

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

Edward "Solly" Danks, Sr., and	)	
Georgiana Danks, as Land Owners	)	CIV. NO. 1:18-cv-00186-CSM
	)	
Plaintiffs,	)	
	)	
-vs-	)	
	)	
	)	
Slawson Exploration Company, Inc., &	)	
White Butte Oil Operations, LLC,	)	
	)	
Defendants.	)	

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**SECOND AMENDED COMPLAINT  
FOR MORE DEFINITE STATEMENT**

COMES NOW Plaintiffs, Edward "Solly Danks, Sr. and Georgiana Danks through counsel, Don Bruce, Belcourt Law Office, Belcourt, North Dakota, 58316, and file their Amended Complaint For a More Definite Statement against Defendants:

**INTRODUCTION**

This is the second amended complaint filed by Plaintiffs seeking money damages for an oil spill caused by Defendants, while operating their oil wells on Plaintiffs' land. The oil spill caused damages to Plaintiffs' surface area, and also contaminated Plaintiffs' water in a creek used to water livestock.

**JURISDICTION**

1. The Court can take jurisdiction over this matter pursuant to N.D.C.C. ch. 38-11.1, *et seq.*, 28 U.S. Code § 1652, and 33 U.S.C. § 2702 (Oil Pollution Act, OPA). The district courts

shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. 28 U.S. Code § 1331. The district courts shall have jurisdiction pursuant to 28 U.S. Code § 1331, because this cause presents a federal question. Defendants have minimal contacts within the State and the Court can assume jurisdiction under *International Shoe Co. v. Washington*, 326 U.S. 310 (1945);

### **VENUE**

2. The district courts shall have venue generally pursuant to 28 U.S.C. § 1391 (a)(2).
3. Venue is appropriate in the Federal District Court pursuant to 28 U.S. Code § 1332 (a)(1), as Plaintiffs allege diversity of the parties and the damages in controversy are \$75,000.00 or greater.

### **FACTS FOR ALL COUNTS**

4. Plaintiffs incorporate the paragraphs 3-8 from the Complaint, dated September 11, 2018.
5. Plaintiffs incorporate the paragraphs 3-14 from the [first] Amended Complaint, dated October 21, 2019.
6. Defendants' oil spill was in violation of N.D.C.C. ch. 38-11.1, and Plaintiffs make their definite statement of a claim for money damages pursuant to N.D.C.C. ch. 38-11.1.

### **FACTS ON COUNT THREE**

7. Plaintiffs allege the oil spill occurred right on top of the banks of a creek, which is used for Plaintiffs' water supply for their livestock.
8. Plaintiffs allege the oil spill contaminated the creek water.
9. Plaintiffs allege the water from this creek flows into the Missouri River, or Lake Sakakawea, which are both navigable water ways under the controlled of the federal

government.

10. Allegations of an alleged oil spill seeping into navigable waters presents a federal question under 28 U.S. Code § 1331.
11. Plaintiffs allege they had to move some cattle out of area where the oil spill contaminated the creek water.

### **COUNT I**

#### **DAMAGES**

1. Plaintiffs incorporate by reference as if completely stated herein the allegations contained in paragraphs 4 through 9.
2. Defendants caused an oil spill on the surface of Plaintiffs' property and Plaintiffs seek recovery for damages under NDCC ch. 38-11.1.

### **COUNT II**

#### **DIVERSITY**

1. There is real diversity of the parties pursuant to 28 U.S.C. § 1392 (a)(1)
2. There is an actual controversy between Plaintiffs and Defendants, who's headquarters or home office is located in a state other than North Dakota.
3. Plaintiffs seek a judgment for money damages from the Court because of Defendants' oil spill happened on surface and money damages for contamination of Plaintiffs' creek water.
4. The property damaged by the oil spill is located within the State.

### **COUNT III**

#### **ENFORCEMENT OF NDCC ch. 38-11.1**

1. Plaintiffs seek to have the Court to enforce NDCC ch. 38-11.1 pursuant to 28 U.S.

Code § 1652, which provides:

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

2. Because the Court is required to enforce state laws where applicable, Plaintiffs demand judgment under to 28 U.S. Code § 1652, and NDCC ch. 38-11.1.
3. Again for the time being, Plaintiffs arrived at damage dollar amount according to the standard applied in 33 U.S.C. § 2702 (OPA).
4. As Judge Miller points out in footnote # 5, Defendants' consultant's report fails to provide any evidence.
5. Plaintiffs argue Defendants' consultant intentionally did not collect any evidence.
6. Plaintiffs argue Defendants did not want any evidence because it was Defendants intent not to inform Plaintiffs of the oil spill at all.
7. Currently it will be difficult to assess damages because there appears to be no apparent evidence behind at the oil spill site, because Defendants spoiled all of the evidence before Plaintiffs had an opportunity to make an assessment of the damages.
8. When the time comes, there are other means to assess damages through experts making a thorough investigation in the of spill.
9. Plaintiffs have make a claim from what factual evidence is available, and make a demand for damages from what evidence and information that is available after Defendants spoiled all of existing evidence after the oil spill.

**COUNT IV**

1. Plaintiffs make a claim for civil trespass or for nuisance whereby Defendants negligently allowed an oil spill on Plaintiffs' property.
2. Defendants had a legal duty to prevent an oil spill on Plaintiffs' land pursuant to the N.D.C.C. ch. 38-11.1, and OPA.
3. After lawful entry to a property, a licensee may act outside of his or her license by performing or failing to perform actions not stipulated within the agreement. *Bond v Kelly*, (1873).
4. The Supreme Court for North Dakota as recently as 2015 held:

We have previously defined civil trespass as occurring “where a person ‘intentionally and without a consensual or other privilege . . . enters land in possession of another or any part thereof or causes a thing or third person so to do.’”

*Tibert v. Slominski*, 2005 ND 34, ¶ 15, 692 N.W.2d 133.

**WHEREFORE**, Plaintiffs prays as follows:

1. Plaintiffs respectfully requests a trial by jury in this matter.
2. The Court take jurisdiction over this cause.
3. The Court award Plaintiffs damages pursuant to N.D.C.C. ch. 38-11.1, and enforcement pursuant to 28 U.S. Code § 1652.
4. For such other and further relief as the Court deems appropriate, just and equitable.

Dated January 28, 2020.

RESPECTFULLY SUBMITTED,  
FOR PLAINTIFFS:

/S/ Don Bruce

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#### SERVICE OF PROCESS

Defendants will receive serves electronically through their attorney when this document is e-filed with the court.