

CAUSE NO. 14001161-W-272

FILED
At 12:08 o'clock
MAY 02 2014
MARC HALLAM, DIST. CLERK
Brazos County, Texas

UNION PACIFIC RAILROAD COMPANY,
Plaintiff,

IN THE DISTRICT COURT
OF BRAZOS COUNTY, TEXAS

VS.

FIBERLIGHT LLC, Defendant.

____ JUDICIAL DISTRICT

Union Pacific Railroad Company's Original Petition & Application for Temporary Restraining Order, for Temporary Injunction, for Permanent Injunction and Request for Disclosures

Plaintiff, Union Pacific Railroad Company ("Union Pacific"), files this original petition and application for injunctive relief. Union Pacific asks the Court to enter an ex parte temporary restraining order that Defendant, FiberLight LLC ("FiberLight"), cease, desist, and refrain from installing any facilities, including fiber optic lines, along, on, across, over, or under Union Pacific railroad tracks and/or right-of-way at any location within Brazos County, unless FiberLight has executed an easement, license, or other agreement with Union Pacific for the specific installation at that location and has provided all notices required by that agreement.

On April 30, 2014 Union Pacific learned from a third party of FiberLight's intent to install fiber optic lines under Union Pacific's railroad tracks and right-of-way near East 26th Street and South Tabor Avenue in Bryan, Texas. Union Pacific confirmed this intent and notified FiberLight personnel that they were required to vacate the right-of-way until they secured Union Pacific's permission. FiberLight personnel stopped their activities the evening of April 30, only to return after midnight on May 1 to resume. Union Pacific police detected this trespass and called Bryan police to the scene. FiberLight personnel again departed, but only temporarily.

On May 1, Union Pacific contacted FiberLight's Vice President and General Counsel, and objected that FiberLight did not have the legal right to enter Union Pacific's right-of-way

and that the lack of notice to Union Pacific presented a grave risk of harm to FiberLight's personnel, Union Pacific's personnel, and the public. Union Pacific offered to expedite negotiations for an agreement and explained that 10 days' notice was required to secure the necessary railroad flagman. FiberLight's Vice President represented that FiberLight wanted to work with Union Pacific to negotiate a written agreement.

Within a few hours of the parties' telephone conference, and without any agreement in place or any notice to Union Pacific, FiberLight had again returned to the scene and completed its installation of fiber optic cable under the Union Pacific right-of-way and tracks near East 26th Street and South Tabor Avenue. Union Pacific has been informed by third parties of FiberLight's intention to complete additional installations under railroad tracks in other locations throughout Brazos County as soon as May 2 and continuing through the weekend of May 3 and 4.

Union Pacific requests the immediate entry of an ex parte temporary restraining order. FiberLight's project manager, General Counsel, and outside lawyer are all on notice of Union Pacific's legal position and safety concerns. FiberLight's conduct – tunneling under railroad tracks in the middle of the night in the face Union Pacific's objections and serious safety concerns – demonstrates a blatant disregard for human health and safety and the rule of law. In the time it would take to provide notice of a hearing, FiberLight would certainly expedite its construction activities and continue to trespass on railroad property in order to meet its tight schedule with its clients. See email from Tony Cash, General Counsel of FiberLight, to Sue Ayers, outside counsel to Union Pacific, attached as Exhibit D.

DISCOVERY CONTROL PLAN

Union Pacific intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3. Union Pacific affirmatively pleads that it seeks injunctive relief.

PARTIES

Plaintiff, Union Pacific Railroad Company, is a Delaware Corporation, doing business in Harris County, Texas at 1001 McKinney, Suite 900, Houston, Texas 77002.

Defendant, FiberLight LLC, a foreign corporation organized and existing under the laws of Delaware, whose principal office is located in Alpharetta, Georgia, is authorized to do business in Texas and may be served with process by serving Tony Cash, Senior Vice President and General Counsel, 11700 Great Oaks Way, Suite 100, Alpharetta, Georgia 30022 and/or by serving its registered agent for service of process CT Corporation at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

VENUE

Venue is mandatory in Brazos County under Texas Civil Practice & Remedies Code section 15.011 because this suit is for damages to real property and this is the county where all of the property is located. Venue is also proper in Brazos County under Texas Civil Practice & Remedies Code section 15.002 because all or a substantial part of the events or omissions giving rise to the claims occurred in Brazos County.

FACTS

Union Pacific attaches the following affidavits to prove the allegations in this application for injunctive relief and incorporates them by reference: (1) Affidavit of Lieutenant James Cliff Mayton Jr. of the Union Pacific Railroad Police, Houston Division, attached as Exhibit A; (2) Affidavit of Senior Special Agent-Investigator Berwin Arceneaux, Union Pacific Railroad Police

Department, attached as Exhibit B, and (3) Affidavit of David S. Gitlitz, Manager of Track Maintenance, Union Pacific Railroad, attached as Exhibit C.

On April 30, 2014 at 5:40 p.m. Union Pacific Manager of Track Maintenance (“MTM”) David Gitlitz received notice that FiberLight was preparing to bore underneath the railroad track at mile post 99.77 (St.) on the Bryan Subdivision and had their representatives standing on and working foul of the main line at this location. Ex. C ¶4. MTM Gitlitz called Rick Jackson, who he believed to be the manager of the FiberLight boring operation. Ex. C ¶¶5, 6. MTM Gitlitz informed Mr. Jackson that he was the Manager of Track Maintenance for the area in which FiberLight was working. Ex. C ¶6.

MTM Gitlitz informed Mr. Jackson that *if* he had permission to work in the right-of-way he was required to provide 10 days’ advance notice to the Manager of Track Maintenance and MTM Gitlitz had not received any prior notification for this location. Ex. C ¶7.

MTM Gitlitz asked how far FiberLight was working from the track or the nearest rail. Ex., C ¶8. Mr. Jackson turned over the call to a man who identified himself to MTM Gitlitz as the “inspector” on the job. *Id.* The “inspector” told MTM Gitlitz that they were working within 16’ of the nearest rail. *Id.* MTM Gitlitz explained that no one could work within 25’ of the track (nearest rail) without a railroad flagman present. Ex. C ¶9.

Approximately an hour later, Lieutenant Cliff Mayton of the Union Pacific Police Department spoke with FiberLight site supervisor James Sartor by cell phone. Ex. A at ¶4. Mr. Sartor stated that he was the onsite supervisor for FiberLight, the company that planned to be drilling under Union Pacific's mainline in Bryan, Texas. *Id.*

Lieutenant Mayton advised Mr. Sartor of his position within the Union Pacific Police Department and also provided Mr. Sartor with his name and cell phone number. Ex. A ¶5.

Lieutenant Mayton advised Mr. Sartor that he had been contacted by Union Pacific's real estate department and told that FiberLight did not have the proper authority to drill under Union Pacific's tracks in Bryan, Texas. Ex. A ¶6. Lieutenant Mayton went on to tell Mr. Sartor that if he or any of his employees entered onto or drilled under Union Pacific tracks they would be considered trespassing on Union Pacific property. *Id.*

Mr. Sartor advised that FiberLight's attorney had been in communication with Union Pacific's attorney and had been given authority to work in Bryan, Texas on Union Pacific's property up to and including drilling under Union Pacific's tracks. Ex. A ¶7.

Lieutenant Mayton told Mr. Sartor that no such authority had been given and that no drilling should occur and reiterated to him that if it did occur he and his employees were trespassing and could further cause a serious safety issue for themselves, Union Pacific, and the general public. Ex. A ¶8.

Mr. Sartor advised that he would contact FiberLight's legal counsel and assured Lieutenant Mayton that no drilling would occur until after FiberLight's attorney and Union Pacific's attorney had an agreement in place. Ex. A ¶9.

At approximately 12:30 a.m. on May 1, Senior Special Agent-Investigator Berwin Arceneaux responded to the railroad crossing at Mile Post 99.77, Bryan Subdivision, in Bryan, Texas. Ex. B ¶4. Special Agent Arceneaux met with James Ray Sartor, of FiberLight. *Id.* Special Agent Arceneaux observed drilling equipment already in use on both sides of the Union Pacific right-of-way. *Id.* There were no Union Pacific flagmen at the scene. *Id.* Mr. Sartor stated that he was told by his supervisor to commence drilling under the tracks. *Id.*

Mr. Sartor told Special Agent Arceneaux that he had started drilling at approximately 5:30 p.m. on April 30, 2014. Ex. B ¶5. Mr. Sartor also stated that he had been contacted by

Lieutenant Mayton of the Union Pacific Police Department, and warned not to drill. Ex. B ¶8
Lt. Mayton later confirmed to Special Agent Arceneaux that he spoke to Mr. Sartor at 6:46 p.m.
on April 30. *Id.*

Mr. Sartor told Special Agent Arceneaux that drilling operations were complete, and
equipment was in the process of being removed from the ground. *Id.* Special Agent Arceneaux
instructed Mr. Sartor to cease drilling operations and remove all equipment above ground. *Id.*
Mr. Sartor called his supervisor while at the scene, who stated that he would contact Bryan
Police Department for assistance. *Id.* Special Agent Arceneaux also made contact with Bryan
Police Department Dispatch, and requested assistance. *Id.*

At approximately 1:00 a.m. on May 1, Officer Laughlin, Bryan Police Department,
arrived, and was given details regarding the incident. Ex. B ¶7. Special Agent Arceneaux told
Officer Laughlin that any drilling operations on Union Pacific property could potentially disrupt
communications and cause undue damage. *Id.* Officer Laughlin agreed to provide any
assistance and left the scene. *Id.*

Mr. Sartor eventually complied, and all equipment was shut down, piping left in the
ground, and all other equipment excluding a trencher, was removed from the scene. Ex. B ¶9.

The entry point of the drill is located approximately 20-25 feet east of the center of the
railroad tracks, extending underground westward, along Street, and exiting above ground
approximately 150 feet west of the center of the tracks. Ex. B ¶6.

Special Agent Arceneaux contacted Union Pacific Response Management
Communications Center and requested that train traffic be stopped until a Union Pacific Track
Inspector could respond and inspect for damage. Ex. B ¶10. The Bryan Subdivision dispatcher

indicated that he would be holding a train at Hearne until the track could be inspected and deemed safe to resume operations. Ex. C ¶10.

Union Pacific Manager of Track Maintenance David Gitlitz contacted Special Agent Arceneaux and advised that he would be responding. *Id.* MTM Gitlitz responded to the scene at approximately 5:00 a.m. on May 1, inspected the tracks and found no damage. Ex. B ¶11; Ex. C ¶11. MTM Gitlitz stayed at this location until approximately 8:30 a.m. Ex. C ¶12.

On May 1 at 10:00 a.m., a conference call was conducted between FiberLight and Union Pacific. FiberLight's Vice President/General Counsel, employees, and outside counsel talked to members of Union Pacific's legal department and outside counsel. The tenor of the conversation was professional and the parties appeared to concur that they should work toward a form of agreement that could be used in locations throughout Texas. Union Pacific communicated that even with an agreement in place, 10 days' notice was required to commence work at any location. Previous negotiations on the terms of an agreement had stalled, but Union Pacific's lawyer emailed a proposed agreement to FiberLight's general counsel and all participants of the earlier call at 4:00 p.m. the same day. This draft agreement incorporated many of the changes FiberLight had proposed in the past.

In the meantime, FiberLight had already dispatched its personnel to return to Mile Post 99.77 near Street to complete their installation of fiber optic wires. At 12:27 p.m. MTM Gitlitz received a phone call from Michael Argo with Union Pacific, who told him that FiberLight was back on the Bryan Subdivision at mile post 99.77 completing their bore. Ex. C ¶12. MTM Gitlitz arrived at approximately 12:35 p.m. to find that FiberLight personnel had completed the bore, were cleaning the work site and loading equipment. Ex. C ¶12.

There are a number of other utilities who have agreements with Union Pacific for underground facilities in Bryan. They have received "One Call" notification of FiberLight's intentions to continue these types of construction activities at other railroad crossings in Brazos County (and other counties) during the next three days. For that reason Union Pacific respectfully requests an immediate ex parte temporary restraining order.

FiberLight's conduct endangers its employees and contractors who are working on and near the railroad tracks without notice to Union Pacific and without the benefit of the required railroad flagmen. Unbelievably, FiberLight has apparently instructed its personnel to work in the middle of the night so as to evade detection while working on live railroad tracks. FiberLight is endangering Union Pacific personnel and the general public. Union Pacific's own communications facilities – such as the lines that trigger gates and flashing lights at crossings – are underground within the railroad right-of-way. If FiberLight's secret operations result in damage to Union Pacific equipment, it could result in a derailment or the failure of safety warning devices that prevent people and vehicles from entering the railroad tracks when a train approaches.

Cause of Action: Trespass to Real Property

Union Pacific has constitutionally protected property rights in its right-of-way. For many decades, Texas courts have repeatedly held that even governmental entities - levee improvement districts, counties, and cities - seeking to enter railroad right-of-way to install public projects must pay just compensation. If they do not acquire an easement by negotiation, they must satisfy all the statutory requirements for condemning the property rights they need. *See e.g., Missouri Kansas & Tex. Ry. Co. of Tex. v. Rockwall County Levee Improvement Dist. No. 3*, 297 S.W. 206

(Tex. 1927). Thus, under federal law and Texas law, FiberLight's installations within Union Pacific right-of-way constitute a trespass and/or a taking without just compensation.

The elements of a cause of action for trespass to real property are present in this case: (1) Union Pacific owns or has a lawful right to possess real property; (2) FiberLight entered the real property, and the entry was: (a) physical; (b) intentional, and (c) voluntary, and (3) FiberLight's trespass caused injury to Union Pacific's right of possession. Union Pacific had to cease all train traffic for several hours on the night of May 1 in order to inspect the area of FiberLight's trespass and insure the structural integrity of those tracks. The amount of damages caused by that delay are unknown at this time. FiberLight's trespass is ongoing so long as FiberLight's fiber optic cable remains in the ground under Union Pacific's right-of-way and railroad tracks.

Union Pacific is entitled to, and seeks the following damages for trespass: (1) cost of restoration and repair, (2) loss of expected profits from the use of land, (3) lost business profits, (4) nominal damages, (5) exemplary damages, (6) injunctive relief, (7) pre-judgment interest, (8) post-judgment interest, (9) court costs, and (10) attorney fees.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

Union Pacific's application for a temporary restraining order is authorized by section 65.011 of the Texas Civil Practice & Remedies Code because (1) Union Pacific is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to Union Pacific, (2) Union Pacific is entitled to a writ of injunction under the principles of equity and the statutes of this state relating to injunctions, and (3) irreparable injury to real or personal property is threatened, irrespective of any remedy at law.

Union Pacific asks the Court to order that FiberLight LLC cease, desist, and refrain from installing any facilities, including fiber optic cables, along, on, across, over, or under Union

Pacific railroad tracks and/or right-of-way at any location within Brazos County, unless FiberLight has executed an easement, license, or other agreement with Union Pacific for the specific installation at that location and has provided all notices required by that agreement.

It is probable that Union Pacific will recover from FiberLight after a trial on the merits because Union Pacific has constitutionally protected property rights that FiberLight has invaded without permission, excuse, or legal right and without paying just compensation.

If Union Pacific's application is not granted, harm is imminent because FiberLight intends to install additional fiber optic cable underneath Union Pacific tracks and right-of-way immediately, without notice to Union Pacific, without flagmen, in the dark of night and in unknown locations throughout Brazos County.

The harm that will result if the temporary restraining order is not issued is irreparable because damages are not presently ascertainable or easily calculated. FiberLight's activities increase the risk of derailment, a collision between a train and FiberLight's equipment or personnel, and the failure of safety warning devices at grade crossings. Any of these events would be catastrophic, causing serious personal injury or even death to FiberLight's employees, Union Pacific's employees, or the public.

Union Pacific has no adequate remedy at law because at the present time, damages are incalculable. Damage to the integrity of the railroad could cause derailment; it is impossible to measure the potential damages, which would depend on the extent of the physical damage, location, proximity to habitable structures, contents of the railcars, etc.

Union Pacific is willing to post bond.

There is not enough time to serve notice on FiberLight and to hold a hearing on this application. On April 30, Union Pacific Police ejected FiberLight from the railroad right-of-way.

FiberLight responded by sneaking out to finish the job after midnight. Union Pacific lawyers conferred with FiberLight's lawyers, who expressed an intent to cooperate and seek agreement, then immediately instructed their personnel to finish the installation as quickly as possible. Union Pacific has been informed that FiberLight intends to complete additional installations in Brazos County in the next 72 hours.

REQUEST FOR TEMPORARY INJUNCTION

Union Pacific asks the Court to set its application for temporary injunction for a hearing in 14 days and, after the hearing, issue a temporary injunction against FiberLight. Union Pacific has joined all indispensable parties under Texas Rule of Civil Procedure 39.

REQUEST FOR PERMANENT INJUNCTION

Union Pacific asks the Court to set its request for a permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against FiberLight.

CONDITIONS PRECEDENT

All conditions precedent to Union Pacific's claim for relief have been performed or have occurred.

REQUEST FOR DISCLOSURE

Under Texas Rule of Civil Procedure 194, Union Pacific requests that FiberLight disclose, within 50 days of the service of this request, the information or material described in Rule 194.2

PRAYER

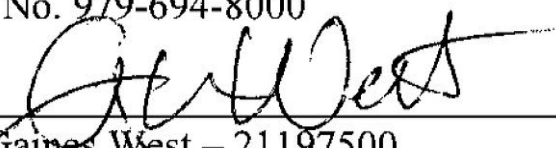
For these reasons, Union Pacific asks that FiberLight be cited to appear and answer and, on final trial, that Union Pacific be awarded a judgment against defendant for the following:

- a. Temporary restraining order;

- b. Temporary injunction;
- c. Permanent injunction;
- d. Actual damages;
- e. Prejudgment and postjudgment interest;
- f. Court costs;
- g. All other relief to which Union Pacific is entitled.

Respectfully submitted,

WEST, WEBB, ALLBRITTON &
GENTRY
1515 Emerald Plaza
College Station, Texas 77845
979-694-7000
Fax No. 979-694-8000

By: 
Gaines West – 21197500
gaines.west@westwebblaw.com

JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
512-236-2000
Fax No. 512-236-2002

By: /s/ Susan Dillon Ayers
Susan Dillon Ayers – 24028302
sayers@jw.com
Noah Mark Galton – 24078531
ngalton@jw.com

ATTORNEYS FOR PLAINTIFF
UNION PACIFIC RAILROAD COMPANY

CERTIFICATE OF SERVICE

This is to certify that on the 2 day of May, 2014, a true and correct copy of the foregoing document was served upon FiberLight LLC:

Via Email

Tony Cash
Senior Vice President and General Counsel
11700 Great Oaks Way, Suite 100
Alpharetta, Georgia 30022

Via Email

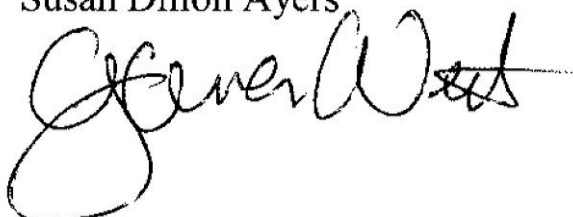
Amy Leila Saberian
Enoch Kever PLLC
One American Center
600 Congress Ave., Suite 2800
Austin, TX 78701

Via Certified Mail RRR

CT Corporation
1999 Bryan St., Ste. 900
Dallas, Texas 75201-3136

/s/ Susan Dillon Ayers

Susan Dillon Ayers

A handwritten signature in black ink, appearing to read "Susan Dillon Ayers", written over a horizontal line.

CAUSE NO. _____

UNION PACIFIC RAILROAD COMPANY,
Plaintiff,

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IN THE DISTRICT COURT
OF BRAZOS COUNTY, TEXAS

VS.

FIBERLIGHT LLC, Defendant.

____ JUDICIAL DISTRICT

VERIFICATION

STATE OF TEXAS


§
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§

COUNTY OF HARRIS

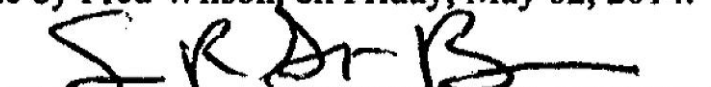
BEFORE ME, the undersigned authority, on this day personally appeared Fred Wilson, who after being by me duly sworn upon his oath, stated the following:

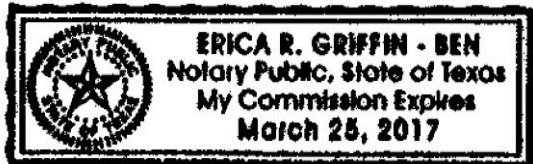
1. "My name is Fred Wilson. I am a Senior General Attorney in the Southern Region with Union Pacific Railroad Company.
2. I am over eighteen (18) years of age and I am fully competent, qualified, and authorized to make this Verification.
3. I have read Union Pacific's Original Petition & Application for Temporary Restraining Order, for Temporary Injunction, for Permanent Injunction. I have personal knowledge of the facts relating to contact and negotiations with FiberLight's General Counsel and outside counsel. Specifically, the following paragraph appears in the Petition. All of the facts stated in this paragraph are within my personal knowledge, are true and correct.
4. On May 1 at 10:00 a.m., a conference call was conducted between FiberLight and Union Pacific. FiberLight's Vice President/General Counsel, employees, and outside counsel talked to members of Union Pacific's legal department and outside counsel. The tenor of the conversation was professional and the parties appeared to concur that they should work toward a form of agreement that could be used in locations throughout Texas. Union Pacific communicated that even with an agreement in place, 10 days' notice was required to commence work at any location. Previous negotiations on the terms of an agreement had stalled, but Union Pacific's lawyer emailed a proposed agreement to FiberLight's general counsel and all participants of the earlier call at 4:00 p.m. the same day. This draft agreement incorporated many of the changes FiberLight had proposed in the past.

5. Further, Affiant sayeth not."


Fred Wilson

SUBSCRIBED AND SWORN TO before me by Fred Wilson, on Friday, May 02, 2014.


Notary Public - State of Texas



CAUSE NO. _____

UNION PACIFIC RAILROAD COMPANY,
Plaintiff,

VS.

FIBERLIGHT LLC, Defendant.

§ IN THE DISTRICT COURT
§
§ OF BRAZOS COUNTY, TEXAS
§
§
§ _____ JUDICIAL DISTRICT

AFFIDAVIT OF JAMES CLIFF MAYTON, JR.

STATE OF TEXAS §
§
COUNTY OF BRAZOS §



BEFORE ME, the undersigned authority, on this day personally appeared James Cliff Mayton, Jr., who after being by me duly sworn upon his oath, stated the following:

1. My name is James Cliff Mayton, Jr. I am a Lieutenant for the Union Pacific Railroad Police Department, Houston Division. I have served in the Union Pacific Police Department for 8 years.
2. I am over eighteen (18) years of age and I am fully competent, qualified, and authorized to make this Affidavit.
3. I have personal knowledge of all of the facts stated in this Affidavit and am in all respects qualified to make this affidavit. All of the facts set forth herein are true and correct.
4. On April 30, 2014, at 6:46 p.m. I spoke with FiberLight site supervisor JAMES SARTOR at cell number 214-837-6596. Mr. SARTOR stated that he was the onsite supervisor for FiberLight, the company that planned to be drilling under Union Pacific's mainline in Bryan, Texas.
5. I advised Mr. SARTOR of my position within the Union Pacific Police Department (Lieutenant). I also provided him with my name and cell phone number.
6. I advised MR. SARTOR that I had been contacted by Union Pacific's real estate department and told that FiberLight did not have the proper authority to drill under Union Pacific's tracks in Bryan, Texas. I went on to tell Mr. SARTOR that if he or any of his employees entered onto or drilled under Union Pacific tracks they would be considered to be trespassing on Union Pacific property.
7. Mr. SARTOR advised that FiberLight's attorney had been in communication with Union Pacific's attorney FRED WILSON and had been given authority to work in Bryan, Texas on

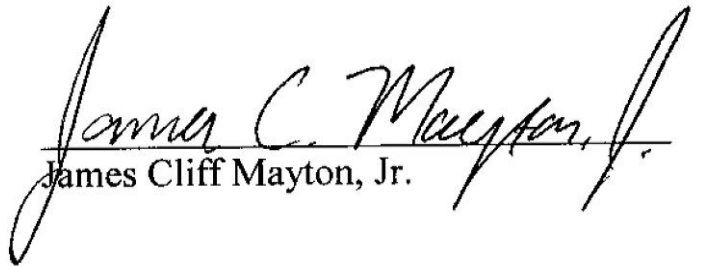
Union Pacific's property up to and including drilling under Union Pacific's tracks.

8. I told Mr. SARTOR that no such authority had been given and that no drilling should occur and reiterated to him that if it did occur he and his employees were trespassing and could further cause a serious safety issue for themselves, Union Pacific, and the general public.

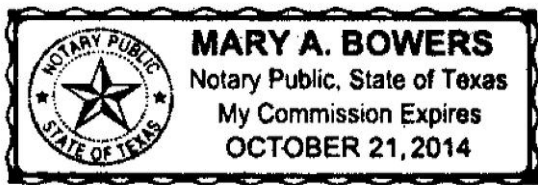
9. Mr. SARTOR advised that he would contact FiberLight's legal counsel and assured me that no drilling would occur until after FiberLight's attorney and Union Pacific's attorney had an agreement in place.

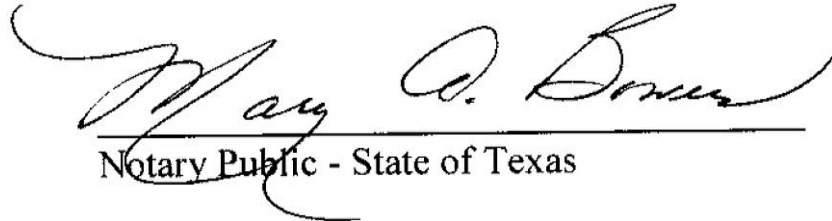
10. At this time we ended our conversation. I have had no further contact with Mr. SARTOR since this phone conversation ended.

11. Further, Affiant sayeth not.


James Cliff Mayton, Jr.

SUBSCRIBED AND SWORN TO before me by James Cliff Mayton, Jr., on Friday, May 02, 2014.




Notary Public - State of Texas

CAUSE NO. _____

UNION PACIFIC RAILROAD COMPANY,
Plaintiff,

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IN THE DISTRICT COURT
OF BRAZOS COUNTY, TEXAS

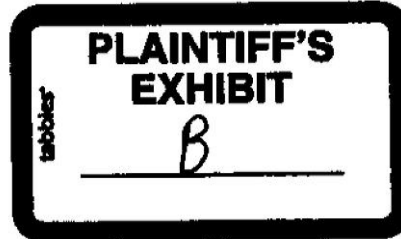
VS.

FIBERLIGHT LLC, Defendant.

____ JUDICIAL DISTRICT

AFFIDAVIT OF BERWIN ARCENEUX

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §



BEFORE ME, the undersigned authority, on this day personally appeared Berwin Arceneaux, who after being by me duly sworn upon his oath, stated the following:

1. My name is Berwin Arceneaux. I am a Senior Special Agent-Investigator for the Union Pacific Railroad Police Department, Houston Division. I have served in the Union Pacific Railroad Police Department for approximately seven (7) years.
2. I am over eighteen (18) years of age and I am fully competent, qualified, and authorized to make this Affidavit.
3. I have personal knowledge of all of the facts stated in this Affidavit and am in all respects qualified to make this affidavit. All of the facts set forth herein are true and correct.
4. At approximately 12:30 AM, on May 1, 2014, I responded to the crossing at Mile Post 99.77, Bryan Subdivision, in Bryan, Texas. I met with JAMES RAY SARTOR, of FiberLight. I observed drilling equipment already in use on both sides of the Union Pacific Right-of-Way. There were no Union Pacific Flagmen at the scene. SARTOR stated that he was told by his supervisor to commence drilling under the tracks.
5. SARTOR told me that he started drilling at approximately 5:30 PM, April 30, 2014. SARTOR stated that drilling operations were complete, and equipment was in the process of being removed from the ground. I instructed SARTOR to cease drilling operations and remove all equipment above ground. SARTOR called his supervisor while at the scene, who stated that he would contact Bryan Police Department for assistance. I also made contact with Bryan Police Department Dispatch, and requested assistance.
6. The entry point of the drill is located approximately 20-25 feet east of the center of the railroad tracks, extending underground westward, along 26th St, and exiting above ground approximately 150 feet west of the center of the tracks.

7. At approximately 1:00 AM, May 1, 2014, Officer LAUGHLIN, Bryan Police Department, arrived, and was given details regarding the incident. I told Officer LAUGHLIN that any drilling operations on Union Pacific property could potentially disrupt communications and cause undue damage. Officer LAUGHLIN agreed to provide any assistance and left the scene.

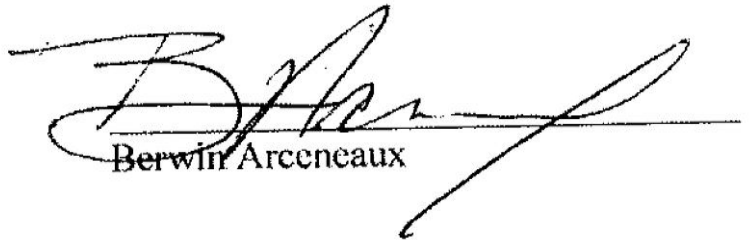
8. SARTOR asserted that he was contacted by Lieutenant MAYTON of the Union Pacific Police Department, and warned not to commence drilling. Lt. MAYTON confirmed that he spoke to SARTOR at 6:46 PM, April 30, 2014, over 1.5 hours after he started drilling, at 5:30 PM, April 30, 2014. SARTOR was not forthcoming about when he spoke with Lt. MAYTON.

9. SARTOR eventually complied, and all equipment was shut down, piping left in the ground, and all other equipment excluding a trencher, was removed from the scene.

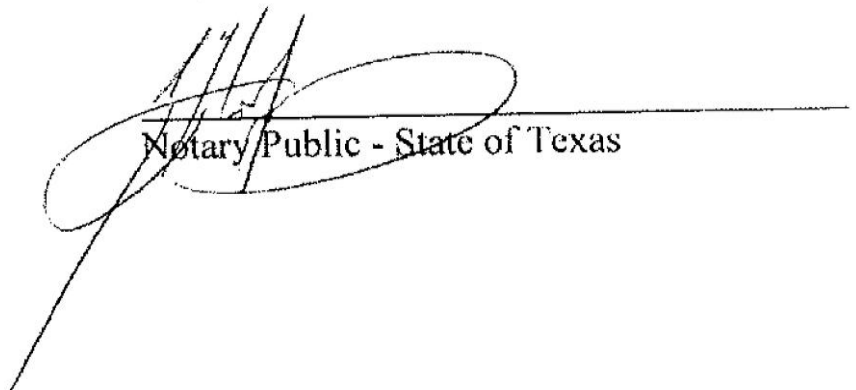
10. I contacted Union Pacific Response Management Communications Center and requested that train traffic be stopped until a Union Pacific Track Inspector could respond and inspect for damage. Union Pacific Manager of Track Maintenance DAVID GITLITZ contacted me and advised that he would be responding.

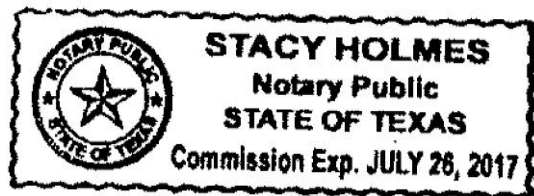
11. MTM GITLITZ responded to the scene at approximately 5:00 AM, May 1, 2014, inspected the tracks and found no damage.

12. Further, Affiant sayeth not.


Berwin Arceneaux

SUBSCRIBED AND SWORN TO before me by Berwin Arceneaux, on Thursday, May 01, 2014.


Notary Public - State of Texas



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CAUSE NO. _____

UNION PACIFIC RAILROAD COMPANY,
Plaintiff,

VS.

FIBERLIGHT LLC, Defendant.

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IN THE DISTRICT COURT
OF BRAZOS COUNTY, TEXAS
____ JUDICIAL DISTRICT

AFFIDAVIT OF DAVID S. GITLITZ

STATE OF TEXAS §
COUNTY OF BRAZOS §



BEFORE ME, the undersigned authority, on this day personally appeared David S. Gitlitz, who after being by me duly sworn upon his oath, stated the following:

1. My name is David S. Gitlitz. I am a Manager of Track Maintenance for the Union Pacific Railroad Company.
2. I am over eighteen (18) years of age and I am fully competent, qualified, and authorized to make this Affidavit.
3. I have personal knowledge of all of the facts stated in this Affidavit and am in all respects qualified to make this affidavit. All of the facts set forth herein are true and correct.
4. On April 30, 2014 at approximately 5:40 PM, Michael Argo, TCA Service Supervisor (Union Pacific) called to inform me that Fiber Light was pot holing fiber and preparing to bore underneath our track at mile post 99.77 (26th St.) on the Bryan Subdivision and had their representatives standing on and working foul of the main line at this location.
5. Michael Argo then gave me the name and phone number (214-837-6596) of Rick Jackson with Phoenix stating he was the supervisor on site.
6. I then called Rick Jackson with Phoenix at 214-837-6596. I informed Rick that I was David Gitlitz with Union Pacific Railroad, the Manager of Track Maintenance for the area in which he was working.
7. I asked Rick Jackson if he had a right of entry which he informed me that he did, I then told him that he is required to make notification to the Manager of Track Maintenance and MSM 10 days prior to their work starting and that I did not receive any prior notification for this location. I then explained to him that I did not believe his right of entry was valid and he was trying to use some sort of loop hole to complete this bore without notifying the railroad.

8. I then asked Rick how far he was working from the track or the nearest rail to his present location. Rick then put me on the phone with a man who identified himself as the inspector on the job. I asked him the same question: how far he was working from the track or the nearest rail to his present location, after some estimations on his part he finally told me that they were working 16' from the nearest rail.

9. At that point I explained to him that they cannot be within 25' of the track (nearest rail) without a railroad flagman present while they are working. He then stated that that they would move to a point beyond the orange fence which was 30' from the track.

10. On May 1, 2014 at approximately 3:20 AM the Bryan Subdivision dispatcher called and stated that Special Agent Arceneaux was at this location and had stopped the boring operation under our main line and Response Management Communications Center was requesting that the track be inspected to insure this operation had not affected the stability of our main line. He also stated that he would be holding a train at Hearne until track was inspected and deemed safe to resume operations.

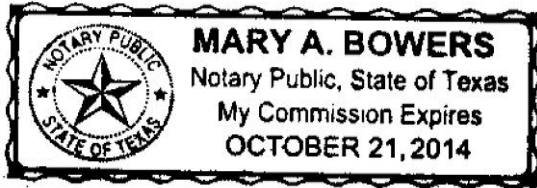
11. I arrived at approximately 5:10 AM. After inspecting the track, I found no track damage and returned the track to service.


12. I stayed at this location until approximately 8:30 AM. At 12:27 PM Michael Argo called me and informed me that Fiber Light was back on the Bryan Subdivision at mile post 99.77 completing their bore. I arrived at approximately 12:35 PM to find that all work around the track had been completed and cleaning up job site and loading equipment and materials was taking place.

13. Further, Affiant sayeth not.


David S. Gitlitz

SUBSCRIBED AND SWORN TO before me by David S. Gitlitz on this 2nd day of May, 2014.




Notary Public - State of Texas

Tony Cash <tony.cash@fiberlight.com>

Wednesday, April 30, 2014 6:33 PM

Ayers, Sue

Fred S. Wilson; Randall Covard; asaberian@enochkever.com; Carla Hicks;

dthomas@eagle1resources.com; Madeline E. Roebke; Chuck Beck; Kimberly Roholt

Re: Fiberlight - activity near Bryan, Texas

Fred's call to me this afternoon, I asked Chuck Beck, our local Project Manager, to call Fred and pro-
nces that we had located other facilities in the area and that we could perform the bore safely. Chuck
a contractor to ultrasound the area to avoid any cable cuts. Chuck told me that he provided 72 hours
to UP and was performing the bore late at night at the City of Bryan's request (due to high traffic in
We have executed the UP crossing agreement with minor modifications as we were asked to do, how-
s not returned a signed copy. I can only take that to mean that it has not been executed by UP. I have
a word from anyone at UP since our call and it was my understanding that someone was going to tra-
that agreement and provide UP's position. FiberLight is under a tight schedule with Verizon Wireless
d can ill afford to be delayed in its fiber deployment. We are willing to work this out for future cross-
demonstrates a sense of urgency about doing so. The crossing tonight is set and we are absolutely sa-
l safety issues have been addressed. Please set up a call to discuss tomorrow and we will attempt to
ttled.

you,

from my iPad

pr 30, 2014, at 6:37 PM, "Ayers, Sue" <sayers@jw.com> wrote:



Mr. Cash:

I was on the call with you and Fred Wilson on April 17. At the conclusion of that call, I expected
FiberLight and UPRR to reach agreement on the notices, procedures, protocols and agreements
that would be used for all proposed FiberLight installations within UPRR right-of-way in the
future. Just today, UPRR received notice from its third party customer that FiberLight intended
to commence an installation this evening within UPRR right-of-way in the Bryan-College
Station area, in Brazos County. Fred Wilson has now confirmed that this information is accurate.
The FiberLight project manager explained the project to Fred in great detail. This is completely
unacceptable.

I am writing now to demand that FiberLight immediately cease all activity within Union Pacific
right-of-way in Brazos County. Please provide your personal guarantee that you will comply
with this demand.

I propose that we convene a phone call at the very earliest opportunity to determine the manner
in which FiberLight will provide the requisite notices, information and assurances to UPRR in
advance of any future installations within UPRR right-of-way.

In the alternative I am prepared to seek injunctive relief against FiberLight in District Court.

Regards, Sue

Sue Ayers

Partner

Jackson Walker L.L.P.

100 Congress Avenue Suite 1100

Austin, TX 78701

O: (512) 236-2336

F: (512) 691-4433

M: (512) 658-5105

sayers@jw.com

www.jw.com

<image001.gif>

<image002.gif>

From: Fred S. Wilson [<mailto:FREDWILSON@UP.COM>]

Sent: Wednesday, April 30, 2014 4:51 PM

To: tony.cash@fiberlight.com; randall.covard@fiberlight.com; asaberian@enochkever.com;

Carla.Hicks@fiberlight.com; dthomas@eagle1resources.com

Cc: Madeline E. Roebke; Ayers, Sue

Subject: Fiberlight - activity near Bryan, Texas

Tony:

Thank you for returning my call. As I stated Union Pacific has been advised that there is a plan to bore under the railroad right of way near Bryan, Texas. The information came from third-party customers concerned about their own utilities at the crossing. My real estate department has no record of an application or agreement for this activity.

It is my understanding that you will make inquiries to determine what if any activity Fiberlight has scheduled in the area of Bryan-College Station, specifically near Mile Post 99.8 Bryan Subdivision. Note, to the extent this activity improperly encroaches on the railroad right of way I am asking that it be halted until such time that Union Pacific can properly prepare and protect for the activity, including protecting property and protecting against any Fiberlight personnel creating a dangerous condition for themselves or others.

Additionally, you have advised that you personally have sent a version of an agreement that you believe is workable where Fiberlight encroaches on Union Pacific property. I have not been able to track down this draft. As such you have agreed to forward the agreement again to my attention. Thank you.

Fred S. Wilson
Sr. General Attorney
Union Pacific Railroad Law Department
801 Louisiana, Suite 300
Houston, TX 77002
713-220-3224
713-220-3215 facsimile
fredwilson@up.com
**

This email and any attachments may contain information that is confidential and/or privileged for the sole use of the intended recipient. Any use, review, disclosure, copying, distribution or reliance by others, and any forwarding of this email or its contents, without the express permission of the sender is strictly prohibited by law. If you are not the intended recipient, please

contact the sender immediately, delete the e-mail and destroy all copies.

**

CAUSE NO. _____

UNION PACIFIC RAILROAD COMPANY,
Plaintiff,

VS.

FIBERLIGHT LLC, Defendant.

§ IN THE DISTRICT COURT
§
§ OF BRAZOS COUNTY, TEXAS
§
§
§ _____ JUDICIAL DISTRICT

**TEMPORARY RESTRAINING ORDER &
ORDER SETTING HEARING FOR PRELIMINARY INJUNCTION**

After considering Plaintiff, Union Pacific Railroad Company's application for temporary restraining order, the pleadings, the affidavits, and arguments of counsel, the Court finds there is evidence that harm is imminent to Plaintiff, and if the Court does not issue the temporary restraining order, that Plaintiff will be imminently and irreparably injured because FiberLight's activities have caused and will cause unscheduled train stoppages, trespass to railroad right-of-way, deprivation of constitutionally protected property rights and have the potential to cause catastrophic injury to people or real and personal property, and even death.

If Union Pacific Railroad Company's application is not granted, harm is imminent because FiberLight intends to continue its activities, boring under railroad tracks and right-of-way on May 2, 2014 and thereafter.

The harm that will result if the temporary restraining order is not issued is irreparable because Union Pacific Railroad Company's damages are not presently ascertainable or easily calculated. A collision or derailment could be catastrophic, causing serious personal injury or even death to employees, nearby landowners, the public traveling in Brazos County.

An ex parte order, without notice to Defendant, is necessary because there was not enough time to give notice to Defendant, hold a hearing, and issue a restraining order before the

irreparable injury, loss, or damage would occur. Specifically, Union Pacific learned of FiberLight's installation of fiber optic cable, ascertained the facts, and filed this action as soon as possible. Defendant could resume boring activities at any time, and is under no present constraint to wait to resume these dangerous activities.

Therefore, by this order, the Court does the following:

- a. Restrains the Defendant, FiberLight LLC and anyone acting in concert with FiberLight LLC, from installing any facilities, including fiber optic lines, along, on, across, over, or under Union Pacific railroad tracks and/or right-of-way at any location within Brazos County, unless FiberLight has executed an easement, license, or other agreement with Union Pacific for the specific installation at that location and has provided all notices required by that agreement.
- b. Orders the clerk to issue notice to Defendant, FiberLight LLC, that a hearing on Plaintiff's application for temporary injunction is set for _____, 2014 at _____ a.m. / p.m. The purpose of the hearing shall be to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits.
- c. Set bond at \$ _____.

This order expires at midnight on May ____, 2014.

SIGNED on May _____, 2014 at _____ a.m. / p.m.

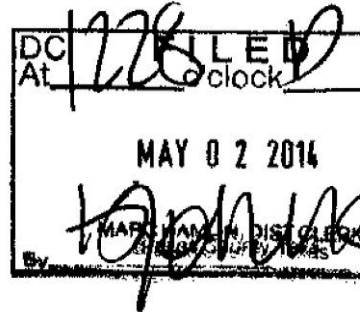
JUDGE PRESIDING

Brazos County



300 E. 26th St., Suite 216
Bryan TX 77803
(979) 361-4230-4240

Marc Hamlin
District Clerk



ISSUANCE OF PROCESS INSTRUCTIONS

Cause Number: 14-00116701-212

Please issue the following type of process:

- Citation Citation by Publication Citation by Posting
- Writ of Sequestration Writ of Garnishment Writ of Attachment
- Subpoena-Civil Subpoena-Criminal Bill of Cost

Requesting Party's Name, Address and Phone Number:
Gaines West, West Webb Allbritton & Gentry
1515 Emerald Plaza, College Station, Texas 77845
979-694-7000

Name and Address of person to be served:
SEE ATTACHED

Please check one:

- Attorney/Runner will pick up (Put in Runners Box)
- Process Server will pick up (Put in Runners Box)
- Mail to Attorney's Office/Requesting Party
- Forward to Sheriff's Office
- Serve by Certified Mail

The Brazos County District Clerk's Office cannot issue any process until the above information is provided and the correct fees have been paid.

CITATIONS (2) separate TO BE ISSUED AS FOLLOWS:

1. FiberLight LLC, Defendant
Through its agent for service of process: Tony Cash
Senior Vice President and General Counsel
11700 Great Oaks Way, Suite 100
Alpharetta, Georgia 30022

DC At *[Signature]* FILED
o'clock
MAY 02 2014
By *[Signature]*
MARCUS W. DISNEY
CLERK OF COURT

2. FiberLight LLC, Defendant
By and through its registered agent for service of process
CT Corporation
1999 Bryan St., Ste 900
Dallas, Texas 75201-3136

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____

COURT (FOR CLERK USE ONLY): _____

STYLED UNION PACIFIC RAILROAD COMPANY V. FIBERLIGHT LLC

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

This information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or estate case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither guarantees the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, request for information, and it is not admissible at trial.

<p>Contact information for person completing case information sheet:</p> <p>West Gaines, West & Gentry Gerald Plaza Dallas, Texas 77845</p> <p>Email: Gaines.west@westwebblaw.com</p> <p>Telephone: 979-694-7000</p> <p>Fax: 979-694-8000</p> <p>State Bar No: 21197500</p>	<p>Names of parties in case:</p> <p>Plaintiff(s)/Petitioner(s): <u>Union Pacific Railroad Company</u></p> <p>Defendant(s)/Respondent(s): <u>Fiberlight LLC</u></p> <p>[Attach additional page as necessary to list all parties]</p>	<p>Person or entity completing case information sheet:</p> <p><input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____</p> <p>Additional Parties in Child Support Case: _____</p> <p>Custodial Parent: _____</p> <p>Non-Custodial Parent: _____</p> <p>Presumed Father: _____</p>
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Identify the case type, or identify the most important issue in the case (select only 1):

	Civil X		Family Law	
<p>Contract</p> <p>Contract Consumer/DTPA Lease/Contract Breach/Misrepresentation Debt/Contract: Insurance Real Estate—Expedited Foreclosure Lease Landlord/Tenant Competition Partnership Contract:</p>	<p>Injury or Damage</p> <p><input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____</p>	<p>Real Property</p> <p><input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input checked="" type="checkbox"/> Other Property: _____</p> <p>Related to Criminal Matters</p> <p><input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____</p>	<p>Marriage Relationship</p> <p><input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children</p> <p>Other Family Law</p> <p><input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____</p>	<p>Post-judgment A (non-Title IV-D)</p> <p><input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—C <input type="checkbox"/> Modification—O</p> <p>Title IV-D</p> <p><input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFS) <input type="checkbox"/> Support Order</p> <p>Parent-Child Relationship</p> <p><input type="checkbox"/> Adoption/Adoption Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parentage <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Paternity Termination of Paternity Rights <input type="checkbox"/> Other Parent-Child Relationship: _____</p>
<p>Employment</p> <p>Termination Retirement Unemployment Compensation Employment:</p>	<p style="text-align: center;">Other Civil</p> <p><input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property</p> <p><input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____</p>			
<p>Tax</p> <p>Appraisal Delinquency Estate Tax</p>	<p style="text-align: center;">Probate & Mental Health</p> <p><i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings</p> <p><input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____</p>			

Identify the procedure or remedy, if applicable (may select more than 1):

<p>Appeal from Municipal or Justice Court Arbitration-related Attachment Order of Review Arbitration Action</p>	<p><input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment</p>	<p><input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover</p>
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WEST, WEBB, ALLBRITTON & GENTRY

A PROFESSIONAL CORPORATION

— Established in 1982 —

ATTORNEYS:

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RYAN D. BRANTLEY ** +
COURTNEY S. CAIN
WALD DELGADO
TRICK W. FOGARTY
HAEL H. GENTRY ** +
BOB GEORGE
KIM T. HANNA
KIMBERLY D. JASPER +
L. B. RHODES
LONDON RUSSELL ***
KIM C. WEBB, JR. +
GAINES WEST +

BOARD CERTIFIED
PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

BOARD CERTIFIED
COMMERCIAL REAL ESTATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

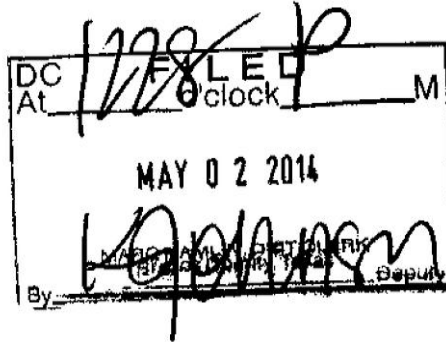
PRINCIPAL OFFICE
1515 EMERALD PARKWAY
COLLEGE STATION, TEXAS 77845
TELEPHONE: (979) 694-1111
FACSIMILE: (979) 694-1112

260 ADDIE ROY RD., SUITE 100
AUSTIN, TEXAS 78746
TELEPHONE: (512) 503-1111

May 2, 2014

WEB SITE: <http://www.westwebb.com>

Writer's e-mail: gaines.west@westwebb.com



*** BOARD CERTIFIED
ESTATE PLANNING AND PROBATE
TEXAS BOARD OF LEGAL SPECIALIZATION

Marc Hamlin
Brazos County District Clerk
Brazos County Courthouse
300 East 26th Street
Bryan, Texas 77803

Via Hand Delivery

Re: Cause No. _____: Union Pacific Railroad Company vs. FiberLight
LLC; In the _____ Judicial District of Brazos County, Texas

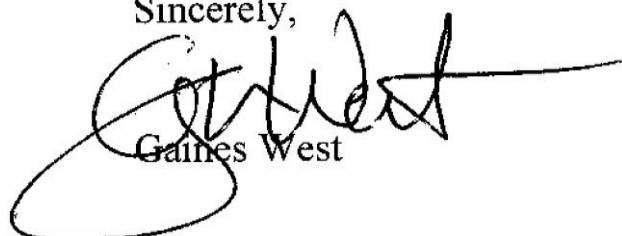
Dear Mr. Hamlin:

Please find enclosed for filing in the above referenced matter an original and one copy of:

1. Union Pacific Railroad Company's Original Petition & Application for Temporary Restraining Order, for Temporary Injunction, for Permanent Injunction and Request for Disclosures, Temporary Restraining Order & Order Setting Hearing for Preliminary Injunction and Civil Case Information Sheet.
2. Issuance of Citation Request Form.

If you should have any questions, please do not hesitate to contact our office.

Sincerely,


Gaines West

GW/pb

WEST, WEBB, ALLBRITTON & GENTRY

A PROFESSIONAL CORPORATION

— Established in 1982 —

ATTORNEYS:

KEN N. ALLBRITTON +
D. BRANTLEY * +
COURTNEY S. CAIN
RALPH DELGADO
MICK W. FOGARTY
DAVID H. GENTRY ** +
GEORGE
JAN T. HANNA
KATHERINE D. JASPER +
B. RHODES
DAVID RUSSELL ***
T. C. WEBB, JR. +
JAMES WEST +

BOARD CERTIFIED
IN PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

BOARD CERTIFIED
IN COMMERCIAL REAL ESTATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

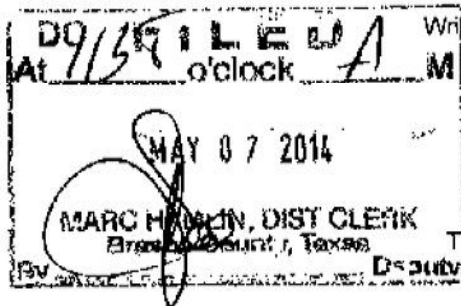
PRINCIPAL OFFICE
1515 EMERALD PL
COLLEGE STATION, TEXAS 77845-
TELEPHONE: (979) 694-
FACSIMILE: (979) 694-

280 ADDIE ROY RD., SUITE
AUSTIN, TEXAS 78746-
TELEPHONE: (512) 501-

May 7, 2014

WEB SITE: <http://www.westwebblaw.com>

Writer's e-mail: gaines.west@westwebblaw.com



*** BOARD CERTIFIED
IN ESTATE PLANNING AND PROBATE
TEXAS BOARD OF LEGAL SPECIALIZATION

Via Hand Delivery

Marc Hamlin
Brazos County District Clerk
Brazos County Courthouse
300 East 26th Street
Bryan, Texas 77803

Re: Cause No. 14-001161-CV-272;; Union Pacific Railroad Company vs. FiberLight LLC; In the 272nd Judicial District of Brazos County, Texas

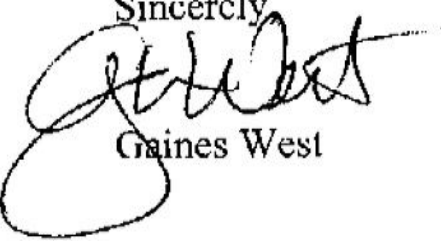
Dear Mr. Hamlin:

Please find enclosed for filing in the above referenced matter an original and three copies for issuance of Writ of Injunction. Please provide us with an original for service on Defendant by private process server.

Additionally, please find enclosed an Issuance of Process Form see attached. Enclosed are two copies of the Union Pacific Railroad Company's Original Petition and Application for Temporary Restraining Order, for Temporary Injunction, for Permanent Injunction and Temporary Restraining Order and Order Setting Hearing for Preliminary Injunctions executed on May 2, 2014 to be attached to the Citation for Temporary Restraining Order and Notice of Hearing for your convenience.

Please advise when citation is completed for pick-up. Enclosed is our firm's check in the amount of \$ _____ to cover cost of same.

If you should have any questions, please do not hesitate to contact our office.

Sincerely,

Gaines West

GW/pb

**TEMPORARY RESTRAINING ORDER
NOTICE OF HEARING
CITATIONS TO BE ISSUED AS FOLLOWS:**

1. FiberLight LLC, Defendant
Through its agent for service of process: Tony Cash
Senior Vice President and General Counsel
11700 Great Oaks Way, Suite 100
Alpharetta, Georgia 30022

2. FiberLight LLC, Defendant
By and through its registered agent for service of process
CT Corporation
1999 Bryan St., Ste 900
Dallas, Texas 75201-3136

Brazos County



300 E. 26th St., Suite 216
Bryan TX 77803
(979) 361-4230-4240

Marc Hamlin
District Clerk

ISSUANCE OF PROCESS INSTRUCTIONS

Cause Number: 14-001161-CV-27

Please issue the following type of process: *Temporary Restraining Order, Notice of Citation*

- Citation Citation by Publication Citation-by Posting
- Writ of Sequestration Writ of Garnishment Writ of Attachment
- Subpoena-Civil Subpoena-Criminal Bill of Cost

Requesting Party's Name, Address and Phone Number:

Gaines West

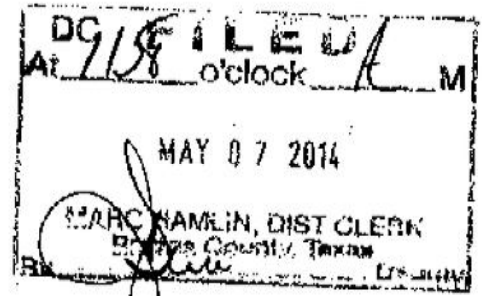
West, Webb, Allbritton & Gentry, P.C.

1515 Emerald Plaza, College Station, Texas 77845

(48.00)

Name and Address of person to be served:

See attached.



Please check one:

- Attorney/Runner will pick up (Put in Runners Box)
- Process Server will pick up (Put in Runners Box)
- Mail to Attorney's Office/Requesting Party
- Forward to Sheriff's Office
- Serve by Certified Mail

The Brazos County District Clerk's Office cannot issue any process until the above information is provided and the correct fees have been paid.

CITATION – OUT OF STATE

CLERK OF THE COURT

Marc Hamlin, Brazos County District Clerk
1000 E. 26th Street Suite 1200
Bryan, TX 77803

PLAINTIFF'S ATTORNEY

WEST, GAINES
1515 EMERALD PLAZA
College Station, TX 77845

THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

Fiberlight LLC, Defendant,

HEARINGS: You are commanded to appear by filing a written answer to the Plaintiff's Petition at or before 10:00 a.m. on the Monday next after the expiration of 20 days after the date of service hereof, before the 272nd District Court of Brazos County, Texas, at the Courthouse in Bryan, TX.

A Petition was filed on 2nd day of May, 2014 numbered 14-001161-CV-272 on the docket of said court and is styled:

UNION PACIFIC RAILROAD COMPANY vs. FIBERLIGHT LLC

A copy of the Temporary Restraining Order and Order Setting Hearing for Preliminary Injunction and Preliminary Injunction accompanies this citation.

Witnessed and GIVEN UNDER MY HAND AND SEAL OF SAID COURT, at office in Bryan, Texas, on 7th day of May, 2014.

Marc Hamlin, District Clerk
Brazos County, Texas

By:  _____, Deputy

ADDRESS FOR SERVICE:

Defendant's Name: Fiberlight, LLC, through its agent for service of process: Tony Cash
Senior Vice President and General Counsel
11700 Great Oaks Way, Suite 100
Alpharetta, Georgia 30022

Rule 108 – Defendant without state – Where the defendant is absent from the State, or is a non-resident of the State, the form of notice to such defendant of the institution of the suit shall be the form prescribed for citation to a resident defendant; and such notice may be served by any disinterested person competent to make oath of the fact in the same manner as provided in Rule 106 hereof. The return of service in such cases shall be endorsed on or attached to the original notice, and shall be in the form provided in the Rule 107, and be signed and sworn to be the party making such service before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer. A defendant served with such notice shall be required to appear and answer in the same manner and time and under the same penalties as if he had been personally served with a citation within this State.

CAUSE NO. 14-001161-CV-272

UNION PACIFIC RAILROAD COMPANY,
Plaintiff,

VS.

FIBERLIGHT LLC, Defendant.

§ IN THE DISTRICT COURT
§
§ OF BRAZOS COUNTY, TEXAS
§
§
§ 272nd JUDICIAL DISTRICT

WRIT OF INJUNCTION

STATE OF TEXAS §
BRAZOS COUNTY §

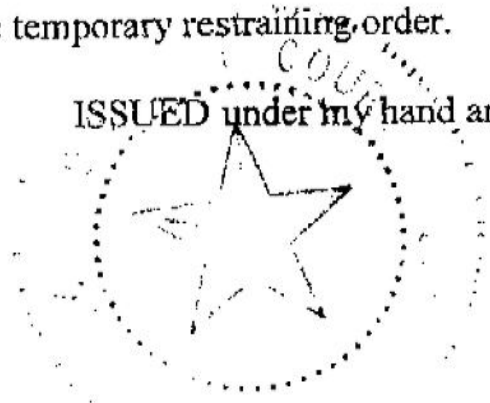
To: FiberLight LLC, Defendant

Plaintiff, Union Pacific Railroad Company, sued Defendant, FiberLight LLC, for trespass. Plaintiff asked the Court to issue a temporary restraining order. After a hearing on the application, the Honorable Judge Towsley granted the application.

Therefore the Defendant, FiberLight LLC and anyone acting in concert with FiberLight LLC, shall cease, desist and refrain from installing any facilities, including fiber optic lines, along, on, across, over, or under Union Pacific railroad tracks and/or right-of-way at any location within Brazos County, unless FiberLight has executed an easement, license, or other agreement with Union Pacific for the specific installation at that location and has provided all notices required by that agreement.

Plaintiff has requested that a temporary injunction be issued. A hearing on the temporary injunction will be held on May 12, 2014, at 10:00 a.m., which is within 14 days of the signing of the temporary restraining order.

ISSUED under my hand and seal on May 7, 2014.



Marc Hamlin

Marc Hamlin
Judicial District Court
Brazos County, Texas

CLERK OF THE COURT
Marc Hamlin
300 East 26th Street, Suite 1200
Bryan, TX 77803

ATTORNEY FOR PLAINTIFF
WEST, GAINES
1515 EMERALD PLAZA
College Station, TX 77845

THE STATE OF TEXAS

CITATION

NOTICE TO THE DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO Fiberlight, LLC who may be served by and through its registered agent, CT Corporation at 1999 Bryan, St., Ste 900, Dallas, Texas 75201-3136 Defendant,

Greeting:

You are hereby commanded to appear by filing a written answer to the Temporary Restraining Order and Order Setting Hearing for Preliminary Injunction and Writ of Injunction at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 272nd District Court of Brazos County, Texas at the Courthouse of said County in Bryan, Texas. Said Petition was filed on the 2nd day of May A.D. 2014, in the case, numbered 14-001161-CV-272 on the docket of said court, and styled,


Union Pacific Railroad Company Plaintiff
VS.
Fiberlight, LLC Defendant

The nature of Plaintiff's demand is fully shown by a true and correct copy of the Temporary Restraining Order and Order Setting Hearing for Preliminary Injunction and Writ of Injunction accompanying this citation and made a part thereof.

The officer executing the writ shall promptly serve the same according to requirements of the law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and sealed of said Court at office, this the 7th day of May, 2014

Marc Hamlin
Clerk of Brazos County, Texas

By  Deputy

OFFICER'S RETURN

Came to hand on the _____ day of _____, 20____, at _____ o'clock _____ M.
Executed at _____, within the County of _____ at _____ o'clock _____ M.

on the _____ day of _____, 20____, by delivering to the within named _____

_____ each,
in person, a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

Total fee for serving this citation _____

Sheriff Account

To certify which witness my hand officially.

No. _____

For Clerk's Use

Taxed _____
Returned Record _____

Sheriff of _____ County, Texas
By _____ Deputy

CAUSE NO. 14-001161-CV-272

UNION PACIFIC RAILROAD COMPANY,
Plaintiff,

VS.

FIBERLIGHT LLC, Defendant.

§
§
§
§
§

IN THE DISTRICT COURT
OF BRAZOS COUNTY, TEXAS
272nd JUDICIAL DISTRICT

WRIT OF INJUNCTION

STATE OF TEXAS §
BRAZOS COUNTY §

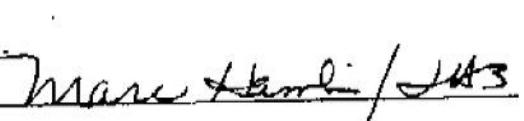
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ISSUED under my hand and seal on May 7, 2014.



Marc Hamlin
Judicial District Court
Brazos County, Texas