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In the Sixth Judicial District Court for the State of Utah
KANE COUNTY, KANAB DEPARTMENT

BEAR RIVER MUTUAL INSURANCE
COMPANY, a Utah non-profit corporation, and
TRAVIS RIDING its subrogee, an individual,

Plaintiff,

vs.

KANAB CITY, a body politic of the State of
Utah, KANAB FIRE DEPARTMENT, KANE
COUNTY, a body politic of the State of Utah,
STATE OF UTAH, and JOHN DOES 1 through
10, "*whose true names are unknown,*"

Defendants

COMPLAINT

Civil No.

Judge

Comes now the Plaintiff and complains of the Defendants and for a cause of
action alleges:

PARTIES AND JURISDICTION

1. That Plaintiff, Bear River Mutual Insurance Company is a Utah non-profit
corporation, licensed to issue insurance coverage in the State of Utah.

2. That the Plaintiff had issued to its insured, Travis Riding, an insurance
policy No. 1189431 on a residence located at 169 West 200 South in Kanab, Kane
County, State of Utah.

3. That at all times herein, Plaintiff Bear River Mutual Insurance Company insured the residence owned by Travis Riding at 169 West 200 South in Kanab, Utah, and the personal property and real property surrounding the residence and is subrogated to Travis Riding for the property damages as more fully set forth herein.

4. At all times herein Kanab City was a municipality and political subdivision of the State of Utah.

5. At all times herein Kane County was a municipality and political subdivision of the State of Utah.

6. At all times herein, it is believed that Kanab City, Kane County and/or the State of Utah owned property in Kanab City, Kane County, Utah next to the property owned by Plaintiff.

7. Kanab City, Kane County and/or the State of Utah directed that a fire be started and that fire spread and damaged property owned by Travis Riding and insured by Bear River Mutual Insurance Company.

8. That on communications dated June 17, 2021, and November 23, 2021, the Plaintiffs, pursuant to Utah Code Annotated, as amended ("U.C.A.") §63G-7-401 through §63G-7-403 provided notice of claim to Kanab City, Kane County, and the State of Utah.

9. More than 90 Days have passed since the said notice of claim was sent and relief from the claim was denied.

10. Defendants have not resolved the claim.

11. The Plaintiffs hereby file an undertaking required by U.C.A. §63G-7-601.

12. This cause of action arose, took place and occurred in and/or within the State of Utah.

13. Defendants, John and Jane Doe 1 through 10, are individuals whose true names are unknown, and include employees, representatives, and/or agents of Defendants, and were acting individually or in the course and scope of their employment, or individuals, companies or subcontractors, under the direction of or who may have contributed to or caused the damages set forth herein. Plaintiff reserves the right to amend this complaint upon discovering the identities of these individuals.

14. Plaintiff asserts this is a tier 1 case under URCP 26(c)(3).

15. Defendants, through their employee, agents, and/or representatives created injury and/or damages by their creation of an unsafe or dangerous condition of a highway, road, street, crosswalk, sidewalk, culvert, tunnel, bridge, gully, viaduct, or other structure.

16. Defendants created injury and/or damages from their creation of a fire or dangerous condition of a public building, structure, reservoir, or other public improvement.

17. Defendants created, were aware, and/or reasonably foresaw that their action of starting a fire in a gully would expose others to an unreasonable risk of harm as a fire Defendants created spread causing damages to real and personal property in the area and damages to the real and personal property owned and insured by Plaintiffs.

18. It was foreseeable that starting a fire in a gully and allowing it to spread in the area would cause Plaintiffs to suffer damages and cause Plaintiffs to repair, replace, and remedy the damages costing, money, materials, transportation, services, and labor.

19. Defendants caused an injury by creating and making a defective, unsafe, and/or dangerous condition at the location.

20. It was foreseeable that starting a fire, leaving the area before the fire was fully extinguished, not extinguishing all embers, allowing embers to continue to burn, allowing a fire to continue in the area, and allowing the fire to spread off the area to the property owned by others would make the real and person property of others susceptible to damages and injury.

21. Defendants affirmatively and/or actively created a condition that gives rise to a duty to act in order to prevent harm and Defendants breached that duty.

22. Defendants started a fire, did not fully extinguish the fire, did not properly monitor the fire, and allowed the fire to spread directly and proximately causing damages and causing Plaintiffs to remedy the situation.

23. Plaintiffs were damaged as they had to secure the area as well as repair, replace, and/or remedy the damaged real and personal property.

24. The Defendants are not immune from suit under the Governmental Immunity Act.

25. Defendants waived their immunity from suit.

26. Defendants benefitted to the detriment of Plaintiffs as Plaintiffs provided labor, money, materials, and services to repair and replace the damaged real and personal property.

27. Defendant knew they were getting a benefit from Plaintiffs and Defendants did not pay Plaintiffs for the materials, money, labor, and services.

FIRST CAUSE OF ACTION

Property Damage

28. That at all times herein the Plaintiff, Travis Riding, was a resident of Kane County, State of Utah, and resided at 169 West 200 South in Kanab, Kane County, and

was the owner of the home and property at that address which was insured by Bear River Mutual Insurance Company.

29. That at all times herein the Defendants, Kanab City and Kane County were municipalities and political subdivisions of the State of Utah.

30. It is believed that the Kanab City, Kane County and/or the State of Utah own property southwest of the Riding residence.

31. That at all times the Defendants maintained and cleared debris and weeds from a gully southwest of the Riding residence.

32. That the gully was cleaned by Defendants by purposely lighting a fire at the location and allowing the fire to burn the debris and weeds collected there.

33. The fire was directed by the State of Utah, Kanab City, and/or Kane County.

34. That the State of Utah directed Kanab City, the Kanab Fire Department, and Kane County to create a fire to burn debris and weeds on the property.

35. Defendants did not completely extinguish the fire.

36. That the fire that was not completely extinguished grew and spread.

37. That on or about February 24, 2021, the fire spread to the property owned and insured by Plaintiffs.

38. That Defendants caused damages to real and personal property in the area.

39. The Defendants caused damages to the real and personal property owned and insured by Plaintiffs.

40. Defendants were negligent generally, and more particularly, as follows:

a. directing that a fire be started in the area;

- b. starting a fire on the property when it was known a fire is a hazard;
- c. creating a dangerous situation by starting a fire;
- d. allowing a fire to spread to surrounding areas causing damages to real and personal property;

- e. failing to properly monitor the fire;
- f. failing to properly extinguish the fire before leaving the area;
- g. failing to make certain hot spots created by the burn were cooled;
- h. leaving the area before all hot spots created by the burn were cooled and fully extinguished;

- i. allowing hot spots from the created fire to spread and cause a fire in other areas which resulted in damage to real and personal property owned and insured by Plaintiffs;

- j. failing to exercise due care; and/or

- k. failing to properly monitor and prevent the embers from igniting and starting another fire.

41. Defendants owed the Plaintiffs a high degree of duty, and duty to properly control the burn they ignited to clear weeds and debris from the gully.

42. Plaintiffs in no way contributed to the clearing the gully and/or the fire that burned the real and personal property.

43. That as a proximate and direct result of the acts, omissions, and/or negligent conduct of Defendants, by and through its employees and agents, Plaintiffs have suffered damages to real and personal property in an amount to be proven at the time of the trial, but in a sum of not less than \$20,956.87.

SECOND CAUSE OF ACTION

Negligence and Res ipsa loquitur

44. Plaintiffs adopt and by this reference incorporate herein paragraphs 1 through 27 of Jurisdiction, paragraphs 28 through 43 of the First Cause of Action as though the allegations contained therein were fully and completely set forth herein.

45. That Plaintiff was at all times mentioned herein, the record owner of the real property located at 169 West 200 South in Kanab.

46. Defendants were responsible for clearing the property next to the property owned and insured by Plaintiffs.

47. That approximately one week prior to February 24, 2021, the gully behind the Plaintiff's insured residence was cleaned by Defendants by purposely lighting a fire in the gully and allowing it to burn the debris and weeds collected there.

48. That the fire to clear the weeds and debris from the gully and its maintenance and operation were solely and entirely within the control of the Defendants.

49. That on or about February 24, 2021, the fire spread from the location started by Defendants to the property owned and insured by Plaintiffs.

50. That the fire at the rear of the property owned and insured by Plaintiffs was entirely the result of the Defendants' acts, omissions, and/or negligence and was not contributed to in any manner by any voluntary act of the Plaintiffs.

51. As a direct and proximately result of the Defendants' acts, omissions, and/or negligence in creating the fire, monitoring the burn, and extinguishing the fire, the Plaintiffs suffered damages to real and personal property in a sum to be proven at the time of trial, but in an amount not less than \$20,956.87.

52. That this type of incident and/or failure and damage does not ordinarily occur in the absence of someone's negligence.

53. That the incident was caused solely by the instrumentality within the exclusive control of the Defendants, and without any voluntary act or part of the Plaintiff's insured in contributing to the damage.

THIRD CAUSE OF ACTION

Declaratory Judgment

54. Plaintiffs adopt and by this reference incorporate herein paragraphs 1 through 27 of Jurisdiction, paragraphs 28 through 43 of the First Cause of Action and paragraphs 44 to 53 of the Second Cause of Action, as though the allegations contained therein were fully and completely set forth herein.

55. Plaintiff has no adequate remedy at law or appropriate means other than this action for declaratory judgment under §63G-7-401 through §63G-7-403, Utah Code Annotated, 1953 to determine the rights, obligations, status, legal relations, pertaining to the damages to real and personal property owned and insured by Plaintiffs.

56. Plaintiffs seek a determination of the rights, responsibilities, duties, liabilities, and obligations as it pertains to the Defendants and the responsibilities in starting a fire, monitoring the fire, extinguishing the fire, and not allowing the fire to spread and cause damages.

57. Plaintiffs have no adequate remedy at law or appropriate means other than this action for declaratory judgment to determine the rights and obligations, if any, and the rights and obligations, agreements, contracts, and/or responsibilities of Defendants and their other employees, subcontractors, agents, and/or representatives as it pertains

to the burning of weeds and debris on the property and allowing the fire to spread to the property of others causing damages.

58. Plaintiffs further seek a determination as to the liability of each of the Defendants and their agents, representatives, and employees as to their duties in avoiding damage and destruction of real and personal property.

59. Plaintiff further seeks a determination as to the liability of each of the Defendants as it pertains to the fire and the damages caused by the fire and the duties of Defendants in causing damages, and/or properly reporting the damages.

60. Plaintiff seeks a determination as to the rights, responsibilities, liabilities, obligations, and negligence of the Defendants as it pertains to the burn in the gully and as to the Defendants' liability.

61. That the above Court should declare the appropriate responsibility, negligence or liability of each of the Defendants or such individuals as to the responsibility and liability to the Plaintiff for the damages incurred herein and that the Defendants owe the sum of not less than \$20,956.87 for the value of repair and replacing the damaged property owned and insured by Plaintiffs.

62. That the Court determine the rights, duties and obligations of the Defendants as it pertains to the damages caused by Defendants.

WHEREFORE, Plaintiff prays for Judgment against the Defendants as follows:

FIRST CAUSE OF ACTION

1. For judgment in the amount of the damages and necessary repairs to the real and personal property and structures owned by Plaintiff's insured, damaged by Defendants in the amount of not less than \$20,956.87.

2. Interest under U.C.A. §15-1-1(2) at 2.29% per annum.

3. Court costs and any such other and further relief as this Court may deem just and proper.

SECOND CAUSE OF ACTION

4. For judgment in the amount of the damages and necessary repairs to the real and personal property and structures owned by Plaintiff's insured, damaged by Defendants in the amount of not less than \$20,956.87.

5. Interest under U.C.A. §15-1-1(2) at 2.29% per annum.

6. Court costs and any such other and further relief as this Court may deem just and proper.

THIRD CAUSE OF ACTION

7. For a determination and order of the rights, responsibilities, duties, liabilities, and obligations as it pertains to the Defendants and the responsibilities in starting a fire, monitoring the fire, extinguishing the fire, and not allowing the fire to spread and cause damages.

8. For a determination and order of the rights and responsibilities and duties of Defendants as it pertains to the requirements in avoiding damage to real and personal property and structures resulting from their burn.

9. For a determination and order as to the liability of Defendants and their agents herein and as to their duties in avoiding damaging property owned and insured by of Plaintiffs.

10. For a determination and order as to the the rights and obligations, if any, and the rights and obligations, agreements, contracts, and/or responsibilities of Defendants and their other employees, subcontractors, agents, and/or representatives

as it pertains to the burning of weeds and debris on the property and allowing the fire to spread to the property of others causing damages.

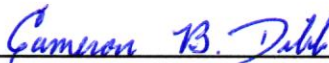
11. That the above Court should declare and order the appropriate responsibility, negligence and/or liability of Defendants, or such individuals as to the responsibility and liability to the Plaintiffs for the damages incurred herein and that the Defendants owe the sum of \$20,956.87 for the value of labor, services and materials to Plaintiff to repair, remedy or replace the damaged property of Plaintiff's insured.

12. Prejudgment interest at 2.29% per annum pursuant to U.C.A. §15-1-4(3)(a) from the date of loss to the date of judgment.

13. Court costs and any such other and further relief as this Court may deem just and proper.

Dated this 20th day of January, 2022.

DUFFIN & DIBB, P.C.



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Plaintiff's Address:
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File No. 738536 (Riding)