

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

LEVEL 3 COMMUNICATIONS, LLC, and §  
WILTEL COMMUNICATIONS, LLC, §  
*Plaintiffs,* §

v. §

Case No. 20-3124

BORETEX COMMUNICATION LLC, and §  
JOSE G. ESPINOZA d/b/a BORETEX §  
COMMUNICATION, §  
*Defendants.* §

**PLAINTIFFS' ORIGINAL COMPLAINT**

Plaintiffs, Level 3 Communications, LLC, and WilTel Communications, LLC (collectively, "Level 3"), file this original complaint against Defendants, Boretex Communication LLC, and Jose G. Espinoza d/b/a Boretex Communication (collectively "Boretex"), arising from damages to Level 3's underground fiber-optic telecommunication facilities in Prairie View, Waller County, Texas, caused by Boretex's wrongful acts and omissions.

**PARTIES**

1. Level 3 Communications, LLC, is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business in Broomfield, Colorado. The citizenship of all members of Level 3 Communications, LLC, is Colorado.

2. WilTel Communications, LLC, is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business in Broomfield, Colorado. The citizenship of the only member of WilTel Communications, LLC, is Colorado.

3. Boretex Communication LLC, is an entity organized and existing under the laws of the State of Texas with a principal place of business in Houston, Texas. Boretex Communication LLC, operates and regularly conducts business in Texas, and may be served with process via its registered agent, Jose G. Espinosa, 12905 S. Post Oak Road, Houston, Texas 77045, or wherever he may be found.

4. Jose G. Espinoza is an individual who resides in Texas, and he may be served with process at 12905 S. Post Oak Road, Houston, Texas 77045, or wherever he may be found. Jose G. Espinoza is the managing member of Boretex Communication LLC, upon information and belief, an entity that was not organized or existing under the laws of the State of Texas until August 20, 2020 (after the wrongful acts and omissions of Boretex on or about September 6, 2018). Thus, Jose G. Espinoza has been named in his individual capacity d/b/a Boretex Communication.

#### JURISDICTION AND VENUE

5. The court has personal jurisdiction, specific and general, over Boretex Communication in this action because a substantial part of the events or omissions giving rise to the claim occurred in Prairie View, Waller County, Texas, and Boretex

Communication has engaged in “continuous and systematic” activities with the State of Texas as evidenced by their conducting business and offering services in Texas.

6. The court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States. Specifically, as a result of Boretex Communication’s acts and omissions, Level 3 has sustained substantial damage to and loss of use of their underground fiber-optic telecommunication facilities made the subject of this lawsuit, which resulted in damages to Level 3 in excess of \$140,000. Moreover, Level 3 is a citizen of Delaware and Colorado, Wiltel is a citizen of Delaware and Colorado, and Boretex Communication is a citizen of Texas.

7. Venue is proper in the court under 28 U.S.C. § 1391(b)(2)-(3) because: (1) “a substantial part of the events or omissions giving rise to the claim occurred” in this judicial district; and (2) alternatively, the defendant, Boretex Communication, is subject to the court’s personal jurisdiction with respect to this action.

#### FACTUAL BACKGROUND

8. Level 3 is a global communications provider located in Broomfield, Colorado, that provides telecommunication services to enterprise, government, and carrier customers.

9. Level 3's telecommunication services are provided through, among other means, extensive nationwide fiber networks consisting of, in part, underground facilities, such as fiber-optic telecommunications cables and conduits.

10. Level 3's underground facilities made the subject of this action were installed, operated, and maintained, in part, at or near the intersection of Richards Road and Highway 290 (Business) in Prairie View, Waller County, Texas ("Underground Facility").

11. On or about September 6, 2018, Boretex Communication was working to install fiber-optic cables and conduits, including, without limitation, using mechanized equipment at or near the location of Level 3's Underground Facility, which was visible or properly marked.

12. Although Boretex Communication had knowledge of the approximate location of Level 3's Underground Facility, it did not take the appropriate precautionary measures to confirm the actual location of Level 3's Underground Facility and ensure that such facility was not at risk of being damaged during the excavation or installation services.

13. Simply put, Boretex Communication completely failed to take the necessary and proper precautions to locate and avoid Level 3's Underground Facility before and during the excavation and installation services.

14. On September 6, 2018, Level 3's Underground Facility was damaged by the mechanized equipment being used by Boretex Communication during the excavation and installation services.

15. Boretex Communication was conducting excavation and installation services negligently, knowingly, and intentionally in violation of the Texas Underground Facility Damage Prevention and Safety Act, TEX. UTIL. CODE §§ 251.001, et seq., and industry standards and practices for conducting excavation, installation, or other similar services with mechanized equipment near underground fiber-optic cables and conduits, including the Underground Facility, and with complete disregard as to the location and safety of Level 3's Underground Facility.

### RELIEF REQUESTED

#### NEGLIGENCE & GROSS NEGLIGENCE

16. Level 3 adopts and incorporates by reference all allegations contained in paragraphs 1 through 15, above.

17. Level 3 generally alleges that Boretex Communication owed a legal duty to Level 3, Boretex Communication breached the duty, and the breach proximately caused Level 3's damages.

18. Level 3 generally alleges that Boretex Communication engaged in acts or omissions which when viewed objectively from the standpoint of Boretex Communication at the time of their occurrence involved an extreme degree of risk,

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