Tar Sands through its existing, unsafe pipeline infrastructure created internally an "obvious risk to public safety," which ExxonMobil deliberately and consciously suppressed and concealed from the public, including Plaintiffs and putative class members in Mayflower, Faulkner County, Arkansas, even though it had a duty of disclosure regarding the condition and safety of the pipeline.

77. However, with this actual knowledge of the danger to public safety and risk of fracture and rupture, knowledge that Tar Sands were dangerous to transport and knowledge that ExxonMobil's existing unsafe, sixty-seven year old ERW Pegasus Pipeline infrastructure was not designed for transporting ultra-hazardous and peculiar Tar Sands, ExxonMobil made a deliberate, corporate decision to pump dangerous and poisonous Tar Sands and toxic chemicals southward through its existing "bad pipeline." Furthermore, with the pipeline revealing numerous leaks, ExxonMobil, rather than replace the pipeline, made a corporate decision to maximize its profits and increase the capacity of the Tar Sands flow from 66,000 barrels per day to 99,000 barrels per day in ExxonMobil's unsafe and deficient and unreasonably defective and dangerous pipeline. Exxon's decision was in deliberate and conscious disregard of multiple,

state and federal water resources and waterbodies, which the Pegasus Pipeline transports Tar Sands through or under, including Lake Conway, and surrounding real property owners.

78. Defendants' unsafe and unreasonably dangerous pipeline and wrongful common course of corporate policy, pattern, practice and conduct resulted in the release and emission of Tar Sands and carcinogenic and poisonous chemicals into the air and water on March 29, 2013, because of the dangerous condition of the entire Pegasus Pipeline and the transportation of Tar Sands as a commodity through the unreasonably dangerous pipeline.

79. Defendants permanently suppressed, concealed and omitted from Plaintiffs and putative class members that the pipeline was in disrepair, unmaintained, unsafe and in need of removal or replacement. Despite having this knowledge and knowing the Pegasus Pipeline was not designed and could not safely transport dangerous, toxic and poisonous Tar Sands from Canada to the Gulf Coast, Defendants knowingly transported Tar Sands at a high volume through their "bad" pipeline. Defendants' "bad" pipeline resulted in air and water pollution and contamination, which released toxins and poisons and interfered with, contaminated and physically harmed Plaintiffs' and putative class members' real property surrounding Lake Conway.

80. Defendants' unsafe and defective pipeline and wrongful and unlawful common course of corporate policy, pattern, practice and conduct, which includes, but is not limited to, failure to maintain, inspect, evaluate, operate and analyze the defective pipeline and transporting inherently and unreasonably dangerous and poisonous Tar Sands, have directly and proximately caused permanent real property damage to the Plaintiffs and the Lake Conway Class.

81. Plaintiffs and the Lake Conway Class respectfully pray for damages caused by Defendants' strict (absolute) liability in an amount in excess of \$75,000.00, exclusive of costs

and interest for individual damages, and in excess of \$5,000,000.00, exclusive of costs and interest for damages in the aggregate.

***B. Nuisance***

82. Plaintiffs reallege the preceding paragraphs and incorporate them by reference herein as though stated word-for-word.

83. Nuisance is an unreasonable interference or invasion of one's person or real property which interferes with the person's life and use and enjoyment of the real property.

84. At all relevant times alleged herein, Defendants owned and failed to inspect and maintain their defective and unsafe Pipeline, which was transporting Tar Sands with poisonous and carcinogenic toxins from Patoka, Illinois to Nederland, Texas.

85. Defendants' unsafe and defective pipeline and wrongful common course of corporate policy, pattern, practice and conduct, which includes, but is not limited to, failing to maintain, inspect, evaluate, operate and analyze their unsafe and defective pipeline, have directly resulted in the substantial interference with, aggravation, annoyance, intrusion upon and physical harm to Plaintiffs' and the Lake Conway Class's real property, as the result of the release and emission of Tar Sands and carcinogenic and poisonous chemicals into the air and water because of the March 29, 2013 Tar Sands spill.

86. Defendants' unsafe and defective pipeline and common course of corporate policy, pattern, practice and conduct, which includes, but is not limited to, failure to maintain, inspect, evaluate, operate and analyze the defective pipeline have resulted and directly and proximately caused permanent real property damage to the Plaintiffs and the Lake Conway Class.

87. Plaintiffs and the Lake Conway Class respectfully pray for damages caused by Defendants' nuisance in an amount in excess of \$75,000.00, exclusive of costs and interest for individual damages, and in excess of \$5,000,000.00, exclusive of costs and interest for damages in the aggregate.

*C. Negligence*

88. Plaintiffs reallege the preceding paragraphs and incorporate them by reference herein as though stated word-for-word.

89. Defendants transport ultra-hazardous and peculiar liquid (Tar Sands) through the Pegasus Pipeline, which runs through the State of Arkansas, including numerous, navigable waterways and protected water resources, such as Lake Conway. Defendants, pursuant to oil and gas industry standards have a non-delegable duty to maintain, inspect and manage the integrity of the Pegasus Pipeline to ensure it is safe throughout the entire course of the pipeline. The Pegasus Pipeline is maintained in a deficient, unsafe condition under a predominating, common course of wrongful corporate policy, pattern, practice and conduct, which includes, but is not limited to, the same or similar inspection, maintenance, evaluation, operation and analysis.

90. It is foreseeable that the Pegasus Pipeline would rupture and leak, *inter alia*, as the ERW pipeline was manufactured prior to 1970 and oil and gas pipeline operators, including Defendants, knew such pipeline was deficient and unsafe. Further, Exxon had a problem near Corsicana, Texas with the pipeline involving a major failure and crude oil leak, fire and property damage in 1987, a leak in July, 1995 in Arkansas, a prior leak in Marion County, Illinois and then a leak after the Mayflower oil spill in Doniphan, Missouri. However, notwithstanding their knowledge of the unsafe nature of the pipeline, Defendants increased the capacity of the pipeline, changed the use and flow of the pipeline and changed the material in the pipeline to toxic Tar

Sands, which sinks in water and emits hydrogen sulfide, benzene, toluene and other carcinogenic, toxic and poisonous contaminants.

91. Defendants' unsafe and defective pipeline and common course of corporate policy, pattern, practice and conduct, which includes, but is not limited to, failure to maintain, inspect, evaluate, operate and analyze the defective pipeline, were a breach of their non-delegable duty to maintain a safe pipeline, and have resulted in, and directly and proximately caused, damages to the Plaintiffs and putative class members.

92. Plaintiffs and the putative class members respectfully pray for damages caused by Defendants' negligence in an amount in excess of \$75,000.00, exclusive of costs and interest for individual damages, and in excess of \$5,000,000.00, exclusive of costs and interest for damages in the aggregate.

93. Plaintiffs reserve the right to move for leave to amend as further facts are ascertained and to allege additional legal theories.

#### **VIII. DEMAND FOR JURY TRIAL**

94. Pursuant to Ark. R. Civ. P. 38, Fed. R. Civ. P. 38, Ark. Const. Art. 2, § 7, Ark. Code Ann. § 16-64-103, Plaintiffs hereby demand a trial by jury of all issues of fact.

#### **IX. DEMAND AND PRAYER**

95. Plaintiffs respectfully pray this Court enter orders and judgment against Defendants as follows:

- (a) For an order certifying this lawsuit to proceed as a class action; and an order appointing Plaintiffs as Class Representatives and appointing their counsel as counsel for all Class members;
- (b) For compensatory damages for each Class member;

- (c) For pre-judgment interest and post-judgment interest at the maximum rate allowed by law; and
- (d) For costs, expenses, fees, expert and attorney's fees as permitted by law or common benefit, and for all other relief deemed equitable, appropriate and just.

Respectfully submitted,

**DUNCAN FIRM, P.A.**

By: /s/ Phillip Duncan  
Phillip Duncan, ABN #74039  
Richard Quintus, ABN #2000078  
William Rob Pointer, ABN #2007216  
Justin C. Zachary, ABN #2010162  
Timothy P. Reed, ABN #2012210  
DUNCAN FIRM, P.A.  
900 South Shackleford Road, Suite 725  
Little Rock, Arkansas 72211  
Telephone: 501-228-7600  
Facsimile: 501-228-0415  
phillip@duncanfirm.com  
richard@duncanfirm.com  
rob@duncanfirm.com  
justin@duncanfirm.com  
tim@duncanfirm.com

-and-

**THRASH LAW FIRM, P.A.**

/s/ Tom Thrash  
Thomas P. Thrash, ABN #80147  
Marcus N. Bozeman, ABN #95287  
Thrash Law Firm, P.A.  
1101 Garland Street  
Little Rock, Arkansas 72201  
Telephone: 501-374-1058  
Facsimile: 501-374-2222  
tomthrash@sbcglobal.net  
bozemanmarcus@sbcglobal.net

-and-

**PARKER WAICHMAN, LLP**

/s/ William J. Dubanevich  
William J. Dubanevich (*pro hoc vice*  
anticipated)  
6 Harbor Park Drive  
Port Washington, New York 11060  
Telephone: 516-466-6500  
Facsimile: 516-723-4733  
wdubanevich@yourlawyer.com

**CERTIFICATE OF SERVICE**

I Phillip Duncan, the undersigned, hereby certify that a true and correct copy of the foregoing file-marked *Amended Complaint – Class Action* is being served by electronic notification through the U.S. District Court Arkansas Eastern District CM/ECF electronic filing system upon the following counsel of record:

Jane A. Kim, Esq.  
Gary D. Marts, Jr., Esq.  
Michelle M. Kaemmerling, Esq.  
Scott A. Irby, Esq.  
Michael Barnes, Esq.  
Stephen R. Lancaster, Esq.  
Edwin L. Lowther, Jr., Esq.  
WRIGHT, LINDSEY & JENNINGS LLP  
200 West Capitol Avenue, Suite 2300  
Little Rock, Arkansas 72201-3699  
jkim@wlj.com  
gmarts@wlj.com  
mkaemmerling@wlj.com  
sirby@wlj.com  
slancaster@wlj.com  
mbarnes@wlj.com  
elowther@wlj.com

On this 27<sup>th</sup> day of June, 2013.

/s/ Phillip Duncan \_\_\_\_\_