

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Sabrina Todd, Vince Osborne, and Alyssa
Smith, individually and as the representatives
of a class of similarly situated persons,

Plaintiffs,

v.

Norfolk Southern Corporation,

Defendant.

Civil Action No. 3:18-cv-01106-MGL

COMPLAINT

Plaintiffs Sabrina Todd, Vince Osborne, and Alyssa Smith, individually and as the representatives of a class of similarly situated persons, file this Complaint against Defendant Norfolk Southern Corporation (“Norfolk Southern”) and allege:

PARTIES

1. Plaintiff Sabrina Todd is a citizen and resident of Richland County, South Carolina.
2. Plaintiff Vince Osborne is a citizen and resident of Richland County, South Carolina.
3. Plaintiff Alyssa Smith is a citizens and resident of Richland County, South Carolina.
4. Defendant Norfolk Southern Corporation is a Virginia corporation that regularly transacts business in South Carolina such that it should anticipate being haled into court here.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action and the claims set forth in this complaint pursuant to 28 U.S.C. § 1332.

6. This Court has personal jurisdiction over Norfolk Southern because Norfolk Southern maintains substantial and continuous contacts in South Carolina and does substantial business in South Carolina.

7. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b), both because a substantial part of the events or omissions giving rise to this claim occurred, and because a substantial part of the property that is the subject of the action is situated, within this District.

FACTS

8. Sabrina Todd, Vince Osborne, and Alyssa Smith (“Named Plaintiffs”) and members of the putative class (collectively “Plaintiffs”) own property in Richland County in proximity to Gills Creek and south of Devine Street.

9. Norfolk Southern operates over 750 miles of railroad track in South Carolina including a rail line in Richland County that runs southeast from downtown Columbia to an area adjacent to Owens Airport before crossing Gills Creek near South Beltline Boulevard and continuing east toward Sumter, South Carolina.

10. Near the point where the rail line controlled by Norfolk Southern crosses South Beltline Boulevard and Gills Creek, Norfolk Southern installed, caused to be installed, owns or is otherwise responsible for a train embankment and trestle that significantly restricts the natural flow of water down Gills Creek.

11. During heavy rains, water flow along the Gills Creek water course is restricted by this embankment and trestle causing water to back up and flow over the land of upstream property owners.

12. In early October 2015, South Carolina experienced a substantial rainstorm. According to the National Weather Service, the Columbia Metropolitan Airport received nearly 11 inches of rain from October 2-5, 2015.

13. This rainstorm was forecast days in advance, and Norfolk Southern had prior notice of the substantial influx of water likely to flow along Gills Creek during the storm.

14. During the rainstorm, the water course flowing down Gills Creek was slowed and restricted by Norfolk Southern's embankment and train trestle over Gill's Creek. As a result, water from Gills Creek backed up and flooded the land of upstream property owners including Plaintiffs.

15. Plaintiffs sustained substantial property damage and other losses as a result of the flood.

CLASS ACTION ALLEGATIONS

16. Plaintiffs reallege and incorporate by reference the allegations set forth above.

17. Pursuant to Rule 23, SCRPC, Named Plaintiffs bring this action on behalf of themselves and all other similarly situated persons. Named Plaintiffs are members of the class and Named Plaintiffs seek to represent the class defined as follows:

All owners of real property in Richland County north of the Norfolk Southern embankment and train trestle over Gills Creek near South Beltline Boulevard and south of Garners Ferry Road/Devine Street that sustained water-related property damage following the October 2-5, 2015 rainstorm.

18. On information and belief, the class includes at least dozens of Richland County property owners and is so numerous that joinder of all members is impractical.

19. There are questions of fact or law common to the class predominating over questions affecting only individual class members, including without limitation:

a. Whether the embankment and train trestle Norfolk Southern caused to be placed, or is otherwise responsible for, on and over Gills Creek near South Beltline

Boulevard restricted the flow of the natural water course of Gills Creek;

- b. Whether Norfolk Southern properly maintained the train trestle at Gills Creek near South Beltline Boulevard;
- c. Whether Norfolk Southern properly responded to forecasts of an approaching rainstorm; and
- d. Whether Norfolk Southern's conduct was a proximate cause of the flooding that damaged Plaintiffs' property.

20. Named Plaintiffs' claims are typical of the absent class members in that all involve property damage suffered as a result of flooding near Gills Creek in October 2015.

21. Named Plaintiffs will fairly and adequately protect the interests of the other class members. Plaintiffs' counsel is experienced in handling class action claims. Neither Named Plaintiffs nor their counsel has any interests adverse to or in conflict with the absent class members.

22. The amount in controversy for all class members exceeds one hundred dollars.

FIRST CAUSE OF ACTION
(Nuisance)

23. Plaintiffs reallege and incorporate by reference the allegations set forth above.

24. Norfolk Southern maintained the embankment and train trestle across Gills Creek near South Beltline Boulevard in a way that caused water from the creek to back up onto upstream property owners' land.

25. The flood of water that covered Plaintiffs' property destroyed homes and substantially interfered with Plaintiffs' use and enjoyment of their land.

26. As a direct and proximate result of Norfolk Southern's conduct, Plaintiffs suffered substantial property damage and other losses.

SECOND CAUSE OF ACTION
(Trespass)

27. Plaintiffs reallege and incorporate by reference the allegations set forth above.

28. Norfolk Southern's use, maintenance, and operation of the train trestles described above was improper, unreasonable, and performed with knowledge of the potential harm that overflowing water could have on upstream landowners' property.

29. Norfolk Southern's use, maintenance, and operation of the train trestles described above caused a physical intrusion of water on Plaintiffs' land and denied Plaintiffs exclusive possession of their property.

30. As a direct and proximate result of the trespass, Plaintiffs suffered damages including harm to the value of all their rights as property owners.

THIRD CAUSE OF ACTION
(Violation of South Carolina General Railroad Law)
(S.C. Code Ann. § 58-17-3910)

31. Plaintiffs reallege and incorporate by reference the allegations set forth above.

32. Pursuant to the South Carolina General Railroad Law, "Railroad corporations shall be liable to landowners for all damages resulting from the wrongful obstruction of watercourses by such corporations . . ." S.C. Code Ann. § 58-17-3910.

33. Norfolk Southern wrongfully obstructed the natural water flow of Gills Creek, a South Carolina watercourse, by owning, controlling, operating, maintaining, and/or managing the embankment and train trestle across Gills Creek as described above.

34. As a direct and proximate result of Norfolk Southern's conduct, Plaintiffs suffered substantial property damage and other losses.

FOURTH CAUSE OF ACTION
(Strict Liability)
(S.C. Code Ann. § 49-11-10)

35. Plaintiffs reallege and incorporate by reference the allegations set forth above.

36. Pursuant to the S.C. Code Ann. § 49-11-10, “No person shall be permitted or allowed to make or keep up any dam or bank to stop the course of any waters so as to overflow the lands of another person without the consent of such person first had and obtained...”

37. Norfolk Southern made or kept up a dam or bank which stopped the course of waters causing them to overflow the lands of other persons without the consent of such persons in violation of S.C. Code Ann. § 49-11-10 amounting to strict liability on the part of Norfolk Southern for any harm or damage caused by its conduct.

38. As a direct and proximate result of Norfolk Southern’s conduct, Plaintiffs suffered substantial property damage and other losses.

FIFTH CAUSE OF ACTION
(Common Law Strict Liability)

39. Plaintiffs reallege and incorporate by reference the allegations set forth above.

40. Norfolk Southern made or kept up a dam or bank which stopped the course of waters causing them to overflow the lands of other persons without the consent of such persons in violation of the common law of South Carolina, and Norfolk Southern is therefore liable for any harm or damage caused by its conduct.

38. As a direct and proximate result of Norfolk Southern’s conduct, Plaintiffs suffered substantial property damage and other losses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant for actual, consequential, and special damages, an award of punitive damages, costs and attorneys' fees, abatement of the nuisance, and for such other and further relief as this court deems just and proper.

Respectfully submitted,

s/Russell T. Burke
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Columbia, South Carolina

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Three Plaintiffs File Class Action Against Norfolk Southern Corp. Over 'Substantial' Flood Damage](#)
