IN THE CIRCUIT COURT OF NEW MADRID COUNTY, MISSOURI
THIRTY-FOURTH JUDICIAL CIRCUIT

RANDALL D. DILL & LINDA S. DILL, MICHELLE M. BRADSHAW, ROBERT BRAMLETT & JENNIFER BRAMLETT, MARION M. CLARK & JENNIFER A. CLARK, DYE SEED SERVICE, INC., CHARLES T. DYE & CATHY DYE, TOM D. GRAHAM, J.W. HUGHES & MARTHA HUGHES, BARBARA A. JOHNSON, JOHN LAUNIUS & MICHI LAUNIUS, DAN LOFLIN & DARLENE LOFLIN, ROBERT E. OGDEN & ROBIN S. OGDEN, VELMA K. PATTERSON, JOHN O. RILEY & HEATHER D. RILEY, THOMAS L. RUSSELL & HELEN L. RUSSELL, EDWARD L. STINNETT & BRENDA K. STINNETT, KENNETH TACKETT & SONJA TACKETT, ANGELA N. WEBB, MARK S. WILLIAMS & SIDNEY Y. WILLIAMS,

Plaintiffs,

v.

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION,
Serve: Missouri Highways & Transportation Commission
105 West Capitol Avenue
Jefferson City, MO 65102

Defendant.

Cause No. 11NM-CV00644

Division No. I

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PETITION FOR DAMAGES

Plaintiffs hereby state their cause of action against defendant Missouri Highways & Transportation Commission (MHTC) as follows:

1. Plaintiffs are property owners in the City of Morehouse, Missouri.

2. Defendant MHTC has, under § 227.120, RSMO, the power to "purchase, lease, or condemn lands in the name of the State of Missouri." That is, MHTC has the power commonly known as the power of eminent domain. This Court has jurisdiction over MHTC pursuant to § 508.010(2), RSMo.

3. Article I, § 10 of the Missouri Constitution provides "no person shall be deprived of . . . property without due process of law."

4. Article I, § 26 of the Missouri Constitution provides that "private property shall not be taken or damaged for public use without just compensation."

5. The Fourteenth Amendment to the United States Constitution prohibits a state from depriving "any person of . . . property, without due process of law."

6. The Fifth Amendment to the United States Constitution prohibits the government from taking private property for public use "without just compensation."

7. Despite these state and federal constitutional protections, defendant MHTC has taken or damaged plaintiffs' property without due process, and without just compensation.

8. Specifically, on or about April 27, 2011, or a date better known to defendant, MHTC caused water to flow violently and quickly into the town of Morehouse when MHTC created an artificial barrier or berm at or near Highway 60 in this judicial circuit.

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9. MHTC's actions constitute an unreasonable use of the lands around Highway 60, and its conduct directly caused or contributed to cause damage to plaintiffs' property.

10. Defendant's conduct was intentional, as it purposefully created the berm in the middle of the night.

11. Defendant's conduct was unreasonable, as it knew or should have known that by changing the flow of the water around Highway 60, such water would back up and flood the town of Morehouse.

12. Defendant's conduct was negligent, in that defendant failed to use ordinary care to a) devise a plan that would not have led to the flooding of Morehouse, b) or warn the residents of Morehouse in sufficient time to prepare for the town being inundated with water.

13. Such residents of Morehouse did not know and in the exercise of ordinary care could not have known that MHTC, under cover of darkness, was constructing an artificial berm which MHTC knew or should have known would cause the town to be overwhelmed with water.

14. At all times relevant MHTC had a duty to use reasonable care to avoid injuring residents of Morehouse and others by redirecting the flow of substantial amounts of water. As set forth above, defendant breached this duty and is therefore liable to plaintiffs, and each of them.

15. As a direct and proximate result of defendant's intentional, unreasonable, negligent and reckless conduct, plaintiffs have suffered damages, including but not limited to:

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a) damage to their homes and lands;

b) damage to personal property including home possessions;

c) damages resulting from loss of use of their property;

d) damages resulting from the need to rent alternative housing;

e) mileage, labor and costs of clean up and/or repair of their property.

16. The damages suffered by the plaintiffs are ongoing, and discovery will clarify and quantify the precise nature of damage.

17. Further, plaintiffs seek all damages allowed under the law applicable to this case, whether stated herein or not. Plaintiffs seek interest, fees, and costs as allowed by this Court.

WHEREFORE, plaintiffs state they have been damaged and injured by defendant as aforesaid, and request judgment in their favor in excess of Twenty-Five Thousand Dollars ($25,000.00), and for such further relief as the Court deems appropriate.

GRAY, RITTER & GRAHAM, P.C.

By: _____

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