

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Master File No. 4:17-CV-141-D**

**IN RE: OUTER BANKS POWER OUTAGE
LITIGATION**

This Document Relates To:

All Actions.

Matthew Breveleri, Robert Case, Rhonda Derring, Nina Edgar, Thomas Edgar, Edwin Fitzpatrick, Karen Fitzpatrick, Alex Garrish, Tami Gray d/b/a Family Water Adventures, Marissa Gross d/b/a Down Creek Gallery, Stephen Harris, Hatteras Blue, Inc., Charles Hofmann, Michael Janssen, Las Olas, Inc., Jack Levis, Briggs McEwan, Bryan Meekins d/b/a TBM Construction, Miss Ocracoke, Inc., Daniel Spaventa, Michael Stockwell d/b/a Morning Star Stables, Kathleen Triolo d/b/a Island Vibe Café, Tri-V Conery, Inc., Edward Waas, Mike Warren, William Bailey, Kerry Fitzgerald, Stephen Wilson, and Stephen Wright,

Plaintiffs,

v.

**PCL Civil Constructors, Inc. and
PCL Construction Enterprises, Inc.,**

Defendants.

MASTER CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs, through counsel, on behalf of themselves and all others similarly situated, allege the following against Defendants:

INTRODUCTION

1. The Herbert C. Bonner Bridge spans the Oregon Inlet and serves as the single point of roadway access from the mainland via Bodie Island to the Outer Banks islands of Hatteras and Ocracoke. It also carries the sole power transmission line from the mainland. This power line runs with Highway NC 12 from the mainland to the north end of the bridge, then with its span, and then follows the roadway again from the south end of the bridge, which is the north end of Hatteras Island, on down the length of the island and over to Ocracoke. The bridge and its associated power line are considered critical infrastructure and characterized as a “lifeline” to these islands.¹

2. Originally built in 1963, the bridge was designed to be used for 30 years. For many years, it was scheduled for replacement, but the project was delayed by environmental concerns. Finally, in 2011, the environmental assessment was complete and the North Carolina Department of Transportation (“NCDOT”) began the process of soliciting bids for construction of a new bridge along with roadway areas at each end of the bridge over the land. The new bridge would be constructed next to the old one, then the old one would be demolished.

3. PCL Civil Constructors, Inc. (“PCL”) is a key subsidiary of the eighth-largest construction company in the world, PCL Construction Enterprises, Inc., whose ultimate corporate parent is based out of Canada, with revenues of close to \$7 billion per year in the U.S.

4. PCL made a bid on the project in which the company held out its ability to act as a single point of contact, including expert design, engineering and logistics services wrapped up

¹ E.g., <https://www.outerbanks.com/herbert-c-bonner-bridge.html> (“The Herbert C. Bonner Bridge is a lifeline for Hatteras Island, connecting the fragile barrier island communities of seven villages with the Northern Outer Banks.”); Sam Walker, Utility line work gets under way for new Bonner Bridge, Nov. 21, 2015, The Outer Banks Voice, available at <https://outerbanksvoice.com/2015/11/21/utility-line-work-gets-under-way-for-new-bonner-bridge/> (quoting Governor McCrory: “The Bonner Bridge has been a lifeline for the residents and visitors to the Outer Banks....”).

in one package. PCL prepared a bid that was over \$60 million less than its closest rival, based on an accelerated schedule and use of platoons of low-wage workers for labor.

5. On July 26, 2011, PCL was awarded, and agreed to be bound by, the terms of a design-build contract with the NCDOT, in an amount of \$215,777,000, an amount later increased to \$246 million. PCL's proposal scored better than its competitors due to the accelerated schedule and PCL's promise to use its design and planning expertise to stage its work in the confines of small areas at the north and south ends of the project to avoid harm to environmentally sensitive areas.

6. At all relevant times, PCL knew that these small work confinement areas contained critically important transmission cables that supplied power to all of Hatteras and Ocracoke Islands. PCL knew the location of these cables, both under and above the ground, and knew that if its construction activities damaged these cables it would knock out power to the islands and cause foreseeable wide-scale damage to businesses, vacationers, and permanent residents. PCL further knew that the very purpose of the project was to secure and strengthen this lifeline to the islands, consisting of the bridge and its utility conduits.

7. Before it was allowed to begin its work, PCL entered into the design-build contract with NCDOT, which is a public record incorporated by reference herein. While PCL assumed a duty of due care separate and apart from the contract, the terms of the contract shed light on its duties. PCL expressly recognized in its contract with NCDOT that it owed a duty to prevent foreseeable harm that could occur if PCL's work caused damage to the power cables supplying the islands. The contract explicitly acknowledged the importance of the power utility conduit to the islands. The contract expressly stated that PCL "shall use suitable precautions to prevent damages to pipes, conduits, and other underground structures" as well as to "poles,

wires, cable” and other facilities. More importantly, the contract expressly warned PCL, and PCL expressly acknowledged and agreed, that an “unacceptable interruption” of electrical service would specifically result if the power lines were cut near the riser pole at the south end of the bridge, which was located at the north end of Hatteras Island.

8. PCL broke ground on the project on March 8, 2016. PCL knew that its work would have a foreseeable impact on people and businesses who used the Islands during the time of the work. Indeed, the company was being paid over \$240 million to protect and secure that use. As stated by the NCDOT, the project marked “a long-awaited milestone for people who live, work or visit the Outer Banks from throughout North Carolina and from around the world.”²

9. Despite PCL’s express promise and agreement as to the importance of avoiding damage to the power lines, on July 27, 2017, PCL cut the power cables near the riser pole at the south end of the bridge. This was the exact region on land where the NCDOT warned PCL not to damage the cables, and where PCL had expressly agreed that damage would cause an “unacceptable interruption.”

10. PCL’s negligence caused the precise damage that was repeatedly warned against in the contract: cutting the power lifeline to the islands at the height of the tourist season. As a result, residents, visitors, and businesses experienced the very outcome that PCL was paid to avoid – a catastrophic loss of power. This action seeks fair compensation for the loss.

NATURE OF THE ACTION

11. This action seeks compensatory damages for each Plaintiff individually, and as representatives on behalf of the putative classes described herein.

²<https://www.ncdot.gov/projects/bonnerbridgereplace/>.

12. Plaintiffs allege that PCL was negligent in the construction of the roadway and handling of its equipment on land at the north end of Hatteras Island in Dare County, North Carolina, which was at the south end of the existing Bonner Bridge. The roadway leads up to the bridge and was being used by PCL as a staging area for its work on the project. The new bridge was being built next to the existing one.

13. PCL, acting through its employees or agents, negligently drove a large steel casing into the ground at a location where PCL knew that power lines were buried. As a result, all electrical power to the islands was disrupted for over a week. A state of emergency was declared by North Carolina Governor Roy Cooper and visitors were forced to evacuate by governmental agencies. These events caused substantial losses and harms to thousands of people visiting or residing on the islands and to local businesses. The damaging of the power transmission cables on July 27, 2017, the resulting loss of power, and the subsequent forced evacuation are collectively referred to as the “Incident.”

14. Plaintiffs, and all other persons similarly situated, suffered damages arising out of the Incident and its aftermath as more fully set forth herein.

PARTIES

A. Plaintiffs.

15. Plaintiff William Bailey is a resident of Pennsylvania.

16. Plaintiffs Matthew Breveleri and Kerry Fitzgerald are residents of Massachusetts.

17. Plaintiff Robert Case is a resident of Virginia.

18. Plaintiff Rhonda Derring is a resident of Virginia.

19. Plaintiffs Nina Edgar and Thomas Edgar are residents of Pennsylvania.

20. Plaintiffs Edwin Fitzpatrick and Karen Fitzpatrick are residents of West Virginia.

21. Plaintiff Alex Garrish is a resident of Ocracoke, Hyde County, North Carolina.
22. Plaintiff Tami Gray d/b/a Family Water Adventures is a resident of Dare County, North Carolina.
23. Plaintiff Marissa Gross d/b/a Down Creek Gallery is a resident of Hyde County, North Carolina.
24. Plaintiff Stephen Harris is a resident of New Mexico.
25. Plaintiff Hatteras Blue, Inc. is a North Carolina domestic corporation located in Hatteras, Dare County, North Carolina.
26. Plaintiff Charles Hofmann is a resident of Ocracoke, Hyde County, North Carolina.
27. Plaintiff Michael Janssen is a resident of North Carolina.
28. Plaintiff Las Olas, Inc. is a North Carolina domestic corporation located in Rodanthe, Dare County, North Carolina.
29. Plaintiff Jack Levis is a resident of Pennsylvania.
30. Plaintiff Briggs McEwan is a resident of Dare County, North Carolina.
31. Plaintiff Bryan Meekins d/b/a TBM Construction is a resident of Buxton, Dare County, North Carolina.
32. Plaintiff Miss Ocracoke, Inc. is a North Carolina domestic corporation located in Ocracoke, Hyde County, North Carolina.
33. Plaintiff Daniel Spaventa is a resident of Pennsylvania.
34. Plaintiff Michael Stockwell d/b/a Morning Star Stables is a resident of Ocracoke, Hyde County, North Carolina.

35. Plaintiff Kathleen Triolo d/b/a Island Vibe Cafe is a resident of Ocracoke, Hyde County, North Carolina.

36. Plaintiff Tri-V Conery, Inc. is a North Carolina domestic corporation located in Rodanthe, Dare County, North Carolina.

37. Plaintiff Edward Waas is a resident of Pennsylvania.

38. Plaintiff Mike Warren is a resident of Hatteras Island, Dare County, North Carolina.

39. Plaintiff Stephen Wilson is a resident of Hyde County, North Carolina.

40. Plaintiff Stephen Wright is a resident of North Carolina.

41. The above Plaintiffs appear in their individual capacities and as representatives of the classes as more fully set forth herein.

B. Defendants.

42. Defendant PCL Civil Constructors, Inc. is a Colorado corporation with a registered agent office located in Raleigh, Wake County, North Carolina. In its business corporation annual report filed with the North Carolina Secretary of State on January 11, 2017, PCL listed its principal office as being in Raleigh. At other times in other state agency filings or in pleadings in lawsuits, the company has identified its principal office as being variously in Florida or Colorado. On information and belief, the North Carolina and Florida addresses are in fact merely regional offices, and the true U.S. headquarters and “nerve center” of the company for purposes of a federal jurisdictional analysis is the corporate headquarters in Denver, Colorado, which reports directly to the international headquarters in Canada.

43. Defendant PCL Construction Enterprises, Inc. (“PCL Construction”) is a Colorado corporation with a principal office in Denver, Colorado. On information and belief, it

is the parent company of PCL Civil Constructors, Inc. PCL Construction is a party only to the sixth claim for relief.

JURISDICTION AND VENUE

44. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d)(2).
45. Venue is proper in the Court under 28 U.S.C. § 1391(b)(1) and (b)(2).
46. This matter is not subject to admiralty or maritime jurisdiction.

FACTUAL ALLEGATIONS

A. Background on PCL.

47. PCL is a subsidiary of a multinational construction conglomerate based in Canada. The PCL enterprise has been classified as the sixth to eighth largest construction company in the U.S. with revenues of over \$7 billion annually.³

48. PCL markets itself as offering integrated heavy infrastructure construction services through one point of contact, with expert design, planning and engineering professionals on staff so that the client can work with one entity, instead of multiple consultants.⁴ According to its website, PCL can “tackle virtually any infrastructure work, from highway, airport and port construction, to a main focus on bridge construction.”⁵

49. The PCL Transportation Infrastructure Group markets itself as a civil contractor specializing providing construction and delivery services for bridge and highway projects.⁶ Regarding this group, PCL represents:

³ See press release at <https://www.mobileiron.com/en/company/press-room/press-releases/one-north-america%E2%80%99s-largest-construction-companies-chooses> (PCL is sixth largest, revenues over \$7 billion); summary at <https://www.zippia.com/advice/biggest-construction-companies-in-america/> (eighth largest, revenues of \$6.7 billion in 2015).

⁴ PCL website, <http://www.pcl.com/Services-that-Deliver/Delivery-Methods/Pages/Design-Build.aspx>.

⁵ PCL website, <http://www.pcl.com/Meet-the-PCL-Family/Meet-Our-Team/PCL-Companies/Pages/default.aspx>.

⁶ PCL website, <http://www.pcl.com/Meet-the-PCL-Family/Locations/United-States/Raleigh/Pages/Transp-Infra-Raleigh-Office.aspx>.

Located in Raleigh, North Carolina, our Transportation Infrastructure Group has strategically placed resources to pursue and manage projects throughout the United States. Within the PCL family of companies, we have access to resources and markets in 27 other locations and more than 14,000 salaried and hourly employees. Combining our experienced construction personnel with our significant equipment resources provides our clients the confidence that their project needs will be met within their required schedule.⁷

50. Defendants are a large and sophisticated enterprise. By contrast to its head count of more than 14,000 employees, the total permanent resident population of Hatteras and Ocracoke Islands comes to approximately 5,270 individuals.

B. PCL's Work on Prior Similar Projects.

51. As alleged in more detail below, the events that led to the Incident were set in motion by PCL's representations made to NCDOT to win the contract. In bidding for the project, PCL did not disclose information pertaining to prior public works projects including the information alleged below, reflecting a pattern and practice of improper conduct. Further, PCL or its affiliates have previously made reckless and material misrepresentations in order to win bids on public infrastructure contracts.

52. Sea-Tac Airport -- In April 2002, the Federal Aviation Administration ("FAA") solicited bids to install a High Intensity Approach Lighting System at Sea-Tac Airport in Washington State. Following an initial screening, two companies were asked to bid: PCL Construction Services, Inc. (an affiliated company of PCL) and Donald B. Murphy Contractors, Inc. ("DBM"). DBM's bid was \$264,000 lower. In June 2002, the FAA asked both companies to submit "best and final" offers. DBM's bid was still lower. On June 10, 2002, the FAA prepared a memo indicating that DBM would be awarded the contract.⁸

⁷ PCL website, <http://www.pcl.com/Documents/TIG-Overview.pdf>.

⁸ U.S. Department of Justice, Western District of Washington, press release dated March 2, 2007, available at <https://www.justice.gov/archive/usao/waw/press/2007/mar/ferrell.html>.

53. Robert Ferrell and Vicki Olson, both employed by the FAA, conspired with PCL co-conspirators, according to the criminal information,⁹ to remove the contracting officer from the project, and to engage in fraud to direct the contract to PCL. They gave PCL confidential information on the DBM bid, which PCL used to submit a bid slightly lower than DBM's final bid. According to the criminal information, "co-conspirators at PCL ... falsely claimed" that its late revision was caused by "the late receipt of a subcontractor bid."¹⁰ DBM was never given a similar chance to revise its bid, and the contract was awarded to PCL, for \$4,293,200 – all of \$4,300 lower than DBM's last bid.¹¹

54. When DBM complained, it was assured there was "no evidence to support DBM's allegation that actions were taken to prevent DBM from successfully bidding on this solicitation and from successfully protesting a wrongful award to PCL."¹²

55. Once the crime was exposed, PCL was required to acknowledge that it received and used confidential information which gave it an unwarranted competitive advantage over DBM and resulted in PCL being awarded the contract. PCL agreed to pay \$1 million in addition to \$750,000 in restitution to DBM.¹³

56. On information and belief, when bidding on the Bonner Bridge project, PCL failed to provide the above information to the NCDOT, or the information from the prior Florida projects noted below.

⁹ *United States v. Olson*, No. CR 07-0051, Criminal Information, Feb. 16, 2007, available at <https://www.justice.gov/archive/usao/waw/press/2007/mar/pdfs/Olson%20information.pdf>.

¹⁰ *Id.*, p. 6, ¶ 18(i).

¹¹ *Id.*, p. 3, ¶ 14.

¹² *Id.*, p. 6, ¶ 18(k).

¹³ US DOJ press release dated March 2, 2007; *see also* Government's Sentencing Memorandum dated Nov. 30, 2007, p. 3 n. 2: "Although PCL was not charged with any crime, it has entered into a civil settlement with the United States pursuant to which PCL has paid a fine of \$1,000,000, and paid \$750,000 in restitution to DBM."

57. Memorial Causeway Bridge – In 2001, the Florida Department of Transportation (“FL DOT”) awarded PCL a \$69 million contract to build the 2,340 foot long Memorial Causeway Bridge in Clearwater Harbor. During construction, in December 2002, an 80 foot section fell and twisted. In February 2004, part of the roadway fell seven inches when scaffolding buckled. Subsequently, four columns holding up the highest sections of the bridge were found to be riddled with cracks.¹⁴

58. These defects were traced back to PCL’s efforts to design the project so as to save itself cost and time. As here, the project consisted of building a new bridge so as to replace an existing older bridge. When the cracks were found, PCL argued that it should be allowed to repair by placing steel “collars” around the columns. However, the Florida DOT obligated PCL to replace the columns due to the danger. In 2005, PCL built eight new columns to replace the four cracked ones. Due in part to these issues, the bridge opened a year behind schedule.

59. According to the PCL website, the same PCL regional office in Raleigh that oversees the Bonner Bridge work oversaw the work on the Memorial Causeway.¹⁵

60. John Ringling Causeway Bridge – In 2001, PCL won the bid to construct this bridge from Sarasota to St. Armand’s Key and Lido Key. In its haste to meet its accelerated schedule, the company failed to properly place pieces of the bridge’s deck. According to state officials, the company made design miscalculations and failed to place quality control personnel

¹⁴ Jennifer Farrell, More problems take toll on Clearwater’s troubled bridge, Feb. 18, 2004, Tampa Bay Times, available at http://www.sptimes.com/2004/02/18/Northpinellas/More_problems_take_to.shtml.

¹⁵ PCL website, <http://www.pcl.com/Projects-that-Inspire/Pages/SR-60-Memorial-Causeway-Bridge-Replacement.aspx>.

on the bridge when pivotal work was done. The company also began demolition work on the older bridge that was being replaced, prior to when it received a permit to do so.¹⁶

61. The Ringling project is also attributed to the Raleigh office.¹⁷

62. The Lee Roy Selmon Expressway -- A section of this elevated expressway in Tampa built by PCL was damaged in April 2004 after a pier sank down during rush hour, more than 11 feet in a matter of seconds. About 1,750 tons of concrete and metal collapsed, hurting two workers and creating a V-shaped crease in the deck of the road.¹⁸

63. Analysis found that 154 of the project's 225 piers needed additional support. Litigation was filed against PCL. In May 2010, the Tampa-Hillsborough County Expressway Authority alleged that PCL had engaged in fraud, theft, racketeering and overbilling.¹⁹

64. The Authority alleged that a lobbyist named John Beck lobbied it to hire Ralph Mervine as its interim director. Undisclosed was that Beck's wife was the general manager of an entity called the Global Rail Consortium, Mervine was the Consortium's project manager, and PCL was the Consortium's construction contractor.

65. Once hired, Mervine moved the duty to approve payments to PCL from the engineering consultant to Jacobs Engineering, which was also part of the Consortium. PCL then submitted a \$5 million pay request for a truss to hold up part of the roadway. Mervine persuaded the Authority's Board to pay it. Later, the Authority learned that PCL had already been paid for the truss previously. The Authority alleged that PCL had misrepresented the facts. The true

¹⁶ Building bridges, not confidence, April 9, 2004, St. Petersburg Times, available at http://www.sptimes.com/2004/04/09/news_pf/Opinion/Building_bridges_not.shtml; Robert Eckhart, State criticizes bridge builder, April 17, 2004, Sarasota Herald-Tribune, available at <http://www.heraldtribune.com/news/20040417/state-criticizes-bridge-builder>.

¹⁷ PCL website, <http://www.pcl.com/Projects-that-Inspire/Pages/Ringling-Causeway-Design-Build-Bridge.aspx>.

¹⁸ Letitia Stein et al., Unseen sinkhole downs span, April 14, 2004, St. Petersburg Times, available at http://www.sptimes.com/2004/04/14/Tampabay/Unseen_sinkhole_downs.shtml.

¹⁹ Rich Shopes, Expressway Board, Insurer settle part of Selmon lawsuit, May 6, 2008, Tampa Tribune, available at <http://www.tbo.com/news/metro/2008/may/06/me-expressway-board-insurer-settle-ar-149997/>.

facts may not have been revealed but for the fact that Mervine was then put in the spotlight by a subsequent scandal involving other issues.²⁰

66. The same company office in Raleigh that oversees the Bonner Bridge project also oversaw the work on the Lee Roy Selmon Expressway.²¹

67. The combined effects of these and other projects²² led Florida DOT officials to advise PCL that its standing to perform future projects was jeopardized. For example, in a letter dated February 2004, Florida DOT construction engineer Jim Moulton Jr. wrote advising: “The recent events have raised more serious concerns in these regards, and PCL should expect to receive a separate letter from the state highway engineer, directed to your firm's continuing capacity to perform work on Florida Department of Transportation projects.”

68. Responding to the criticism, PCL laid the blame on “unique and perhaps first-ever details” it had included in the project designs, and assured that “[o]n future projects, we will attempt to avoid cutting-edge designs and opt for more traditional and common concepts.”

69. On information and belief, the adverse developments in Florida led PCL to focus more efforts on winning large project bids in North Carolina. The company did not disclose some or all of the events in Florida to NCDOT officials in making its proposals.

70. *Brazos River Bridge* – In this bridge project in Texas, PCL once again performed work without a permit, causing an incident leading to a Court finding of punitive damages. Union Pacific Railroad hired PCL to replace a deteriorating bridge spanning the Brazos River in Freeport. PCL moored the certain “H-Beam” pilings in the water without obtaining a permit, as

²⁰ See <http://www.tbo.com/brandon/expressway-authority-countersues-construction-contractor-39926>.

²¹ PCL website, <http://www.pcl.com/Projects-that-Inspire/Pages/Lee-Roy-Selmon-Crosstown-Expressway.aspx>.

²² PCL also was alleged to have dropped a section of concrete bridge at the Fort Lauderdale Hollywood International Airport, then performed repairs unilaterally before the Florida DOT had approved the plan to do so. See http://www.sptimes.com/2004/04/06/Northpinellas/More_problems_with_br.shtml.

required by federal law. PCL used a mooring line for a barge that was inadequate, and did not supervise the work area.

71. PCL employees including Michael Davis were assigned to install the pilings despite their having no prior work experience in doing so.²³ On information and belief, the PCL regional safety supervisor responsible at the time of the breakaway and barge damage was from the same civil southeast division of the company that was involved in the project herein. The supervisor told Mr. Davis nothing about the need to ensure barges were safely moored.²⁴ Mr. Davis despite his own lack of experience was deemed by PCL to be a safety director under its Health, Safety and Environment (“HSE”) program.²⁵ However, Mr. Davis did not know to check the mooring lines to make sure they were not fraying.²⁶

72. The barge broke away and caused severe damage to a boat on March 5, 2011. The court awarded the boat owner lost profits for the harm to his fishing business as well as punitive damages. The court found that “PCL's failure to take easily available precautions demonstrates an indifference to the magnitude of risks involved.”²⁷

C. The Bonner Bridge Project and PCL’s Contract with NCDOT.

73. For decades, the Herbert C. Bonner Bridge has provided highway access between mainland North Carolina and the Outer Banks’s Hatteras Island.

74. The NCDOT and the Federal Highway Administration settled on a plan to replace the Bonner Bridge and maintain NC 12 on Hatteras Island.²⁸

²³ *Graham v. PCL Civ. Constructors, Inc.*, No. 3:11-CV-00546, 2013 U.S. Dist. LEXIS 179688 (S.D. Tex. Dec. 23, 2013); M. Davis depo. filed in *Graham* at Doc. 37-4, see 13:5-15.

²⁴ M. Davis depo. filed in *Graham*, 17:19-20:2.

²⁵ G. Grady depo. filed in *Graham*, Doc. 37-2, 10:23-11:1.

²⁶ M. Davis depo. filed in *Graham*, 32:15-23, 36:19-37:24, 70:18-25, 83:18-23.

²⁷ *Graham*, 2013 U.S. Dist. LEXIS 179688, *40.

²⁸ *Id.* at 381 (so stating).

75. On July 26, 2011, NCDOT awarded the design-build contract to replace the bridge and perform work on the related areas of NC 12 to PCL.²⁹ The original contract amount was \$215.8 million, but it increased to \$246 million due to delays caused by legal challenges.³⁰

76. Similar to its earlier projects, PCL represented that it would use “innovative construction methods” on an “accelerated schedule” to “save[] the client \$60 million over the other contractor proposals.”³¹ PCL’s proposed plan provided to the NCDOT contradicted its assurances to the Florida DOT, noted above, that it would avoid cutting-edge designs and opt for more traditional and common concepts in its large bridge and roadway projects.

77. Prior to entering the contract, PCL had full access to the record of the Environmental Impact Statement (“EIS”) which was replete with references to the importance of preserving the power lifeline. Materials dating from 2010 described that “[p]roject development and construction activities would be coordinated with utility providers in the project area **in order to prevent interruption of local utility services.** The following utility providers currently serve the project area: Dare County (water service); Sprint Communications (telephone service); Charter Communications (cable television service); and **Cape Hatteras Electric Membership Association (electric power service).**” (Emphasis added).³²

78. The EIS noted the critical importance of the power lines: **“Bonner Bridge carries electricity and telephone cables to Hatteras Island. These cables are the sole source of service on the island. In addition to the electrical cables servicing facilities on Hatteras**

²⁹ NCDOT website, <https://www.ncdot.gov/projects/bonnerbridgereplace/timeline.html>.

³⁰ See <https://ocracokeobserver.com/2016/02/04/dare-commissioners-hear-about-bridges-dredging-ferry-tolling/>.

³¹ PCL website, <http://www.pcl.com/Projects-that-Inspire/Pages/Replacement-of-Herbert-C-Bonner-Bridge-Across-Oregon-Inlet-from-Bodie-Island-to-Hatteras-Island.aspx>.

³² Record of Decision, NCDOT TIP Project Number B-2500, Dec. 2010, p. A-4. Available at <https://www.ncdot.gov/projects/bonnerbridgereplace/download/ROD.pdf>.

Island, low-voltage submarine cables service the residents of Ocracoke Island.” (Emphasis added).

79. Public comments in the EIS record of decision further reflected the critical concerns of the islanders. As the Outer Banks Chamber of Commerce commented in a letter to NCDOT, “Sheriff Midgett has stated that any disruption of electrical service on Hatteras Island — which is fed to the island via a cable under the bridge — also would have a direct impact on crime and public safety and have life-threatening consequences for those with serious medical issues or who are dependent upon life support equipment.”³³

80. Likewise, the Cape Hatteras Electric Cooperative (“CHEC”) stated on August 9, 2010 that “[i]n the event of a temporary or permanent loss of the Bonner Bridge across Oregon Inlet, Cape Hatteras Electric Cooperative will be severely hampered in continuing to achieve its mission of providing reliable and affordable electric power to the citizens and property owners on Hatteras and Ocracoke Islands. The sole source of electric power to the islands is via a single set of 115,000 volt cables attached to the Bonner Bridge.”³⁴

81. The CHEC went on to warn:

Should a failure of the bridge occur that results in **damage to the power cables, all power would be immediately lost to the islands, resulting in hardship to customers of the Cooperative.** This hardship would result from temporary measures necessary to restore power using on-island generation.

In addition to all other causes of economic hardship, electric power costs would dramatically increase for the duration of the damage until at least a temporary cable rerouting was accomplished. This rerouting would likely require eight weeks or more to complete after clearance was obtained to begin the rerouting.

³³ Record of Decision, p. B-36. Further, “Utilities to support Hatteras Island are currently attached to the bottom of the bridge. Removal of these lines would require the generation of electricity on the island itself since there is no other reasonable alternative to supplying the island's need. Although there is an electric generation plant on the island, it could only meet the needs of the island during the shoulder months, when it is neither too hot nor too cold, and when it is primarily inhabited by residents and not the throngs of visitors who go there each summer.” *Id.*

³⁴ *Id.*, p. B-38.

Even though the Cooperative has available on-island oil-fueled diesel generators belonging to the North Carolina Electric Membership Corporation, the cost of operation of these generators would increase the cost per kilowatt-hour of electric service by an estimated 29 cents to an estimated cost of 41.5 cents per kilowatt-hour....

A temporary bridge failure of the type described would have a devastating economic impact on island residents and property owners from electrical cost and supply alone, before the impact for other problems was considered.³⁵

82. Power transmission cables rated at 115 kilovolt (kV) run with NC 12, either by above-ground or buried lines. These cables are carried by the bridge over the water, then run again with NC 12 down the length of Hatteras Island and then feed power to Ocracoke Island. These cables represent the sole connection between the mainland power grid and the two islands. PCL knew and agreed that preserving this critical power connection was one of the primary purposes of the Bonner Bridge replacement project.

83. Pursuant to the NCDOT contract, PCL had the sole responsibility for construction engineering and management of the Bonner Bridge replacement project.

84. Pursuant to the contract, PCL agreed that it “shall be fully and totally responsible for the accuracy and completeness of all work performed under this contract.”³⁶

85. Pursuant to the contract, PCL assumed numerous critical duties with regard to the integrity of the power transmission cables that serve the residents, visitors, and businesses on the islands. PCL expressly acknowledged and agreed that harm and losses may result to individuals and businesses from damaging these vital cables. Further, it knew that carrying out these duties involved the company’s special expertise in planning, design, engineering and quality control.

³⁵ *Id.*, p. B-38 (emphasis added).

³⁶NCDOT contract at p. 140. See contract materials available at <https://connect.ncdot.gov/letting/design%20build%20program/b-2500/rfp%20final%20addendum%201%20and%202%2020110607.pdf>.

86. PCL expressly agreed to assume the following duties and undertakings in the NCDOT contract:

- “The Design-Build Team shall be responsible for damage to the existing or relocated utilities resulting from the Team’s operations.”³⁷
- “Construction shall include, but not limited to, all necessary ... utility coordination and relocation ... for the proposed two-lane facility.”³⁸
- “The Design-Build Team shall not commence work at points where the highway construction operations are adjacent to utility facilities, until making arrangements with the utility company to protect against damage that might result in expense, loss, disruption of service or other undue inconvenience to the public or utility owner.”³⁹
- “The Contractor shall be responsible for the protection from his activities of all public and private property on and adjacent to the work and shall use every reasonable precaution necessary to prevent damage or injury thereto.”⁴⁰
- “[The Contractor] shall use suitable precautions to prevent damage to pipes, conduits, and other underground structures, and to poles, wires, cables, and other overhead structures.”⁴¹

87. PCL expressly acknowledged that violations of the contract terms may “result in damages due to public inconvenience, obstruction to traffic,” and “interference with business.”⁴²

88. Regarding liability arising from the project, PCL contractually agreed that it “shall be totally responsible for criminal penalties, regulatory fines and liability associated with negligence and/or failure to adhere to the Federal Bridge Statutes Governing Bridges.”⁴³

³⁷ *Id.* at 205.

³⁸ *Id.* at 140.

³⁹ *Id.* at 205.

⁴⁰ *Id.* at 1-63.

⁴¹ *Id.*

⁴² *Id.* at 1-81.

⁴³ *Id.* at 222.

89. Through the contract, PCL expressly acknowledges its potential liability to other parties such as the Plaintiffs and the class members. The contract reads: “The Design Build Team shall be liable for any losses resulting from a breach of the terms of this contract.”⁴⁴

90. The Cape Hatteras Electric Cooperative supplies electrical power to residents and businesses on the islands using the transmission cables that run along NC 12 from the mainland, pass over the existing Bonner Bridge, then continue on with NC 12 either buried underground or carried on power poles the length of Hatteras and then to Ocracoke.

91. Before and during its work on the bridge project, including on July 27, 2017, the day of the Incident as described below, PCL and its employees or agents working at the Bonner Bridge had plans and drawings for the project, marked with the location of the utilities including the CHEC power transmission cables that provide power to the islands.

92. As part of its design-build services, PCL agreed to use its professional expertise to protect the utility conduits that passed through the staging area it was using for its work on the south end of the bridge.

93. PCL was aware of the existence of the CHEC power lines where they came out of the ground at a riser pole next to NC 12 where it led up to the south end of the existing bridge structure. The NCDOT Contract specifically provided that a power loss caused by interference at this site was “unacceptable”:

“The riser pole owned by Cape Hatteras EMC near the south end of the existing structure should be avoided if possible due to the likelihood of an unacceptable interruption duration.”⁴⁵

94. The contract specifically warned PCL of the vital importance of not interrupting the power lifeline during the vacation season. The contract stated that even scheduled

⁴⁴ *Id.* at 230.

⁴⁵ NCDOT contract at 202.

interruptions of service were prohibited between Memorial Day (i.e., the last Monday in May) and Labor Day (the first Monday in September):

“For any scheduled interruptions of service that are required for this project there is a moratorium for any service interruptions from Memorial Day through Labor Day. The preferred time for cutover service interruptions is from March 1 through May 15 and will require a minimum of three weeks notice to the appropriate Utility Company.”⁴⁶

95. Protecting this area by the south end of the bridge had long been important to CHEC. In its comments included in the EIS record, CHEC stated: “Continued maintenance of the Oregon Inlet protective groin would provide protection for the underground to overhead riser structure at the south end of the bridge.”

96. NCDOT had issued a synopsis in 2008 for the project, which also made clear the design-build team’s responsibility for utilities: “Full electronic surveys are completed and will be provided to the short-listed teams. Supplemental surveys shall be the responsibility of the Design-Build Team. Known existing utilities have been located and will be included with the survey data. All supplemental SUE work shall be the responsibility of the Design-Build Team.”⁴⁷

97. Subsurface Utility Engineering (“SUE”) is a requirement on roadway construction projects. The power transmission lines at issue were located where the roadway runs up to the bridge. The purpose of SUE is to make sure that unexpected conflicts with utilities are eliminated so that delays caused by cutting, damaging, or discovering unidentified utility lines are reduced.

98. The NCDOT project synopsis also stated that “[t]he Design-Build Team shall be responsible for coordinating the construction / relocation of private utilities with the appropriate owners. The Department anticipates entering into agreements with Sprint Communications

⁴⁶ *Id.* at 202.

⁴⁷ See <https://connect.ncdot.gov/letting/Design%20Build%20Program/B-2500/Project%20Synopsis.pdf>.

(telephone service), Cape Hatteras Electric Co-Op. Inc. (electric power service) and possibly Charter Communications (cable television service).”⁴⁸

99. In performing its services on the bridge project, PCL affirmatively undertook a course of conduct which was reasonably expected to affect the rights and safety of third parties, specifically including all residents, visitors, and businesses on the islands

100. Given the obligations it assumed on the project, PCL undertook to protect against and bear responsibility for any outage-related damages to the islands caused by PCL’s conduct.

101. In performing its services on the bridge project, PCL knew, or should have known, that residents, visitors, and businesses on Hatteras and Ocracoke Islands could suffer foreseeable harms or losses from a power outage if PCL failed to use reasonable care in its undertakings.

102. Based upon the circumstances described herein, PCL placed itself into such a position towards residents, visitors, and businesses on the islands that anyone of ordinary sense would have, at once, recognized that if PCL did not use ordinary care and skill in its own conduct with regard to the project and protecting against power outages, PCL would cause danger or risk of foreseeable harms and losses to said individuals and businesses.

D. Lead-Up to the Incident on July 27, 2017.

103. As noted, PCL was awarded the project on July 26, 2011. PCL then had a five-year period prior to when it broke ground on the project on March 8, 2016, in which to ensure all safeguards were implemented to secure the power lifeline that was situated in the land construction zone.

⁴⁸ *Id.*

104. On or about November 21, 2015, CHEC began preliminary utility work to facilitate the work of PCL. CHEC made careful arrangements to move the transmission cable south of Oregon Inlet to allow the PCL crews extra space to begin construction of the new bridge. In order to complete the relocation, the co-op cut the existing cable, resulting in a transmission outage that lasted several days. However, arrangements were made for Hatteras and Ocracoke islands to receive power from several diesel generators, including in Buxton and Ocracoke, as well as portable units. The outage was scheduled to occur in December 2015 for minimal interference of any tourism.⁴⁹

105. By December 19, 2015, CHEC's contractors had finished splicing new high voltage cables at the southern end of the Bonner Bridge, which was the northern end of Hatteras. By December 20, Hatteras and Ocracoke islands were reconnected to the electrical transmission lines. The cables had run underground for a short distance on the north end of the Pea Island National Wildlife Refuge on Hatteras. These cables were cut intentionally so as to be spliced into new equipment, in the form of a riser.⁵⁰ This sensitive area was the same area prominently noted in the contract documents as the area where PCL was obligated not to cause an "unacceptable interruption" of the power lifeline.

106. By late February, 2016, PCL was preparing this area at the south end of the bridge on Pea Island by installing erosion control measures and clearing vegetation along the shoulders of NC 12. PCL added pavement on either side of the road for traffic that would be shifted to the east to access the existing bridge during construction of the new one. PCL moved in heavy equipment near the Pea Island wildlife refuge parking lot, under an agreement with the U.S. Fish

⁴⁹ Sam Walker, Utility line work gets under way for new Bonner Bridge, Nov. 21, 2015, The Outer Banks Voice, available at <https://outerbanksvoice.com/2015/11/21/utility-line-work-gets-under-way-for-new-bonner-bridge/>.

⁵⁰ Sam Walker, Power line work at Oregon Inlet finished ahead of schedule, Dec. 19, 2015, The Outer Banks Voice, available at <https://outerbanksvoice.com/2015/12/19/power-line-work-at-oregon-inlet-finished-ahead-of-schedule/>.

and Wildlife Service allowing part of the lot to be converted to a staging area for construction equipment.⁵¹

107. PCL officially broke ground on the project on March 8, 2016.

108. PCL started driving pilings for the new bridge and installed the first of 673 pilings on May 11, 2016.

E. Facts Regarding the Incident Causing the Power Loss.

109. On July 27, 2017, PCL employees were actively working at the project site. On that date, PCL was aware of the plans and drawings marking the location of the power cables.

110. The plans and drawings marking the locations of the power cables provided by CHEC and NCDOT were adequate. Any negligence in accounting for or protecting the power cables was solely the responsibility of PCL.

111. On July 27, 2017, PCL's employees working near the riser pole area intentionally pushed a large metal casing into the ground and negligently severed and damaged the power cables underground, in the very area where PCL agreed not to cause "an unacceptable interruption."

112. Over the weeks leading up to that date, PCL had allowed its staging area to become cluttered with machinery and equipment. This clutter was caused, in whole or part, by the accelerated schedule that PCL had proposed in order to secure the project.

113. Also, in order to secure the project, PCL had assured that it could limit its staging area to a small portion of the northern end of Hatteras Island so as to avoid trespass upon sensitive environmentally protected Pea Island lands, which had been the subject of litigation by

⁵¹ Preliminary work on new Bonner Bridge starts this week, Feb. 22, 2016, The Outer Banks Voice, available at <https://outerbanksvoice.com/2016/02/22/preliminary-work-on-new-bonner-bridge-set-to-start-tuesday/>

nonprofit groups that delayed the project. This promise by PCL increased the unsafe accumulation of equipment, machinery and materials on the land.

114. PCL's project design necessitated the use of numerous concrete pilings, the drilling of numerous boreholes, and the building of structures requiring supports. To facilitate boreholes, drilling and the setting of pilings, PCL's design professionals specified the use of large steel casings, also known as sleeves. These casings are giant tubes that are driven into the ground and used to enclose individual concrete pilings to keep them in position while they are installed to support the bridge deck and other structures.

115. To meet the accelerated schedule, large quantities of heavy machinery, casings and piling materials were all kept in the small staging area.

116. Due to its accelerated schedule, and budget, PCL required the availability of crews of hourly, relatively low-wage workers to handle the physical labor onsite. In the months leading up to the incident, PCL ran "help wanted" postings seeking heavy equipment operators for drilling and pile driving, at a pay rate of \$15 to \$24 per hour.⁵²

117. At the time of the Incident, PCL provided insufficient supervision to inadequately trained, low-paid hourly workers, operating heavy machinery in a limited staging area amidst logistical complexities, working at night in order to meet PCL's schedule.

118. On July 27, 2017, PCL's hourly workers needed to set aside a casing for future use, in a crowded staging area with limited space to store materials. The crew decided to drive it vertically into the earth next to NC 12, at the same location where the contract said power cables ran and where PCL had been warned that an interruption would be "unacceptable."

⁵² PCL job posting dated Dec. 14, 2016, available at https://pcl.taleo.net/careersection/pcl_sc_mobile_cs/jobdetail.ftl?job=160000M9. Help wanted postings continued to run after the Incident. See August 9, 2017 job posting at <http://jobsmost.com/view/pile-driving-foremen-at-pcl-construction-in-raleigh-fc2f3578412b4129/>.

119. The steel casing was being used to construct supports on land at the south end of the bridge. The workers, who drove it into the underground power cables, were not using it to drive new pilings at the time but were instead moving the casing to a place where it could be stored temporarily.⁵³

120. The cables were cut at about 4:30 a.m. on the morning of July 27, 2017. This fact was consistent with how work on the project had taken place during overnight hours almost since the groundbreaking in March 2016.

121. The PCL workers used a crane to put the casing into the ground, the way someone might stick a shovel in the dirt when it is not needed. The construction activity was considered to be cleanup work and movement of materials. PCL knew that while NCDOT personnel assisted to oversee various aspects of the work, such cleanup work was solely PCL's responsibility and the company needed to oversee its own workers.

⁵³ See Molly Waybright, Life after the outage: Hatteras Islanders struggle with losses, Nov. 6, 2017, Outer Banks Voice, available at <https://outerbanksvoice.com/2017/11/06/life-after-the-outage-hatteras-islanders-struggle-with-losses/> (“The main transmission line — made up of three cables — runs under the old bridge, then underground on the south side. A crew was setting aside a steel sleeve used to position pilings for the new bridge and accidentally drove it into the lines.”); Sam Walker, Power to Hatteras and Ocracoke could be back in 4 to 6 days, Aug. 1, 2017, Outer Banks Voice, available at <https://outerbanksvoice.com/2017/08/01/power-to-hatteras-and-ocracoke-could-be-back-in-4-to-6-days/> (“The power went out at 4:30 a.m. Thursday when the company building the replacement for the 50-year-old Bonner Bridge drove a steel casing into the electrical transmission system. Casings are giant tubes that enclose individual concrete pilings to keep them in position while they are installed in clusters to support the bridge deck, said Jerry Jennings, District 1 engineer for the North Carolina Department of Transportation. Workers were setting aside the casing for future use by driving it partially into the ground.”); Hyde County press release dated July 27, 2017 (describing “PCL Construction, the contractors building the new Bonner Bridge, drove a piling through the underground cable between the southern end of Bonner Bridge and the first riser pole on Hatteras Island.”); Associated Press, NC officials: Equipment being set aside when outage happened, Aug. 2, 2017, available at <http://abcnews.go.com/amp/Lifestyle/wireStory/nc-officials-equipment-set-outage-happened-48993121> (“State Transportation Department spokesman Tim Hass said workers doing construction on a bridge between islands stuck the steel casing in a spot where they intended to leave it temporarily. The long, tube-like metal device is used to ensure the proper angle and depth for concrete pilings that support the bridge. ‘They had finished using it elsewhere a little ways away, and they were taking the sleeve out to move it, just to put it aside for the next time they would use it,’ Hass said. ‘They were cleaning up and moving equipment, that kind of thing.’ The damaged transmission cables were buried under more than 7 feet (2 meters) of sand where the accident happened, utility officials said. Transportation Department personnel were on another section of the approximately 3-mile (5-kilometer) bridge where there was active construction when the lines were damaged around 4:30 a.m. on July 27, Hass said.”).

122. According to CHEC, the location of the underground power cables was plainly marked on the work plans. However, PCL had failed to take adequate steps to secure the location, train and supervise its crews, and otherwise safeguard this lifeline to the islands.

123. As the crew drove that casing down into the ground, they heard an audible “pop.” There were three buried cables, each successively deeper. The force of the casing wholly severed the top cable and damaged the others. All three cables had to be intact to transmit power. As a result, all power stopped to both Hatteras and Ocracoke Islands.

124. The driving of the casing into the ground so as to sever the high-voltage power lines was very hazardous and could have caused electrocution or injury. Subsequent efforts to excavate were hampered by the dangers of high voltage and a high water table.

125. The acts and omissions of PCL’s employees or agents occurred while they were working within the scope and course of their employment or agency, and PCL is liable for their acts and omissions under the doctrine of vicarious liability and *respondeat superior*.

126. On information and belief, PCL’s work on the project was performed subject to an internal PCL Health, Safety and Environmental Manual.

127. On information and belief, the PCL workers involved in causing the Incident violated multiple requirements stated in the HSE Manual for this project, which required that the work being performed on the construction site where the power lines were buried followed a specific written safe work procedure. Pursuant to the Manual and PCL’s internal guidelines, activities requiring written safe work procedures included, but were not limited to crane and pile driving operations, trenching and excavation, as well as other high-risk activities.

128. On information and belief, the PCL HSE Manual required completion of HSE checklists that reflected that the site plot plan was reviewed, including hazards associated with

utilities, excavations, congested work areas, and restricted areas. PCL was to have conducted a Construction Hazard Assessment. The HSE Manual required inspections and audits including as regarded electrical and excavation issues. The HSE Manual required completion of incident investigation reports including regarding equipment operation, digging, handling material, operating pile driving equipment, and other activities.

129. On information and belief, PCL obtained one or more incident reports and witness statements after the power transmission lines were damaged herein. On information and belief, PCL or its parents or affiliates is in possession of incident investigation documents and witness statements from one or more prior bridge or roadway construction projects in which unsafe incidents occurred involving electrical dangers, or utility right-of-way issues, pile driving, casing or material storage issues.

F. Aftermath of the Damage to the Power Lines.

130. Following the damage to the underground power transmission cables described above, the islands were no longer connected to an external transmitted source of electrical power, the only source of power on the islands.

131. The aftermath was immediate and, from an economic point of view, catastrophic. Satellite photos from before and after the line cut showed the islands go dark.⁵⁴

132. In response to a lack of electrical power, governmental agencies with authority over the islands issued a mandatory evacuation for visitors to Ocracoke starting on Thursday, July 27, 2017, and to Hatteras starting on Saturday, July 29, 2017.

⁵⁴ Sam Walker, Power to Hatteras and Ocracoke could be back in 4 to 6 days, Aug. 1, 2017, Outer Banks Voice, available at <https://outerbanksvoice.com/2017/08/01/power-to-hatteras-and-ocracoke-could-be-back-in-4-to-6-days/> (embedding satellite imagery).

133. Governor Roy Cooper declared a state of emergency on July 27, 2017 pursuant to N.C. Gen. Stat. §§ 166A-19.3 and 19.20.⁵⁵

134. The Hyde County Board of Commissioners issued a proclamation of a state of emergency and mandatory visitor evacuation for Ocracoke Island effective at 5 p.m. on July 27, 2017, pursuant to the Hyde County Ordinances, Chapter 166A of the General Statutes, and Article 36A of Chapter 14 of the General Statutes.⁵⁶

135. The Dare County Department of Emergency Management issued a mandatory evacuation order for all visiting Hatteras Island effective at 6 a.m. on July 29, 2017. It included the island villages of Rodanthe, Waves, Salvo, Avon, Buxton, Frisco and Hatteras.⁵⁷

136. Under the mandatory evacuation, any affected individuals who failed to leave the evacuated area would be guilty of a Class 2 misdemeanor, under N.C. Gen. Stat. § 14-288.20A.⁵⁸

137. The mandatory evacuations for visitors remained in place until Friday, August 4, 2017 at 12:00 noon.⁵⁹

138. Because of the location of the line cut, the elevated water table made it impossible to completely repair the damaged lines in place. When CHEC, PCL and New River Construction dug down to the first damaged line by July 29, they found an entire two-foot section missing (consistent with the width of the metal casing). By July 30, they had confirmed damage to the other two of the three total buried lines. A new power line had to be constructed in order to reconnect power, which took a week to do.

⁵⁵ Executive Order No. 12, available at <https://files.nc.gov/governor/documents/files/EO12%20-%20Declaration%20of%20a%20State%20of%20Emergency.pdf>.

⁵⁶ The proclamation is available on the Hyde County Facebook page.

⁵⁷ Associated Press, Hatteras Island Gets Mandatory Evacuation Order, July 28, 2017, available at <https://www.usnews.com/news/best-states/north-carolina/articles/2017-07-28/the-latest-emergency-on-powerless-north-carolina-islands>.

⁵⁸ Hyde County press release, July 28, 2017, available on Hyde County Facebook page.

⁵⁹ See Hyde County proclamation dated Aug. 3, 2017.

139. The Hyde County Board of Commissioners found that the state of emergency continued after the power was restored “due to the personal and economic losses faced by members of the Ocracoke Community.”⁶⁰

140. The mandatory evacuations resulted in foreseeable harms and losses to the Plaintiffs and members of the classes as more fully described below. The economic losses suffered by the Plaintiffs and the class members were foreseeable just like the economic losses incurred by others who are nonparties to this case, such as:

- a. Tideland EMC -- oversaw electric power supplied to Ocracoke Island, incurred economic loss including labor and other costs of deploying generators to provide temporary power. As of July 28, 2017, for example, Tideland had an emergency generator running to power a small area near the lighthouse. However HVAC and other resource-intensive systems were off.⁶¹ By July 31, three emergency generators were running.⁶²
- b. Hyde County -- lost tax revenue and incurred costs due to the effect of the power loss on county infrastructure on Ocracoke. For example, the water plant, school and health clinic on the island all suffered outage periods. Facilities on the island that ran their own private generators incurred gas and manpower costs. The Hyde County Department of Social Services, Health Department, Emergency Management, Office of Planning and Economic Development, and the County Manager’s Office were all involved in assistance over the outage period and thereafter. The county lost occupancy and retail tax revenues.
- c. Cape Hatteras Electrical Cooperative -- owned the lines that were severed and damaged; incurred labor and materials costs to construct a new overhead power line to restore power; worked with New River transmission to build a new riser for connection to the overhead lines; worked to get diesel generators up and running; worked to implement and oversee rolling blackouts; brought in portable generators and deployed crews to run them 24/7;
- d. Dare County -- suffered loss similar to that of Hyde County, only Dare’s loss was related to Hatteras, while Hyde’s related to Ocracoke.

⁶⁰ Hyde County press release dated Aug. 3, 2017. Press releases are available on the Hyde County website and Facebook page.

⁶¹ Hyde County press release dated July 28, 2017.

⁶² Hyde County press release dated July 31, 2017.

141. People on the islands were deprived of air conditioning and refrigeration throughout the Incident. The temperatures in Hatteras, NC during the days without power reached highs of 87° on July 27, 86° on July 28, 82° on July 29, 77° on July 30, 81° on July 31, 83° on August 1, 85° on August 2, 84° on August 3, and 84° on August 4.⁶³

142. The cause of the power loss was the negligent failure by PCL to carry out its duties to act with reasonable care in its capacity as a provider of professional services and expertise in the areas of design planning, quality control, integrated construction management and engineering, which would include safeguarding the lifeline of the power cables.

143. PCL could have prevented this catastrophe by using proper construction and risk management practices, following industry standards, following required safety protocols and precautionary procedures, providing proper training and supervision to its workers, and properly maintaining and storing equipment. Instead, PCL chose to violate or ignore operational discipline, in order to meet its budget and schedule commitments.

144. Under the circumstances, PCL's conduct constituted reckless indifference to the rights, economic interests, businesses, safety, and property of Plaintiffs and putative class members. By causing the power cables to be damaged in the exact location where PCL knew the cables existed, and in the exact location the contract called "unacceptable," PCL's conduct constituted conscious and intentional disregard of the rights and safety of others, including but not limited to the Plaintiffs and class members described herein, which disregard PCL knew or should have known was reasonably likely to result in injury, damage, or other harm.

145. PCL made decisions to the detriment of the safety, health, welfare, and value of the people, businesses, and properties of the Plaintiffs and class members. PCL rejected

⁶³ <https://www.accuweather.com/en/us/hatteras-nc/27943/july-weather/334902>.

adequate and responsible risk analysis checks and balances to weigh cost and time versus risk and safety. The result was both predictable in outcome and unprecedented in scale.

146. PCL's conduct endangered the health and safety of a large region and population, caused and increased the risk of serious injury and bodily harm, and affected a financially vulnerable population dependent on tourism and vacationers during the exact time of year when the negligence occurred.

147. The Incident caused foreseeable economic damage. Businesses lost and continue to lose income; the tourism industry and hotels, resorts, restaurants, commercial fisherman, rental owners and other tourism-reliant businesses lost and continue to lose income; residents were forced to pay out-of-pocket expenses to evacuate the islands and pay for spoiled food; and vacationers and property owners were deprived of the full use of their properties, had planned vacations ruined, and endured additional travel expenses and out-of-pocket costs due to Defendant's negligent, reckless and intentional misconduct.

148. The outage could not have happened at a worse time for the islanders. Hurricane season and the slow winter months were approaching and the islanders needed to have money saved up to get through that time of the year.⁶⁴

149. Economic data reflects that in the years leading up to the outage, Dare County gross occupancy receipts peaked in the July-August time period.⁶⁵

⁶⁴ Thus on August 28, 2017, Hyde County issued a proclamation of a new state of emergency due to the imminent threat of a tropical storm. On September 6, Governor Cooper declared a state of emergency in light of Hurricane Irma. By September 26, focus had shifted to Hurricane Maria, and Hyde County evacuated Ocracoke.

⁶⁵ Rebecca Tippet, Tourism impacts on Dare County, July 14, 2015, available at <http://demography.cpc.unc.edu/2015/07/14/tourism-impacts-on-dare-county/>.

150. Preliminary data aggregated by the Outer Banks Visitors Bureau reflects that after increasing from \$33 million in 2012 to \$39 million in 2016, food and beverage gross revenues decreased to \$37 million in August 2017.⁶⁶

151. Likewise, gross occupancy in the Bed & Breakfast category after staying above \$380,000 in August of 2014, 2015 and 2016, fell to \$230,000 in 2017.

G. Facts Regarding the Named Plaintiffs.

152. The Plaintiffs fall within the following categories:

- i) Residents: Plaintiffs who live on the islands. This is a discrete group. There are an estimated 5,270 permanent residents of the islands per the 2010 census.
- ii) Businesses: Plaintiffs who own and operate businesses on the islands. This includes Plaintiffs who own homes or other properties on the islands that they rent out to others; and small businesses. Also, some individuals who do not live on the islands own small businesses there or rent out vacation homes to tourists.
- iii) Vacationers: This group includes an estimated 50,000 people were forced to evacuate from Hatteras Island and another 10,000 from Ocracoke.⁶⁷ Also, there is a second group of vacationers who never reached the islands because they had their trips canceled.

153. These categories of affected individuals reflect how PCL's conduct endangered the health and safety of a large region and population, caused and increased the risk of serious injury and bodily harm, and affected a financially vulnerable population dependent on tourism and vacationers during the exact time of year when the negligence occurred. These categories define putative classes that meet the criteria of Fed. R. Civ. P. 23.

⁶⁶ Source: <https://www.outerbanks.org/partners/statistics/>.

⁶⁷ See Joe Sterling, Thousands evacuate North Carolina's Outer Banks after power outage, July 31, 2017, CNN ("Dare County public information officer Dorothy Hester said Friday that about 50,000 to 60,000 people were in the beach areas -- both residents and visitors."). Available at <http://www.cnn.com/2017/07/28/us/nc-outer-banks-power-outages/index.html>. See also M. Murgia, Power outage hits Outer Banks, July 31, 2017, Washington Post ("An estimated 50,000 people were evacuated from Hatteras Island and another 10,000 from neighboring Ocracoke."). Available at https://www.washingtonpost.com/national/outer-banks-power-outage-keeps-tourists-out-of-hatteras-ocracoke-maybe-for-weeks/2017/07/31/d1e8e522-7633-11e7-8f39-eeb7d3a2d304_story.html?utm_term=.8feb39200d7a.

i) **Residents.**

154. Plaintiffs Alex Garrish, Tami Gray, Charles Hoffman, Michael Janssen, Briggs McEwan, Bryan Meekins, Michael Stockwell, Kathleen Triolo, Mike Warren, Stephen Wilson and Stephen Wright all reside on Hatteras or Ocracoke Islands.

155. All of said Plaintiffs suffered foreseeable injury, including out-of-pocket loss, property damage, loss of use and enjoyment to their properties, and other damage and loss as a result of the Incident.

ii). **Small Businesses.**

156. The small business Plaintiffs include the Down Creek Gallery, the Island Vibe Café, Morning Star Stables, TBM Construction, Las Olas, Inc., Tri-V Conery, Inc., Family Water Adventures, Miss Ocracoke, Inc. Hatteras Blue, Inc, Robert Case, Rhonda Derring, Michael Janssen, Stephen Harris, Stephen Wright, Briggs McEwan, and Daniel Spaventa.

157. On July 27, 2017, Marissa Gross d/b/a Down Creek Gallery was actively operating her small business, Down Creek Gallery, an art gallery located at 260 Irvin Garrish Highway, Ocracoke, North Carolina. The gallery was in operation for over a decade when Ms. Gross took over ownership in 2014.

158. On July 27, 2017, the Island Vibe Cafe was an actively operating small business located on Ocracoke Island. Kathleen Triolo is the owner. Since opening in May 2016, this locally owned café has offered food and beverages as well as clothing, jewelry and other gifts for tourists.

159. On July 27, 2017, Michael Stockwell's Morning Star Stables was actively operating as a small business located on Ocracoke Island. Morning Star Stables offered horse rides and depended on the tourist season for income.

160. On July 27, 2017, TBM Construction, operated by Bryan Meekins, was actively operating as a construction company on Hatteras Island in Buxton, North Carolina. TBM specialized in the repair and renovation of rental properties.

161. On July 27, 2017, Las Olas, Inc. was an actively operating business on Hatteras Island in Rodanthe. Plaintiff Briggs McEwan owns Las Olas, Inc. which operates Lisa's Pizzeria. Lisa's Pizzeria was in operation for many years leading up to the Incident which caused it to suffer out-of-pocket loss, for example when food inventory lost refrigeration.

162. On July 27, 2017, Tri-V Conery, Inc. was an actively operating business on Hatteras Island in Rodanthe. Two years ago, Mr. McEwan through the corporate entity, Tri-V Conery, opened this ice cream shop. Due to the Incident, the business incurred out-of-pocket loss, for example when ice cream inventory lost refrigeration.

163. On July 27, 2017, Ms. Gray operated a sole proprietorship doing business as Family Water Adventures, actively operating on Hatteras Island in Frisco, North Carolina. Family Water Adventures offered recreational boating charters to the public.

164. On July 27, 2017, Miss Ocracoke, Inc. was actively operating as a small business on Ocracoke Island. Since 1998, Stephen Wilson operated the business offering sport fishing and boat cruises for clients.

165. On July 27, 2017, Hatteras Blue, Inc. was actively operating as a small business on Hatteras Island. Since its original incorporation in 1988, Mike Warren, who lives on Hatteras, has provided the public with sport fishing and pleasure charters through this business.

166. The following Plaintiffs owned vacation rental property on the islands: Robert Case (owner of real property located on Hatteras Island at 25222 Sea Isle Shores Lane, Waves, North Carolina used as a vacation rental home); Rhonda Derring (owner of real property located

on Hatteras Island at 39237 Sandfiddler Lane, in Avon, used as a vacation rental home); Michael Janssen (owns two vacation rental homes on Hatteras Island in Rodanthe); Stephen Harris (home located on Ocracoke Island); Stephen Wright (same); Briggs McEwan (home located on Hatteras Island in Rodanthe); Daniel Spaventa (home located on Hatteras Island in Salvo).

167. The small business Plaintiffs all suffered decreased revenues, loss of use, property damage, and other damages caused by the Incident.

168. The Plaintiffs were entitled to continue to own and operate their businesses free of the power loss and evacuation. As a direct and proximate result of the Incident, they lost revenues due to the evacuation of the tourists.

169. The Plaintiffs who owned vacation homes for rental to tourists were entitled to the uninterrupted use and enjoyment of their homes including the ability to utilize the homes for income generation as rental properties. As a direct and proximate result of Defendant's negligence, they experienced the interruption of the rights of occupancy and use and enjoyment of their homes including the right to utilize them for income generation as rental properties, and suffered damages including loss of use and enjoyment of their homes; loss of revenue from rental of the homes; inconvenience; emotional suffering such as worry, anxiety, stress; and other related damages to be shown at the trial of this matter.

170. All of the above-described losses were reasonably foreseeable forms of damages that PCL knew, or should have known, would result from its negligent conduct in cutting the power cables at issue. The scope of the foreseeable injury is limited in scope and fairly subject to class treatment.

iii). Vacationers.

171. The vacationer Plaintiffs include Thomas and Nina Edgar, Edward Waas, Karen and Edward Fitzpatrick, Matthew Breveleri, William Bailey and Jack Levis.

172. On July 27, 2017, Plaintiffs Thomas and Nina Edgar were visitors to Hatteras from July 23 to 30, 2017. The Edgars paid in excess of \$7,000. As a result of the Incident, they were forced to evacuate on or about July 29, 2017. Prior to this evacuation, the Edgars were deprived of the use and enjoyment of their vacation rental starting early in the morning on July 27, 2017 when they lost power.

173. On July 27, 2017, Plaintiff Edward Waas and his family were visitors to Hatteras from July 22-29, 2017. Waas paid in excess of \$3,000. As a result of the Incident, Waas and his family were forced to evacuate during the evening of July 27, 2017. Prior to evacuation, they were deprived of the use and enjoyment of the home starting early in the morning on July 27, 2017 when power stopped.

174. On July 27, 2017, Plaintiffs Karen and Edward Fitzpatrick were visitors to Hatteras Island from the last week in July through the first week in August. The Fitzpatricks paid in excess of \$1000 for their rental. As a result of the Incident, the Fitzpatricks were forced to evacuate on or about July 29, 2017. Prior to this evacuation, they were deprived of the use and enjoyment of the home starting early in the morning on July 27, 2017 when they lost power.

175. Plaintiffs Matthew Breveleri and Kerry Fitzgerald rented a vacation rental property on Hatteras for the week of July 29 to August 5, 2017. As a result of the Incident, they were prevented from accessing their rental property during that time and suffered out-of-pocket expenses and other losses.

176. Plaintiff William Bailey rented a vacation rental home on Hatteras for the week of July 29 to August 5, 2017. As a result of the Incident, Mr. Bailey was prevented from accessing his rental property during that time and suffered out-of-pocket and other loss.

177. Plaintiff Jack Levis owns a vacation home on Hatteras. He rents the home to vacationers, but planned to use it for his own family's vacation during the week of July 29 through August 5, 2017. As a result of the Incident, Mr. Levis was prevented from accessing his property and suffered out-of-pocket and other loss. Mr. Levis and his family were deprived of the use and occupancy of their vacation home, incurred costs in excess of \$10,000 for the rental of a replacement vacation rental home at Virginia Beach, and also lost over \$1,000 worth of food that had been delivered to the Hatteras Island home which spoiled due to lack of electricity.

178. Each of said Plaintiffs was entitled to the uninterrupted use and enjoyment of their vacation properties for which they had ownership or occupancy interests, during the pertinent times. As a direct and proximate result of PCL's acts and omissions, said Plaintiffs experienced the interruption of the rights of use and enjoyment of their vacation homes, and suffered damages including out-of-pocket costs, diminished value of property, emotional suffering such as worry, anxiety, stress, physical discomfort, irritation and annoyance, and other related damages to be shown at the trial.

179. All of the above-described losses were reasonably foreseeable forms of damages that PCL knew, or should have known, would result from its negligent conduct in cutting the power cables at issue.

H. PCL's Response to the Incident.

180. In the aftermath of the Incident, PCL in public statements admitted its liability: "PCL Construction, the company working on the new Bonner Bridge, is accepting complete

responsibility for damaging the transmission line that brings power to Hatteras and Ocracoke Islands.”⁶⁸

181. The Governor of North Carolina, Roy Cooper, agreed with PCL’s admission of liability and stated: “I think the company has already admitted responsibility for this and that they are going to have to be responsible for the damages.”⁶⁹

182. Both the Dare and Hyde County official government websites include information, forms and links for persons to submit claims to a claims facility set up by PCL.⁷⁰

183. While Plaintiffs appreciate the claims facility, to date it has lacked the transparency, publicity and verifiability to ensure that it actually is accomplishing its stated goal of **fully** compensating affected persons for their economic loss.

184. On information and belief, PCL and/or its parent company, PCL Construction (together “Defendants”), made an agreement with CHEC, Dare County, Hyde County, the State and/or others by which PCL would compensate affected residents, businesses and tourists who had suffered personal injury, damage to property and economic loss that they could document to a reasonable degree of certainty.

⁶⁸ Associated Press, OBX power outage enters fifth day, July 27, 2017, available at <http://wunc.org/post/obx-power-outage-enters-fifth-day#stream/0>. See also Aaron Moody, Cut Outer Banks power cable was marked in bridge work plan, could take weeks to fix, July 29, 2017, Charlotte Observer (“PCL is taking full responsibility for the incident....”). Available at <http://www.charlotteobserver.com/news/local/article164348682.html>. And see Chuck Liddy, Electricity conservation in place as tourists evacuate Hatteras, Aug. 1, 2017, Raleigh News and Observer (“A spokeswoman for electric cooperative said over the weekend that PCL was taking full responsibility for the accident and had been cooperating with the utility.”). Available at <http://www.newsobserver.com/news/local/article164830267.html>.

⁶⁹ Beau Minnick, Power outage causes tourist dollars to leave Outer Banks, July 28, 2017, available at <http://wncn.com/2017/07/28/power-outage-causes-tourist-dollars-to-leave-outer-banks/>. See also Associated Press, Officials: Islands’ power to be restored in less than week, August 1, 2017, available at <http://www.readingeagle.com/article/20170801/AP/308019620/1007> (“Gov. Roy Cooper said Tuesday that he believes the company responsible should pay for damages once all the facts are known.”).

⁷⁰ Dare County website: <https://www.darenc.com/government/hatteras-island-power-outage-information>. Hyde County website: http://www.hydecourtnc.gov/ocracoke_economic_recovery/index.php.

185. Defendants' claims facility is administered by the insurance adjuster Crawford and Company ("Crawford"), and the settlement administration firm Garden City Group ("GCG").⁷¹ The generic forms indicate that Zurich Insurance ("Zurich") is also involved.

186. The Defendants' forms on their face contemplate submission of claims for economic loss. They ask for information on items such as lost revenues, wages, and other sensitive and confidential information. These forms reflect an agreement by PCL to pay economic loss claims where adequately proven. Otherwise, it is not known why Defendants would ask claimants to provide such information which does include potentially sensitive confidential personal information.

187. The claims facility is not clear and transparent in its rules and procedures, and has no known claims protocol or plan of allocation. Claimants are not told how they will receive compensation, if at all.

188. The Plaintiffs and class members are intended third party beneficiaries of the agreement.

189. On August 16, 2017 PCL Construction's spokesperson provided a written statement that was read out at a community meeting hosted by Dare County, "apologizing for the inconvenience and directing those who suffered economic losses to submit a claim questionnaire available online at outerbanks.pcl.com." (Emphasis added).⁷² The emphasized statement, made by PCL Construction and placed on an official government website, reflects the company holding itself out as agreeing to pay for economic loss.

⁷¹ <http://www.outerbanksclaimsteam.com/>. "Crawford and Company has been appointed by PCL and its insurers to provide the adjustment of your claim relating to the Outer Banks outage. Crawford and Company is a third party administrator and independent adjusting company assigned to act on behalf of PCL and its insurers." *Id.*

⁷² Dare County website, <https://www.darenc.com/government/hatteras-island-power-outage-information>.

190. It was announced as well that “[t]here are separate forms for residents, businesses and vacationers. Any questions can be directed to the PCL Outer Banks Claim Team at 844-402-8570.”

191. On information and belief, Defendants did not set up this claims facility as an act of unilateral benevolence. Rather, on information and belief, Defendants agreed to it as part of a negotiated resolution of its liability and by agreement with one or more other stakeholders, as a means of ensuring it would be allowed to continue work on the lucrative bridge project, and as a means of settling claims by stakeholders including CHEC, NCDOT, Dare County, Hyde County, or others without transparency or assurances to injured individuals and businesses of payment.

192. The Incident caused significant financial loss to Dare County, which lost tax and other revenues, to Hyde County, to CHEC, which suffered disruption of its electrical business, the NCDOT, with whom PCL contracted to build the bridge, and to others. On information and belief PCL initiated the claims facility in conjunction with other agreements such as to perform or pay for the performance of emergency work to reconnect power to the islands.

193. Because PCL had a contract with NCDOT making clear in multiple ways that PCL was allocated the liability risk for an “unacceptable interruption” of power to the islands, because PCL had physically severed cables owned by NCDOT, and because Defendants stood to lose tens or hundreds of millions from the cancelling of the contract for cause, it is understandable that the companies agreed to compensate affected residents, businesses and tourists for their economic loss, as a promise in consideration of the other stakeholders’ promise to allow the company to continue with the project, as part of an overall resolution of claims, and in return for one or more other stakeholders not suing Defendants for damages.

194. After several class actions were filed, an email address created by Defendants was circulated by which persons could make claims to PCL. Subsequently, PCL set up an “Outer Banks Claims Website” which on information and belief “went live” or increased its public content on or about the same date that PCL filed its motions to dismiss in two of the class actions on grounds of the economic loss rule on September 12, 2017.⁷³

195. The company thus solicits claims for economic loss on its claims website on the one hand, while taking the position it has no responsibility for economic loss in this lawsuit on the other. The company uses its assurances that it will consider islander claims for economic loss to mollify governmental officials and the community, without releasing metrics or data to verify that it is actually properly paying the claims and not taking advantage of financially stressed islanders put into a hardship situation by this company’s deliberate misconduct.

196. The rules and criteria being followed by Crawford and GCG are unknown, nor have Defendants provided any transparency as to its claims process. To date, neither Defendants nor their adjuster has been willing to publicly disclose the rules they are following to consider, accept, reject or process claims. Defendants have not made public any metrics regarding the number of claims received, the number paid, the amounts of any payments, the criteria applied, or the procedure followed in order to ensure fair claims settlement practices.

197. Unlike a class action using a court-approved plan of allocation and court-supervised process, Defendants’ claims facility is notable for its opacity. However, what is known is that Defendants have set up the claims website and its claim forms to track the categories of class definitions alleged in the Related Actions when they were first filed.

⁷³ See <https://web.archive.org/web/20170912042049/http://www.outerbanksclaimsteam.com/>.

198. The Defendants' "Outer Banks Claims Website" invites "resident," "business" and "vacationer" claimants to send in claims using forms addressed to be sent in to GCG. These categories of claimants track the classes of Plaintiffs alleged in the previously filed class actions.⁷⁴

199. These "Resident Claim Form" includes questions such as, "Did your residence sustain a power outage?," "Did your residence sustain property damages due to the power outage?," "Did you evacuate your residence?," and "If yes, did you incur expenses due to the evacuation?" The form asks the claimant to describe any "loss of income." The form instructs the claimant to state a monetary figure for the "Total Amount you are Claiming: (Including property damages, expenses, and loss of income)."⁷⁵

200. The "Business Claim Form" requests information as to "Property Damages," "Business Interruption," "Supporting detail of any spoilage being claimed (including invoices and photos of that disposed)," "Detail of cancelled reservations and refunds" and "Extra Expense Receipts," among other things.⁷⁶

201. The "Vacationer Claim Form" likewise requests similar information.⁷⁷

202. All three forms include a certification that the claimant must sign that "I understand that false statements or claims made may result in fines, imprisonment, and/or any other remedy available by law."

203. Individuals who wish to accept the claim payment offered by Defendants must also sign a broad-form release of liability. The document, styled as "General Full Release of All

⁷⁴ For example, in the Related Action of *Island Vibe Café*, No. 4:17-cv-00101-D, in the complaint filed on July 31, 2017, the plaintiffs pled *inter alia* classes for vacationers, businesses and property owners. Complaint ¶¶ 28-31.

⁷⁵ <http://www.outerbanksclaimsteam.com/docs/residentpoc.pdf>.

⁷⁶ <http://www.outerbanksclaimsteam.com/docs/businesspoc.pdf>.

⁷⁷ <http://www.outerbanksclaimsteam.com/docs/vacationerpoc.pdf>.

Claims,” reflects payment to the claimant by Defendants, and recites that the claimant “fully releases PCL Civil Constructors, Inc., any related companies and all other corporations, insurance companies, persons and entities from any and all past, present and future claims, damages, expenses, costs, or attorney's fees arising out of, or relating in any way to the struck power lines that occurred on July 27, 2017 at the Bonner Bridge Project, including the resulting power outage.”

204. Defendants have encouraged Dare and Hyde Counties to advise residents to use these claim forms and this claim process. In addition, Hyde County created its own claim form for claimants to complete and send to Defendants.⁷⁸

205. A comparison between Defendants’ claims facility and the best practices for a class action settlement under Constitutional due process principles shows:

- a. In a class action settlement, effective proactive notice must be distributed to the class members. Routes to do this include mailing a detailed notice about the settlement, mailing a postcard that directs one to a website, setting up a settlement website, placing notices in media and newspapers, and using mailing lists and address databases to ensure mailed notices reach the maximum number of persons. However, the Defendants’ claims facility has not been well-publicized to the affected groups of residents, businesses and tourists.
- b. In a class settlement, full and fair disclosure of the settlement terms, the rules and procedures for claims, the criteria and plan of allocation to pay on claims, and other information must be provided. However, Defendants have provided no information in this regard.
- c. The process should be designed to make it easier, not harder, for claimants to be compensated. For some categories of claimants, it may be possible to simply pay them without requiring a claim. Where a claim submission is required, the process and paperwork should be vetted to make sure that the process is not being gamed to set up difficult, laborious requirements that discourage claims from being made and create obstacles to payment. Here, the generic Defendants’ claim forms are cumbersome and intimidating.

⁷⁸ See Hyde County website, http://www.hydecourtync.gov/ocracoke_economic_recovery/index.php.

- d. A class action settlement administrator would have the expertise to staff a call center and proactively assist claimants. A class action claims website typically has useful content such as Frequently Asked Questions or “FAQs.” Further, experienced class action attorneys assist claimants in providing information and help throughout the claims process. Here, Defendants’ claims process is marked by delays and long waits imposed on claimants, and the website is minimal and opaque.
- e. A common fund should be established to provide for settlement administration, outreach, notice to the class, processing of claims, and payment of the claims. Funds that are leftover for reasons such as an inability to reach all class members should not revert to the company but rather, be sent to a relevant nonprofit or charity for its use. Here, the financial arrangements are utterly unknown to the public.
- f. Steps should be taken to ensure similarly situated persons are treated similarly. A claimant should not receive special treatment or a better settlement because, for example, he knows someone working for Defendants, holds a governmental office, or has some other leverage. Here, it is unknown whether anyone is providing any fair oversight to the claim facility.

206. On information and belief, Defendants, Crawford and Zurich are well-aware of the minimum due process and fairness protections for a court-approved settlement facility for a cohort of claimants. The Plaintiffs and the class members are entitled to those protections here.

207. PCL continues to work on the bridge replacement project for which it will be paid over \$240 million of taxpayer money.

CLASS ACTION ALLEGATIONS

208. This action is brought by Plaintiffs both individually, and as representatives of all others similarly situated under the provisions of Rule 23(a) of the Federal Rules of Civil Procedure, for compensatory damages as set forth in more detail below. Each Plaintiff, as a representative of the class, has suffered one or more of the elements of damages alleged herein and is a member of one of the classes set forth below.

209. The **Resident Class** is defined as all permanent residents of Hatteras and Ocracoke Islands during the time of the Incident.

210. The Resident Class is represented by the following Plaintiffs: Alex Garrish, Tami Gray, Charles Hoffman, Michael Janssen, Briggs McEwan, Bryan Meekins, Michael Stockwell, Kathleen Triolo, Mike Warren, Stephen Wilson and Stephen Wright.

211. The **Business Class** is defined as all businesses located and operating on Hatteras or Ocracoke Islands during the time of the Incident. This class includes without limitation persons renting homes to vacationers, small businesses such as fishing or charter services, and restaurants and shops located on the Islands.

212. The Business Class is represented by the following Plaintiffs: Marissa Gross d/b/a Down Creek Gallery, Kathleen Triolo, Bryan Meekins, Michael Stockwell, Las Olas, Inc., Tri-V Conery, Inc., Tami Gray, Miss Ocracoke, Inc., Hatteras Blue, Inc., Robert Case, and Rhonda Derring.

213. The **Vacationer Class** is defined as all natural persons who were using a vacation property on Hatteras or Ocracoke Islands during a time period in whole or part overlapping the time period of the Incident and as a result were subject to evacuation, unable to access the property, or had plans cancelled or changed.

214. The Vacationer Class is represented by the following Plaintiffs: Thomas and Nina Edgar, Edward Waas, Karen and Edward Fitzpatrick, Matthew Breveleri and Kerry Fitzgerald, William Bailey, and Jack Levis.

215. Excluded from the above-defined classed are those persons or businesses who would otherwise be class members, but who or which are: (i) Defendant, or any of its employees, agents, insurers, contractors, and subcontractors, including employees of Defendant's agents, contractors or subcontractors, (ii) the Court, court personnel and their immediate families, and (iii) the attorneys for any of the Parties and members of their law firms..

216. The proposed class meets all of the requirements to be certified under Rule 23, including the criteria of Rule 23(a) and Rule 23(b).

Rule 23(a)

217. Numerosity: The putative classes are so numerous that joinder of all members is impracticable. In addition to the named Plaintiffs, a significant number of other vacation renters, homeowners and businesses suffered damages as a result of the Incident. While the exact number of members of the classes is unknown, Plaintiffs are informed and believe that the classes consist of thousands of persons.

218. Commonality: There is a well-defined community of interest among the classes and there are numerous questions of law or fact which include, but are not limited to, the following:

- a) Whether the power line damage was caused by employees or agents of PCL acting in the normal course and scope of their duty;
- b) Whether PCL's conduct breaches a duty of due care owed to some or all of the plaintiffs and class members thereby proximately causing injury to them;
- c) Whether PCL is liable for a claim of negligence, a claim of negligence *per se*; or a claim of willful, wanton and reckless conduct;
- d) Whether PCL is liable for a claim of nuisance;
- e) Whether Plaintiffs and class members are third-party beneficiaries to an agreement by which PCL and its parent company PCL Construction established a claims facility; and
- f) Whether Plaintiffs and class members are entitled to legal recourse or remedies with regard to that claims facility.

219. Typicality: Plaintiffs' claims are typical of the claims of the members of the proposed classes. Plaintiffs' claims arise from the same practices and conduct that give rise to the claims of all class members and are based on the same legal theories.

220. Adequacy: Plaintiffs will fairly and adequately represent and protect the interests of the classes in that they have no disabling conflicts of interest that would be antagonistic to those of the other members of the classes. Plaintiffs seek no relief that is antagonistic or adverse to the members of the classes and the infringement of the rights and the damages they have suffered are typical of all other class members. Plaintiffs have retained attorneys experienced in class actions and complex litigation as counsel.

Rule 23(b)

221. Under Fed. R. Civ. P. 23(b)(1), prosecuting separate actions by individual class members would create a risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendant; or (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

222. Specifically, as noted, Defendants have offered to consider certain claims for damages by residents, businesses and vacationers affected by the Incident, via a facility administered by the insurance adjuster Crawford and Company.⁷⁹ The rules and criteria being followed by Crawford are unknown, nor has PCL provided any transparency. It is likely that any rulings that this Court makes with regards to merits or damages issues may affect the standards applied by this facility.

223. Under Fed. R. Civ. P. 23(b)(2), class certification of a claim for declaratory and injunctive relief is appropriate given as the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding

⁷⁹ <http://www.outerbanksclaimsteam.com/>.

declaratory relief is appropriate respecting the class as a whole. Specifically, as noted above, PCL has purported to offer class members access to a claims facility, but without any transparency or fairness in the process. Because Defendants have a duty to compensate the affected persons, under the circumstances, it should provide transparent and fair access to its *de facto* alternative dispute resolution facility. See Count V below.

224. Under Fed. R. Civ. P. 23(b)(3), questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Because of the number and nature of common questions of fact and law, multiple separate lawsuits would not serve the interest of judicial economy.

225. Plaintiffs will fairly and adequately protect the interests of the classes which they represent. The interests of the Plaintiffs are consistent with those of the class members.

226. Plaintiffs are represented by experienced and able counsel who have expertise in the areas of tort law, trial practice, and class action representation.

227. The potential class members are readily ascertainable as the classes are confined to a discrete group of individuals and businesses who meet the above class definitions. This litigation is manageable as a class action in that the conduct of Defendants uniformly applies to the claims of all Plaintiffs and it is feasible to identify the putative class members.

228. Plaintiffs reserve the right to amend the above class definitions as additional information becomes available through discovery in this matter.

CLAIMS FOR RELIEF

COUNT I **(Negligence)**

229. Plaintiffs incorporate by reference each allegation stated above as if more fully stated herein.

230. At all relevant times, PCL had a duty to exercise reasonable care in its design and construction work with regard to the bridge replacement project.

231. At all relevant times, PCL had a duty to ensure that its construction activities would not result in a disruption of power to the Islands.

232. At all relevant times, PCL had a duty to establish procedures to ensure that the relevant construction work was done in a safe and reasonable manner and in such a way as to prevent a disruption of power to the Islands.

233. At all relevant times, PCL had a duty to refrain from construction activities that would foreseeably cause harm to Plaintiffs and the other members of the classes.

234. At all relevant times, PCL had a duty to plan, inspect and supervise the construction work to ensure that activities were being done in a proper and safe manner.

235. At all relevant times, PCL had a duty to adhere to the contractual obligations set forth in the contract between PCL and the NCDOT which were expressly stated to protect Plaintiffs and the class members.

236. PCL knew, or in the exercise of reasonable care should have known, of the serious consequences that damage to the power transmission line could have on vacationers, homeowners, and businesses on the Islands including the potential that vacationers and homeowners would be deprived of the use and enjoyment of their homes and that businesses would suffer losses and damages.

237. PCL was negligent, by and through the acts and omissions of its employees and agents, proximately causing damage to Plaintiffs and the proposed class members by:

- a. Failing to take adequate precautions to identify the location of the power transmission line;
- b. Failing to ensure that construction activities did not damage the power transmission line;
- c. Placing a steel casing into the ground in such a manner as to damage the power transmission line;
- d. Failing to exercise reasonable care in protecting and preserving the rights of Plaintiffs and the proposed class members;
- e. Failing to exercise reasonable care in the management, supervision and construction of the hourly workers on the project;
- f. Failing to adhere to the contractual obligations set forth in the contract between PCL and the NCDOT; and
- g. By acting or failing to act in other ways not fully set forth herein but as may be developed during further discovery in this action.

238. It was reasonably foreseeable to PCL that if it damaged the power transmission line and disrupted the power to the Islands that Plaintiffs and members of the proposed classes would suffer damages as more fully alleged herein.

239. As a direct and proximate result of the negligence of the PCL as hereinabove alleged, the Plaintiffs, and the classes of Plaintiffs they represent, were damaged as set forth herein and are entitled to recover the same of the PCL.

COUNT II
(Negligence *Per Se*)

240. Plaintiffs incorporate by reference each allegation stated above as if more fully stated herein.

241. In agreeing to undertake the work, PCL agreed to comply with various relevant statutes, regulations and codes.

242. On information and belief, PCL's conduct amounts to negligence *per se* as the facts reflect that PCL violated duties arising not only under its contract with NCDOT, but also and independently, duties arising under one or more other statutes, regulations or codes.⁸⁰ The Plaintiffs and class members are within the ambit of persons meant to be protected by those authorities.

243. On information and belief, PCL's conduct violated the duty toward the general public established under the Underground Utility Safety and Damage Prevention Act, N.C. Gen. Stat. § 87-115 *et seq.*

244. Under that Act, enacted in 2013, the General Assembly declared as a matter of public policy that it was necessary to protect the citizens of the State from the dangers inherent in excavating in areas where underground lines, systems, or infrastructure are buried beneath the ground. N.C. Gen. Stat. § 87-116. The General Assembly also found it necessary to protect underground facilities used for transmitting or distributing electricity from damage. *Id.*

245. Under the Act, PCL's act of driving the large steel casing into the ground on the shoulder of NC 12 constituted "driving" or "pounding" within the meaning of N.C. Gen. Stat. § 87-117(9). The act was movement of earth in the ground by use of mechanized equipment. *See id.* PCL was an "excavator" per N.C. Gen. Stat. § 87-117(10).

⁸⁰ Violations of code provisions can constitute negligence per se. *Oates v. JAG, Inc.*, 314 N.C. 276, 333 S.E.2d 222, 225 (1985) ("In fact, plaintiffs' complaint alleges five specific violations of the North Carolina Uniform Residential Building Code. The North Carolina Uniform Residential Building Code has been held to have the force of law and a violation thereof is negligence per se.").

246. The three cables constituting the underground power lines were a “facility” within the meaning of N.C. Gen. Stat. § 87-117(12). They were underground lines used for conveying, transmitting and distributing electricity. *See id.*

247. The machinery used to pound or drive the steel casing into the ground was “mechanized equipment” under N.C. Gen. Stat. § 87-117(14).

248. PCL had a duty to provide notice of its intent to excavate, under N.C. Gen. Stat. § 87-117(16) and § 87-122.⁸¹ However PCL did not do so and thereby violated its duties including, *inter alia*, to “plan the excavation or demolition to avoid damage to or minimize interference with facilities in or near the construction area,” § 87-122(c)(3), to not use mechanized equipment within the danger zone, § 87-122(c)(9), and its duty otherwise to “exercise due care at all times to protect the facilities when exposing these facilities.” *See id.*⁸²

249. In addition, PCL improperly used mechanized equipment near an electric transmission line as defined under § 87-122(c)(10).

250. PCL had “a duty to provide education and training to employees and to document such education and training. The training shall include sufficient information, guidance, and supervision such that employees can competently and safely operate the equipment used in the course of the business or trade and complete assigned tasks in a competent and safe manner while minimizing the potential for damage.” N.C. Gen. Stat. § 87-123(a). PCL violated this

⁸¹ *See also* the NCDOT Utilities Accommodation Manual, p. 6, July 30, 2014 (“The utility owner, or contractor as appropriate, shall notify the North Carolina 811 before any excavation or demolition activities in accordance with G.S. 87- Article 8 – Underground Damage Prevention (87-115 Underground Utility Safety and Damage Prevention Act or the most current applicable legislation).”).

⁸² Information regarding locations of all utility lines and conduits was readily available to PCL from multiple sources, and the company had a duty to contact and confirm its plans with a variety of authorities before proceeding. Indeed, in the aftermath of the power loss, a plane carried a banner overhead expressing community members’ frustration and reading, “CALL BEFORE YOU DIG!” Sam Walker, Power to Hatteras and Ocracoke could be back in 4 to 6 days, Aug. 1, 2017, Outer Banks Voice, available at <https://outerbanksvoice.com/2017/08/01/power-to-hatteras-and-ocracoke-could-be-back-in-4-to-6-days/>.

duty as well as its duty to conduct excavation in compliance with OSHA standards and under the direction of a competent person. N.C. Gen. Stat. § 87-123(c).

251. The Act specifically contemplates that a breach of the duties it imposes could cause damages to members of the general public and their property. N.C. Gen. Stat. § 87-126(b).

252. Under N.C. Gen. Stat. § 136-93(a), “[n]o State road or State highway, other than streets not maintained by the Department of Transportation in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Department of Transportation or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Department of Transportation or its officers or employees....” Here, PCL drove the casing into the shoulder of NC 12 thereby damaging underground conduits.

253. Under 19A NCAC 02B .0502(b), “[n]o utility which has been placed on the right-of-way of any road on the State Highway System shall be changed or removed without written permission from the Department of Transportation.” Here, PCL damaged the electrical utility conduit in the form of the power lines.

254. Under the North Carolina Existing Building Code, section 1503.1, “[t]he temporary use of streets or public property for the storage or handling of materials or equipment required for construction or demolition, and the protection provided to the public shall comply with the provisions of the applicable governing authority and this chapter.” Under section 1503.3, protection against damage shall be provided to utility fixtures during the progress of the work.

255. Under the North Carolina Utility Policy Manual, page 27, subsection E, “It is the policy of the NCDOT to accommodate existing utility facilities and attempt to minimize the impacts to these facilities, whenever practical.”

256. Under the NCDOT Construction Manual, Section 1500-3, “[i]t is incumbent upon the Contractor to determine the exact location of utilities before beginning work in a location.” Under Section 1500-4, “[c]ustomers affected by any interruptions in service should be notified well in advance of the interruption.”

257. Under NC OSHA and the NCDOT Construction Manual, PCL had a duty to meet occupational safety standards during the project work. Severance of a high-voltage power line can cause an imminent danger to the workers involved. PCL’s conduct under the circumstances violated one or more applicable OSHA duties.

258. The relevant statutes, regulations and codes were intended to protect cohorts of the public including the Plaintiffs and the class members. PCL in holding itself out as capable of taking on the work of improving the transportation and utility lifeline to the two affected islands, knowingly assumed duties to the island residents and other groups. PCL’s contract with the NCDOT did not provide a contractual allocation of the risk as to these groups, as they were neither contracting parties, nor parties to express warranties, or express third party beneficiaries. Rather, the contract informs the duty of care.

259. Under the circumstances, PCL’s mismanagement of its professional duties and failure to properly use its expertise with regard to the utility line, is analogous to the failure of a design professional to exercise due care in the work on a new home project. Here, by analogy, the islands were the home and the power line was the driveway, and PCL had a duty of care to

keep the driveway open. By failing to do so, the PCL is liable under principles of negligence under North Carolina law.⁸³

260. As a direct and proximate result of PCL's negligence *per se*, the Plaintiffs and the putative classes have been damaged.

COUNT III
(Gross Negligence; Willful and Wanton Conduct)

261. Plaintiffs incorporate by reference each allegation stated above as if more fully stated herein.

262. PCL owed and breached duties of ordinary and reasonable care to Plaintiffs in connection with the bridge construction operations on the Bonner Bridge Project, and additionally owed and breached duties to Plaintiffs and the putative classes to guard against and/or prevent the risk of the power outage.

263. PCL breached its legal duty to Plaintiffs and failed to exercise reasonable care and acted with reckless, willful, and wanton disregard in the negligent construction of the Bonner Bridge Project.

264. PCL knew or should have known that its wanton, willful, and reckless misconduct would result in a disastrous and devastating power outage that would endanger the rights and/or safety of the businesses, residents, and visitors of Hatteras and Ocracoke Islands causing damage to those affected by the power outage.

265. PCL could have prevented this catastrophe by using proper construction or risk management practices, following industry standards, following required safety protocols and

⁸³ See *Oates v. JAG, Inc.*, 314 N.C. 276, 333 S.E.2d 222 (1985); *Lord v. Customized Consulting Specialty, Inc.*, 182 N.C. App. 635, 637, 643 S.E.2d 28 (2007), *disc. rev. denied*, 361 N.C. 694, 652 S.E.2d 647 (2007); *Hospira Inc. v. AlphaGary Corp.*, 194 N.C. App. 695, 704-05, 671 S.E.2d 7, 14 (2009); *Ellis-Don Constr., Inc. v. HKS, Inc.*, 353 F.Supp.2d 603, 607 (M.D.N.C. 2004); *Beaulieu v. EQ Indust. Servs., Inc.*, No. 5:06-cv-00400-BR (E.D.N.C. April 28, 2008).

precautionary procedures, providing proper training and supervision to its workers, and properly maintaining and storing equipment. However, PCL chose to violate or ignore operational discipline, and to save time and money, at the expense of safety.

266. Under the circumstances described herein, PCL's conduct constitutes gross negligence, willful or wanton misconduct, and a reckless indifference to the rights, economic interests, businesses, safety, and property of Plaintiffs and class members described herein. By allowing or causing the power cables to be damaged in the exact location where PCL knew the cables existed, and had agreed in its contract that it would guard against such damage, PCL's conduct constitutes a conscious and intentional disregard of and indifference to the rights and safety of others, including but not limited to the Plaintiffs and class members described herein, which PCL knew or should have known was reasonably likely to result in injury, damage, or other harm.

267. As a direct and proximate result of PCL's wrongful conduct, the Plaintiffs and class members are entitled to recover damages in an amount to be determined at trial.

COUNT IV
(Private Nuisance)

268. Plaintiffs incorporate by reference each allegation stated above as if more fully stated herein.

269. As a direct and proximate result of PCL's acts and omissions, PCL did cause an invasion of the Plaintiffs' and class members' interest in the private use and enjoyment of the relevant properties as well as the right of security of the Plaintiffs' and class members' established businesses.

270. PCL's acts were intentional and unreasonable, negligent, reckless, or due to abnormally dangerous conditions or activities.

271. PCL substantially and unreasonably interfered with the Plaintiffs' and class members' use and enjoyment of the relevant properties.

272. As a direct and proximate result of the foregoing acts and omissions of the PCL, which constitute a private nuisance the Plaintiffs, and the classes of Plaintiffs they represent, have suffered significant harm and were damaged as set forth herein and are entitled to recover the same of the PCL.

COUNT V
(Private Claim for Public Nuisance)

273. Plaintiffs incorporate by reference each allegation stated above as if more fully stated herein.

274. The acts and omissions of the PCL give rise to a private claim for public nuisance. PCL's conduct constituted an unreasonable interference with the common interests or rights of the general public, i.e. the common interest and right of having access to power. PCL's interruption of the utility conduit is analogous to the blocking of a highway⁸⁴ or other acts categorized as a public nuisance.

275. All or some of Plaintiffs and class members have standing to bring a private claim for public nuisance due to the fact that some or all of the Plaintiffs and class members suffered injuries different in kind from those suffered by other members of the general public.⁸⁵

276. Under North Carolina law, a private party can maintain an action for damages caused by a public nuisance, so long as the party has suffered an injury that cannot be considered merged with the general public right.⁸⁶

⁸⁴ "A public nuisance is an unreasonable interference with the common interests or rights of the general public, such as the blocking of a highway." Richard W. Wright, *Private Nuisance Law: A Window on Substantive Justice*, (2011), at 496. Available at: http://scholarship.kentlaw.iit.edu/fac_schol/707.

⁸⁵ *Hampton v. North Carolina Pulp Co.*, 223 N.C. 535, 27 S.E.2d 538 (1943).

277. The basis for this rule is that a purely public right is of such a nature that ordinarily an interference with it produces no appreciable or substantial damage. Thus, the existence of a special injury is defined as the invasion of a more particular and more personal right than one that should be considered merged into the general public right.⁸⁷

278. A party adequately evidencing a private claim for public nuisance may be entitled to recover damages including for economic loss, where the damages can be established by evidence which is not speculative.⁸⁸ This is particularly so when the facts reflect that the economic damaged that is complained of was foreseeable to the PCL in that it had made an agreement with an applicable government entity not to cause the relevant nature of injury.⁸⁹

279. Dare County is one of the few donor counties in the State. Hyde County (Ocracoke) tourism revenues also benefit the general public. While the public in general of the State at large were harmed economically by the Incident, it was groups such as the islanders in particular who were injured in a way that was different in kind from the public at large.

280. As a direct and proximate result of the foregoing acts and omissions of the PCL, which constitute a private claim for public nuisance, the Plaintiffs, and the putative classes, have suffered significant harm and were damaged as set forth herein and are entitled to recover the same of the PCL.

⁸⁶ *Neuse River Found. v. Smithfield Foods, Inc.*, 155 N.C. App. 110, 115, 574 S.E.2d 48 (2002), citing *Hampton*.

⁸⁷ *Id.*

⁸⁸ *See Hampton*, 223 N.C. at 547 (allowing plaintiff to proceed with claim of “injury to a going business” including damages for its “interruption or discontinuance” where evidence was not “speculative”).

⁸⁹ *See id.* (rejecting defendant’s request “to weigh the economic consequences involved in this decision” where facts reflected that defendant had made “an agreement with a State Department that it would not permit the discharge of waste matter” such as that which caused the business loss to the plaintiff).

COUNT VI
(Third Party Beneficiary)

281. Plaintiffs incorporate by reference each allegation stated above as if more fully stated herein.

282. While the above claims are brought only against PCL, the instant claim is brought also against PCL Construction, as that second entity is identified as involved in the claims facility that has been established.

283. The practice of allowing third-party beneficiaries not in privity of contract to bring an action in their own name to enforce the contract made for their benefit was recognized in North Carolina as early as 1842.⁹⁰

284. On information and belief, the Plaintiffs and class members are the intended beneficiaries of a promise and an agreement, whether written or oral, detailed or general, between Defendants and one or more other stakeholders.

285. On information and belief, Plaintiffs are each a third-party beneficiary in that a contract exists between two other persons or entities, which is valid and enforceable, and which was executed for Plaintiffs direct, and not incidental, benefit.

286. On information and belief, each Plaintiff is a direct beneficiary of the contract in that the contracting parties intended to confer a legally enforceable benefit on them.

287. The Defendants' statements and representations including ones made on Dare and Hyde County official government websites, and the CHEC website, and the information sought in the claim forms, reflect that the company has made statements admitting liability, responsibility and negligence. The only reasonable interpretation of those statements,

⁹⁰ *Vogel v. Reed Supply Co.*, 277 N.C. 119, 126, 177 S.E.2d 273 (1970); *Raritan River Steel Co. v. Cheery, Bekaert & Holland*, 329 N.C. 646, 652, 407 S.E.2d 178, 182 (1991); *Shook v. Gaston County Board of Educ.*, 882 F.2d 119 (4th Cir. 1989).

representations and actions is that they reflect the existence of an express or implied agreement that Defendants will compensate residents, businesses and tourists for injury or damage including economic loss caused by the Incident. However, to date the claims facility has not performed this agreement to compensate in a manner which is fair and reasonable.

288. Under the circumstances, Defendants should not be allowed to hold out that it takes responsibility, admits liability and negligence, and that it is soliciting claims for economic loss, while at the same time, taking the position that it has no duty to compensate for such claims, using that position as a threat to drive lower settlements, and then keep the entire process under a veil of secrecy so that islanders and others cannot know if they are being treated fairly.

289. Plaintiffs request that the Court declare and construe the respective rights and responsibilities of the parties to the referenced agreement and order the specific performance of it so that the Plaintiffs may be fully and fairly compensated herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray the Court as follows:

1. That after due proceedings, this action be certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
2. That in due course, this action proceed as a class action to judgment in favor of Plaintiffs, and the classes, and against Defendants;
3. That Plaintiffs, and the classes, have and recover all damages pursuant to the claims for relief set out in this Complaint;
4. That Plaintiffs, and the classes, have and recover prejudgment and post judgment interest at the maximum legal rate; as well as any costs, expenses and attorneys' fees allowed by law; and
5. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby request a jury trial on the claims so triable.

Respectfully submitted, this the 10th day of November, 2017.

Interim Co-Lead Counsel:

/s/ Daniel K. Bryson

Daniel K. Bryson, N.C. State Bar No. 15781
Scott C. Harris, N.C. State Bar No. 35328
Matthew E. Lee, N.C. State Bar No. 35405
Patrick M. Wallace, N.C. State Bar No. 48138
Whitfield Bryson & Mason LLP
900 West Morgan St.
Raleigh, North Carolina 27603
919-600-5000 / 919-600-5035 (fax)
dan@wbmlp.com
scott@wbmlp.com
matt@wbmlp.com
pat@wbmlp.com

Gary E. Mason
Whitfield, Bryson & Mason, LLP
5101 Wisconsin Ave., NW, Suite 305
Washington, DC 20016
Telephone: 202-429-2290
gmason@wbmlp.com

Robert E. Zaytoun, N.C. State Bar No. 6942
Matthew D. Ballew, N.C. State Bar No. 39515
John R. Taylor, N.C. State Bar No. 43248
3130 Fairhill Drive, Suite 100
Raleigh, NC 27612
(919) 832-6690 / (919) 831-4793 (fax)
rzaytoun@zaytounlaw.com
mballew@zaytounlaw.com
jtaylor@zaytounlaw.com

Mona Lisa Wallace, N.C. State Bar No. 9021
John S. Hughes, N.C. State Bar No. 22126
Wallace and Graham, P.A.
525 North Main Street
Salisbury, NC 28144
704-633-5244 / 704-633-9434 (fax)
mwallace@wallacegraham.com
jhughes@wallacegraham.com

Interim Plaintiffs' Steering Committee:

Jean S. Martin, N.C. State Bar No. 25703
Law Office of Jean Sutton Martin, PLLC
2018 Eastwood Rd., Suite 225
Wilmington, NC 28403
910-292-6676 / 888-316-3489 (fax)
jean@jsmlawoffice.com

John A. Yanchunis
Morgan & Morgan Complex Litigation Group
201 N. Franklin St., 7th Floor
Tampa, FL 33602
813-275-5272 / 813-275-9295 (fax)
jyanchunis@forthepeople.com
(notice of appearance filed Aug. 1, 2017)

Joseph G. Sauder
McCune Wright Arevalo LLP
555 Lancaster Avenue
Berwyn, PA 19312
Telephone: (610) 200-0581
jgs@mccunewright.com
(notice of appearance filed Oct. 24, 2017)

J. Michael Malone, N.C. State Bar No. 26512
Hendren, Redwine & Malone, PLLC
4600 Marriott Dr., Suite 150
Raleigh, NC 27612
919-573-1423 / 919-420-0475 (fax)
mmalone@hendrenmalone.com

M. Peebles Harrison, N.C. State Bar No. 22746
Dennis C. Rose, N.C. State Bar No. 19241
Rose Harrison & Gilreath, P.C.
P. O. Box 405, 700 Blue Jay St., Suite 1
Kill Devil Hills, NC 27948
252-480-1414 / 252-480-1765 (fax)
peebles@outerbanksllaw.com
Dennis@outerbanksllaw.com

Thomas H Burt
Wolf Haldenstein Alder Freeman & Herz LLP
270 Madison Avenue
New York, NY 10016
212-545-4600 / 212-686-0114 (fax)
burt@whafh.com / donovan@whafh.com
(notice of appearance filed Sept. 14, 2017)

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing pleading was filed this day electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to the below parties and/or counsel of record:

Attorneys For Defendant

Rodney E. Pettey
rpettey@ymwlaw.com

David M. Fothergill
dfothergill@ymwlaw.com

Alexandra L. Couch
acouch@ymwlaw.com

This the 10th day of November, 2017.

Interim Co-Lead Counsel:

/s/ Daniel K. Bryson

Daniel K. Bryson, N.C. State Bar No. 15781
Scott C. Harris, N.C. State Bar No. 35328
Matthew E. Lee, N.C. State Bar No. 35405
Patrick M. Wallace, N.C. State Bar No. 48138
Whitfield Bryson & Mason LLP
900 West Morgan St.
Raleigh, North Carolina 27603
919-600-5000 / 919-600-5035 (fax)
dan@wbmlp.com
scott@wbmlp.com
matt@wbmlp.com
pat@wbmlp.com