

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
CIVIL ACTION NO.

21-1037 F

SAFETY INSURANCE COMPANY as  
Subrogee of JESSICA AMATO,  
IRINA CONSTANTIN and  
WILLIAM E. DAVIS,  
Plaintiff

vs.

BOSTON GAS COMPANY,  
Defendant

COMPLAINT

1. The Plaintiff, Safety Insurance Company (hereinafter "Safety"), is an insurance corporation duly organized and having a principal place of business at 20 Custom House Street, Boston, Suffolk County, Massachusetts.
2. Jessica Amato (hereinafter "Ms. Amato") is an individual who resides at 1218 Calmar Street, West Roxbury, Suffolk County, Massachusetts.
3. Irina Constantin (hereinafter "Ms. Constantin") is an individual who resides at 83 Cust Street, #1, Burlington, Middlesex County, Massachusetts.
4. William E. Davis (hereinafter "Mr. Davis") is an individual who resides at 1216 VFW Parkway, Unit 41, West Roxbury, Suffolk County, Massachusetts.
5. Defendant, Boston Gas Company, (hereinafter "Boston Gas"), is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with a primary place of business located at 40 Sylvan Road, Waltham, Middlesex County, Massachusetts, and was at all times, doing business in the Commonwealth of Massachusetts.

INTRODUCTION/FACTS COMMON TO ALL COUNTS

6. At all times relevant, and all times hereinafter mentioned, Jessica Amato maintained a policy of insurance with Safety, which provided coverage for, among other things, damage to her real and personal property located at 1214 VFW Parkway, Apt 34, West Roxbury, MA 02132.
7. At all times relevant, and all times hereinafter mentioned, Irina Constantin maintained a policy of insurance with Safety, which provided coverage for, among other things,

damage to her real and personal property located at 1214 VFW Parkway, Unit 32, West Roxbury, Massachusetts.

8. At all times relevant, and all times hereinafter mentioned, William E. Davis maintained a policy of insurance with Safety, which provided coverage for, among other things, damage to her real and personal property located at 1216 VFW Parkway, Unit 41, West Roxbury, Massachusetts.
9. At all times relevant, and all times hereinafter mentioned, Defendant Boston Gas was engaged in business in the Commonwealth of Massachusetts and offered and provided natural gas to residential customers, including Ms. Amato, Ms. Constantin, and Mr. Davis.
10. At all times relevant, and at all times hereinafter mentioned, Defendant, Boston Gas, its agents, servants and/or employees was engaged in the design, installation, replacement, testing, monitoring, servicing, maintenance, repair and/or modernization of natural gas utilities, services, equipment, and/or devices that supplied natural gas to 1214 and 1216 VFW Parkway, West Roxbury, MA ("the Property") and was responsible for ensuring that no hazardous conditions existed with respect thereto and for warning the public of any such conditions, including Ms. Amato, Ms. Constantin, and Mr. Davis.
11. At all times relevant and at all times hereinafter mentioned, Defendant, Boston Gas, owned, controlled and/or exercised dominion over natural gas utilities on and/or near the Property.
12. At all times relevant, and at all times hereinafter mentioned Defendant, Boston Gas, had and/or assumed a duty to properly to design, install, replace, test, protect, assess, monitor, service, maintain and/or repair natural gas utilities and natural gas equipment on or associated with the Property.
13. At all times relevant, and all times hereinafter mentioned, the Defendant, Boston Gas, failed to monitor and assess the risks and hazards associated with the natural gas utilities and equipment on or near the Property including but not limited to: failing to maintain and service the natural gas service line or lines; failing to maintain and service the natural gas regulators and rise assembly; failing to maintain and service a cap of a service tee related to the natural gas system; and failing to service and maintain other components of the natural gas system.
14. As a direct and proximate result of the Defendant Boston Gas's acts and/or omissions, gas leakage occurred from the natural gas utilities and equipment on or near the subject Property and a fire occurred at or near the properties of Ms. Amato, Ms. Constantin, and Mr. Davis on May 12, 2018.
15. The fire caused substantial damage to the real and personal property of Ms. Amato, Ms. Constantin and Mr. Davis all to the direct financial loss of the Plaintiff, Safety Insurance Company.

16. Pursuant to the contractual and equitable rights of subrogation the Plaintiff now stands in the shoes of its insureds and possesses the same rights and causes of action available to them that could be asserted against the responsible third-party, Boston Gas.

COUNT I  
NEGLIGENCE V. BOSTON GAS COMPANY

17. Plaintiff repeats, realleges, and incorporates by reference the preceding allegations contained in this complaint, as if expressly written and set forth herein.
18. The damage that occurred to the Plaintiff's Insured's property was directly and proximately caused by the actions and/or omissions, negligence, gross negligence, and/or breaches of duties owed by the Defendant, including, but not limited to the following:
- a. Failing to properly, design, install, replace, test, monitor, service, maintain, and/or repair natural gas utilities and equipment within the natural gas system associated with the Property;
  - b. Failing to perform appropriate inspections of its natural gas utilities, services, equipment, and/or devices associated with the natural gas service provided to the property, including, but not limited to the natural gas line, natural gas regulators, natural gas rise assembly, service tee cap, and other components of the natural gas system;
  - c. Failing to identify/repair defect(s) in its natural utilities, services, equipment, and/or devices associated with the property, including, but not limited to, the natural gas line, natural gas regulators, natural gas rise assembly, service tee cap, and other components of the natural gas system;
  - d. Causing and/or allowing defective natural gas utilities, services, equipment, and/or devices associated with the property, including, but not limited to natural gas regulators, natural gas rise assembly, and/or service tee cap to exist and remain in an unsafe location and/or condition;
  - e. Failing to warn about dangerous or hazardous conditions associated with the natural gas utilities, services, equipment, and/or devices associated with or relating to the property, including, but not limited to, natural gas regulators, natural gas rise assembly, service tee cap, and other components of the natural gas system;
  - f. Failing to comply with applicable federal, state, local, and/or industry regulations concerning the design, install, replace, test, monitor, service, maintain, repair and/or modernization of its natural gas utilities, services, equipment, and/or devices leading to the property, including, but not limited to natural gas regulators, natural gas rise assembly, service tee cap, and other components of the natural gas system;

- g. Failing to take appropriate measures to guard against the possibility for a hazardous or dangerous condition at the property as a result of natural gas utilities, services, equipment, and/or devices associated with or relating to the Property;
- h. Failing to protect the natural gas regulators, natural gas rise assembly, service tee cap, and other components of the natural gas system;
- i. Failing to take the appropriate action when Boston Gas knew that gas was leaking at the subject property to prevent the explosion and fire, as well as to prevent fire spread damages;
- j. Failing to properly identify, locate and detect the source of the gas leak(s) in the area of the subject property prior to the ultimate explosion and fire that occurred on or about May 12, 2018;
- k. Failing to properly and timely respond to the natural gas leak(s) at or in the vicinity of the subject property in order to prevent the explosion and fire, as well as to prevent fire spread damages;
- l. Failing to turn off the gas service at the subject property prior to the May 12, 2018 explosion;
- m. Failing to turn off the gas service at the subject property immediately after the May 12, 2018 explosion that caused fire spread damages;
- n. Failing to provide emergency response personnel and its own personnel with the required training to properly locate the gas leak(s) and turn off the gas in order to prevent the explosion and fire, as well as to prevent fire spread damages; and
- o. Otherwise failing to exercise reasonable care under the circumstances that then and there existed.

WHEREFORE, Plaintiff Safety Insurance Company respectfully demands judgement be entered on its behalf against the Defendant Boston Gas Company in the amount of \$116,406.26 the benefits paid by Safety Insurance Company, plus interest, costs and for further relief as the Court deems just and proper.

COUNT II  
BREACH OF CONTRACT V. BOSTON GAS COMPANY

19. Plaintiff repeats, realleges, and incorporates by reference the preceding allegations contained in this complaint, as if expressly written and set forth herein.

20. The Defendant Boston Gas contracted and agreed to properly design, install, replace, test, protect, assess monitor, service, maintain, and/or repair natural gas utilities equipment on or associated with the properties of Jessica Amato, Irina Constantin, and William E. Davis.
21. The Defendant Boston Gas breached the contract by failing to properly design, install, replace, test, protect, assess monitor, service, maintain, and/or repair natural gas utilities equipment on or associated with the properties of Jessica Amato, Irina Constantin, and William E. Davis.
22. As a result of the Defendant's breaches of contract, the Plaintiff was made to suffer direct financial loss as a result of the fire.

WHEREFORE, Plaintiff Safety Insurance Company respectfully demands judgement be entered on its behalf against the Defendant Boston Gas Company in the amount of \$116,406.26 the benefits paid by Safety Insurance Company, plus interest, costs and for further relief as the Court deems just and proper.

COUNT III  
BREACH OF WARRANTY V. BOSTON GAS COMPANY

23. Plaintiff repeats, realleges, and incorporates by reference the preceding allegations contained in this complaint, as if expressly written and set forth herein.
24. Plaintiffs subrogors had the right to and did in fact rely on the expertise and knowledge of Boston Gas that its equipment and devices that supplied natural gas to 1214 and 1216 VFW Parkway, West Roxbury, MA ("the Property") would be free from defects and safe to use for their intended purpose.
25. The public, including Jessica Amato, Irina Constantin, and William E. Davis, relied upon the warranties set forth by the Defendant to their detriment.
26. Based upon the aforementioned careless, negligent and/or unlawful conduct (including both acts and omissions) on the part of Boston Gas, the Defendant breached the applicable warranties.
27. Furthermore, based upon the fact that the natural gas utilities and equipment and all services performed were not free of defects, were not of merchantable quality, and were not fit for the purposes for which intended, Boston Gas breached the aforementioned warranties.
28. Plaintiff and its subrogors have performed all conditions precedent to recover based upon such breaches.
29. Plaintiff's damages as described above occurred as a direct and proximate result of Boston Gas's breach of its implied warranties of merchantability and fitness for a

particular purpose as set out in M.G.L. 106 Sections 2-314 and 2-315, and Boston Gas's breach of its express warranties in violation of M.G.L Chapter 106, Section 2-313.

30. As a result of the Defendant's breaches of warranties, the Plaintiff was made to suffer direct financial loss as a result of the fire.

WHEREFORE, Plaintiff Safety Insurance Company respectfully demands judgement be entered on its behalf against the Defendant Boston Gas Company in the amount of \$116,406.26 the benefits paid by Safety Insurance Company, plus interest, costs and for further relief as the Court deems just and proper.

COUNT IV  
STRICT LIABILITY ULTRAHAZARDOUS ACTIVITY V. BOSTON GAS COMPANY

31. Plaintiff repeats, realleges, and incorporates by reference the preceding allegations contained in this complaint, as if expressly written and set forth herein.
32. In undertaking its actions, engaged in the design, installation, replacement, testing, monitoring, servicing, maintenance, repair and/or modernization of natural gas utilities, services, equipment, and/or devices that supplied natural gas to 1214 and 2016 VFW Parkway, West Roxbury, MA the Defendant Boston Gas, engaged in an ultra-hazardous activity, for which strict liability attaches.
32. As a direct and proximate result of the Defendant's acts and/or omissions while engaged in an ultrahazardous activity the Plaintiff suffered damages.

WHEREFORE, Plaintiff Safety Insurance Company respectfully demands judgement be entered on its behalf against the Defendant Boston Gas Company in the amount of \$116,406.26 the benefits paid by Safety Insurance Company, plus interest, costs and for further relief as the Court deems just and proper.

REQUEST FOR JURY TRIAL

The Plaintiff hereby requests a trial by Jury on all issues raised by these pleadings.

Attorney for Plaintiff,

Handwritten signature of Kevin M. Davis in black ink, with the initials "jpm" in parentheses at the end.

Kevin M. Davis, Esquire

LAW OFFICES OF

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