



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney *LGB*
DATE: October 21, 2015
SUBJECT: Wierzbicki et. al. v. Troy

Enclosed please find a copy of a lawsuit that was recently filed against the City of Troy by Troy residents Jacek and Grazna Wierzbicki, Beth Farhat, Fawaz and Maha Hasso, Gregory and Gail Eskridge, Charles and Patricia Moran, Jay and Rucha Patel, Dev and Dimpi Patel, Mark and Dana Thomas, and Kischore and Shridevi Reddy.

The Plaintiffs in this case are seeking an amount in excess of \$600,000 for damages resulting from a sewage back up in the Somerset North subdivision. These Plaintiffs have previously filed and settled a lawsuit against the Somerset Collection and the Capital Grille in which the City provided significant discovery related to the sewage back-up that occurred on November 9, 2013.

Under Michigan law, there is no municipal liability unless Plaintiffs can prove that there was a defect in the sewer system, and that the City knew about the defect and did not timely correct it. In the complaint, Plaintiffs do not allege any defects in the sewage system, but instead claim that the City should have provided even greater maintenance and oversight. This sewer line had been jetted and cleaned just two months prior to the back-up. There were no prior back-ups in this sewer line. The City also was able to demonstrate that our Water and Sewer Department was very proactive in monitoring the sewer system, in light of the fact that it serviced restaurants.

Absent objections from City Council, our office will represent the City's interests. As always, please let us know if you have any questions.

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT SIXTH JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 2015 149 666	NO
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Court address: North Telegraph Road, Pontiac, MI

Court telephone no.:

Plaintiff's name(s), address(es), and telephone no(s).
JACEK WIERZBICKI, GRAZNA WIERZBICKI, GREGORY ESKRIDGE, GAIL ESKRIDGE, BETH FARHAT, FAWAZ HASSO, MAHA HASSO, CHARLES MORAN, PATRICIA MORAN, JAY PATEL, RUCHA PATEL, DEV PATEL, DIPPEPATEL, M&D THOMASETAL

Plaintiff's attorney, bar no., address, and telephone no.
**PHILLIP G. BAZZO P25243
 55 EAST LONG LAKE RD., PMB # 535
 TROY, MI 48085 248-321-8600
 FLOODLAW@COMCAST.NET**

Defendant's name(s), address(es), and telephone no(s).
**CITY OF TROY
 500 WEST BIG BEAVER ROAD
 TROY, MI 48084**

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued OCT 16 2015	This summons expires JAN 15 2016	Court clerk Lisa Brown
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**This summons is invalid unless served on or before its expiration date.
 This document must be sealed by the seal of the court.*

COMPLAINT Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

Family Division Cases

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

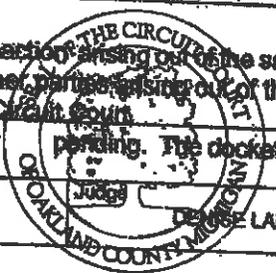
General Civil Cases

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in Oakland County Circuit Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no. 2014 140384-NQ	Judge DENISE LANGFORD MORRIS	Bar no.
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VENUE

Plaintiff(s) residence (include city, township, or village) CITY OF TROY, COUNTY OF OAKLAND	Defendant(s) residence (include city, township, or village) CITY OF TROY, OAKLAND COUNTY
Place where action arose or business conducted CITY OF TROY, OAKLAND COUNTY	

Date: 10/16/2015

Signature of attorney/plaintiff: *Phillip G. Bazzo*

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Received for Filing Oakland County Clerk 2015 OCT 16 PM 04:06

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JACEK WIERZBICKI, GRAZYNA WIERZBICKI, GREGORY ESKRIDGE, GAIL ESKRIDGE, BETH FARHAT, FAWAZ HASSO, MAHA HASSO, CHARLES MORAN, PATRICIA MORAN, JAY PATEL, RUCHA PATEL, DEV PATEL, DIMPI PATEL, MARK THOMAS, DANA THOMAS, KISHORE REDDY, and SHRIDEVI REDDY, ON BEHALF OF THEMSELVES AND THEIR MINOR CHILDREN, PLAINTIFFS Vs. CITY OF TROY, DEFENDANT	ORIGINAL COMPLAINT CASE NO.: <u>15-149666</u>-NO JDG LANGFORD MORRIS RELATED CASE: 2014-140384- NO RELATED CASE JUDGE: HON. DENISE LANGFORD MORRIS
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ORIGINAL COMPLAINT
TO THE CLERK OF THE COURT:

There are no other presently pending cases arising out of the same occurrence as complained of herein to the best of the undersigned's knowledge. However, there was a prior, dismissed case arising out of the same nucleus of operative facts related to this occurrence entitled "Wierzbicki et al. vs. Doetsch et al.", case no. 2014-140384-NO before the Hon. Denise Langford Morris.



/s/Phillip G. Bazzo
Phillip G. BazzoP25243

The PLAINTIFFS JACEK WIERZBICKI, GRAZYNA WIERZBICKI, GREGORY ESKRIDGE, GAIL ESKRIDGE, BETH FARHAT, FAWAZ HASSO, MAHA HASSO, CHARLES MORAN, PATRICIA MORAN, PATRICIA MORAN, JAY PATEL, RUCHA PATEL, DEV PATEL, DIMPI PATEL, MARK THOMAS, DANA THOMAS, KISHORE REDDY AND SHRIDEVI REDDY, on behalf of themselves and on behalf of their minor children, by and through their attorney PHILLIP G. BAZZO, complain of tortious conduct by the DEFENDANT CITY OF TROY as follows

PARTIES

1. "At all relevant times" prefaces all averment(s) herein unless otherwise evident.
2. **Plaintiffs JACEK WIERZBICKI, GRAZYNA WIERZBICKI, BETH FARHAT, FAWAZ HASSO, GREGORY ESKRIDGE, GAIL ESKRIDGE, MAHA HASSO, CHARLES MORAN, PATRICIA MORAN, PATRICIA MORAN, JAY PATEL, RUCHA PATEL, DEV PATEL, DIPPE PATEL, MARK THOMAS, DANA THOMAS, KISHORE REDDY and SHRIDEVI REDDY RESIDE AND/OR OWN PROPERTY IN THE COUNTY OF OAKLAND, STATE OF MICHIGAN.**
3. **Defendant CITY OF TROY** is a municipal corporation which conducts a continuous and systematic business in the City of Troy, County of Oakland, State of Michigan.
4. The amount in controversy exceeds \$25,000 as to each Plaintiff and as to Defendant and is otherwise within the jurisdiction of this Court.
5. Venue is proper in Oakland County as (1) all parties conduct business in Oakland County, (2) the tortious conduct occurred within Oakland County and (3) Plaintiffs are citizens of Oakland County.

NUCLEUS OF OPERATIVE FACTS

6. **Definitions:** The following definitions apply herein.
 - 6.1. **2011 Warning:** "2011 Warning" refers to the December 8, 2011 Letter by Richard Shepler, Superintendent, City of Troy Water and Sewer Department, in which the City of Troy identifies "massive amounts of grease" in the South Drive Sewers based upon its inspection. See Exhibit 1 hereto.
 - 6.2. **Big Beaver Road:** "Big Beaver Road" is the main road between Coolidge Road on the west and Crooks Road on the east (A) under which is situated the "North Big Beaver Trunk Sewer"

and (B) which divides the Somerset North Mall from the Somerset South Mall, into which Lakeview Drive terminates.

- 6.3. **East Dock:** "East Dock" refers to the southeast loading dock located in the southeast quadrant of the North Somerset Mall.
- 6.4. **Hamlet Sewer:** "Hamlet Sewer" refers to the lateral sanitary sewer which services the homes on Hamlet Drive including the Plaintiffs who resided on Hamlet Drive and which connects to the Lakeview Sewer. The Hamlet Drive sewer receives forms a junction with the "Shakespeare Sewer" and continues in a southwest direction to the Lakeview Sewer.
- 6.5. **Lakeview Sewer:** "Lakeview Sewer" means the sanitary sewer main line under or near Lakeview Drive to which both the South Drive Sewer and the Hamlet Sewer connected.
- 6.6. **Manhole 177:** "Manhole 177" means Manhole 177 of the West Big Beaver Truck Line which is the approximate location of the sanitary sewer obstruction blocking sanitary sewage flow on November 9, 2013.
- 6.7. **Manhole 259:** "Manhole 259" means Manhole 259 situated along the South Drive Sewer located near the East Grease Interceptor.
- 6.8. **North Big Beaver Trunk Sewer:** "North Big Beaver Trunk Sewer" is the sanitary sewer situated underneath or near the easement of Big Beaver Road on the north side between Coolidge Road on the west and Crooks Road on the east. The North Big Beaver Trunk Sewer receives sanitary sewage from the the Lakeview Sewer, the South Drive Sewer, the Hamlet Sewer and the Shakespeare Sewer.
- 6.9. **North Drive:** "North Drive" refers to the drive situated directly north of the north side of the North Somerset Mall. See Exhibit BPV-Mall-1.

- 6.10. **North Drive Sewer:** "North Drive Sewer" means the lateral sanitary sewer near and under the North Drive of the North Mall with a terminus being north of Nordstroms and the sewer proceeding east to Lakeview Drive.
- 6.11. **North Mall:** "North Mall" means the north mall of the Somerset Collection Mall.
- 6.12. **Sanitary Sewage System:** "Sanitary Sewage System" means the sanitary sewage system including any and all pipes and sewers which collects sanitary sewage from the North Mall and Plaintiffs' Subdivision.
- 6.13. **Shakespeare Sewer:** "Shakespeare Sewer" means the lateral municipal sanitary sewer servicing homes on Shakespeare including the Plaintiffs' homes on Shakespeare.
- 6.14. **Somerset Mall:** "Somerset Mall" means both the south mall and the north mall of the Somerset Collection.
- 6.15. **South Drive Sewer:** "South Drive Sewer" refers to the lateral sewer situated south of the Somerset North Mall land which begins at its western terminus at or near manhole 20-260 and, proceeding east, traverses from west to east to the following manholes in the following order: manhole 20-261, manhole 20-262, manhole 20-259, manhole 20-258 and man-hole 20-257 at or near the intersection of the South Drive with Lakeview Drive.
- 6.16. **Sewer Watch List:** "Sewer Watch List" refers to the list maintained by the City of Troy of sewers which the City of Troy watches more carefully due to prior sewer problems including prior grease problems.
- 6.17. **West Dock:** "West Dock" refers to the loading dock located in the southwest quadrant of the Somerset North Mall.
7. The Plaintiffs are situated in the Somerset North Subdivision immediately north of the North

Somerset Mall in the City of Troy.

8. All sewers identified herein are sewers exclusively owned by and exclusively operated by the City of Troy.
9. The Plaintiffs share a common sanitary sewer lines including the Lakeview Sewer and the North West Big Beaver Trunk Sewer with the North Somerset Mall owned and operated by the City of Troy.
10. The South Drive Sewer is a sanitary sewage line situated under and/or near the South Drive of the North Somerset Mall and is solely and exclusively owned and operated by the City of Troy.
11. The South Drive Sewer drains east into the Lakeview Sewer which is a common sanitary sewer which services the Plaintiffs' homes in the North Somerset Subdivision.
12. Both the Hamlet Sewer and the Shakespeare Sewer drain sanitary sewerage into the Lakeview Sewer.

PRIOR KNOWLEDGE OF GREASE DISCHARGES

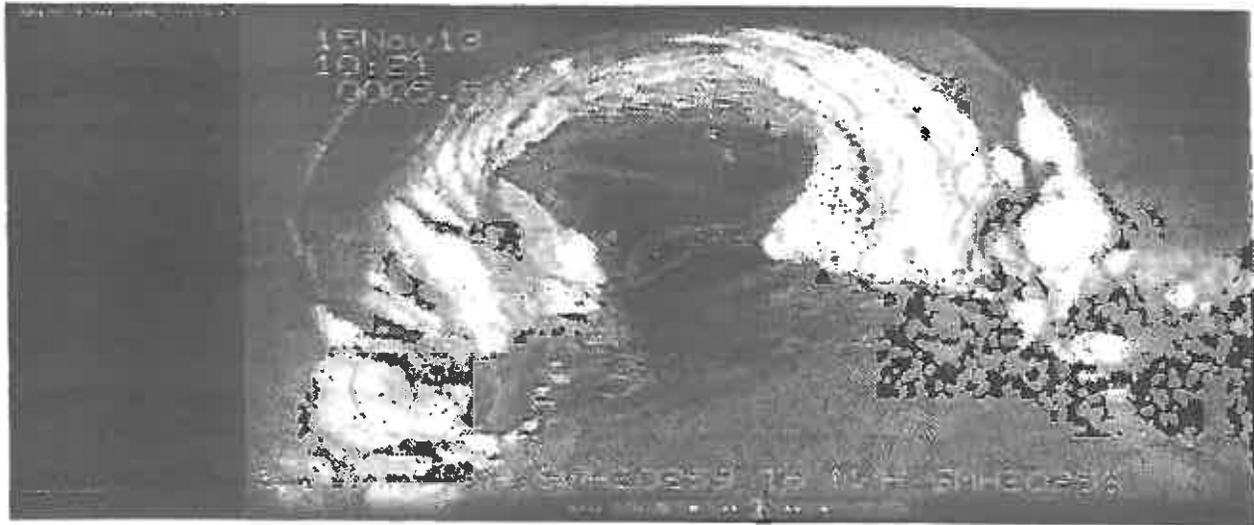
13. On December 5, 2011, the City of Troy became aware that excess grease was being discharged by the North Somerset Mall's grease interceptors into the South Drive Sewer upstream from the Lakeview Sewer posing a risk to the Plaintiffs per the 2011 Warning.
14. Specifically, Richard Sheplar, Superintendent, City of Troy, knew of and was fully aware of "massive amounts of grease" entering the South Drive Sewer of the Troy Sanitary Sewer System:

On December 5, 2011, the Troy Water & Sewer Division discovered during routine cleaning of the City's main sanitary sewer system an excessive amount of grease coming from the sewer lateral of The Somerset Collection on the north side of Big Beaver Rd. Upon further investigation with our video inspection equipment, we found massive amounts of grease in the sanitary sewer system and began immediate cleanup procedures.

15. Complaint Exhibit 1 is the Letter of Richard Shelplar finding massive amounts of grease in the

South Drive Sewer solely and exclusively owned and operated by the City of Troy.

16. These “massive amounts of grease” were located in the South Drive Sewer solely and exclusively operated by the Defendant City of Troy.
17. Despite the City of Troy having actual notice and knowledge of grease accumulations in the City-owned and City-operated South Drive Sewer, the City of Troy failed to monitor the South Drive Sewer for grease deposits on a periodic basis which would allow for detection of grease accumulations.
18. At all relevant times, the City maintained a “Sewer Watch List” for sewers which presented a problem relating to the safe conveyance of sanitary sewage.
19. Specifically, despite the City of Troy having actual notice and knowledge of grease accumulations in the City-owned and City-operated South Drive Sewer, the City of Troy failed to place the South Drive Sewer on the City’s “Sewer Watch List”.
20. After December 2011, the South Drive Sewer continued to accumulate grease deposits.
21. However, the City of Troy failed to do regular weekly, bi-weekly, monthly or proper periodic sewer inspections of the South Drive Sewer.
 - 21.1. Specifically, the City failed to open and inspect the various manholes including manhole number 259 of the South Drive Sewer situated near the East Dock of the North Somerset Mall.
22. If the City of Troy had done a visual inspection and other sewer inspections of the South Drive Sewer before November 9, 2013, then the City of Troy would have seen accumulated grease deposits in its South Drive Sewer including the following condition:

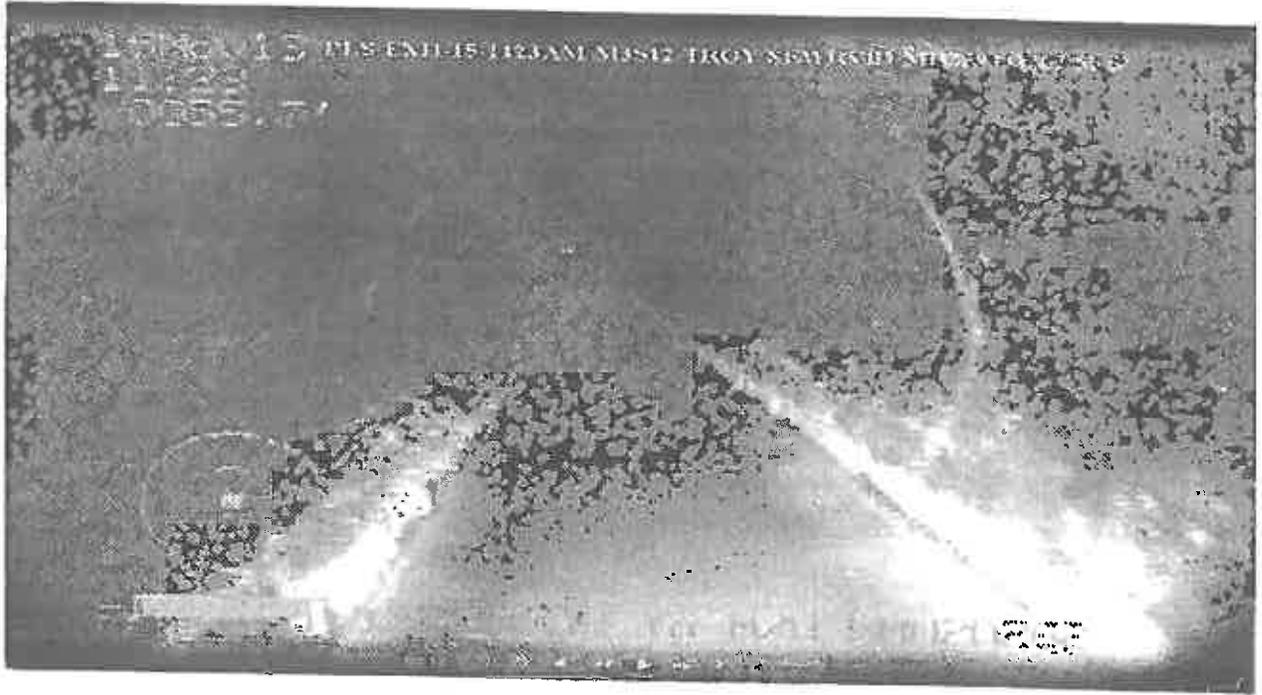


23. Prior to November 9, 2013, the above grease accumulation condition was open and obvious as it was located only 5.5 feet downstream of Manhole No. 259 and readily visualized upon any type of reasonable inspection before November 9, 2013 including but not limited to:

- 23.1. Simply popping Manhole Cover No. 259 and doing a manual visual inspection of the sewer pipe within 6 feet of the manhole;
- 23.2. Conducting a visual inspection using the Troy Sewer Inspection Camera System on one of the Troy Sewer Inspection TV Trucks; and/or
- 23.3. Using other types of visual sewer inspection systems including but not limited to inspection camera and/or inspection mirrors other than the Troy Sewer Inspection TV.

24. Not only was the above open and obvious condition available for inexpensive inspection by the City, but massive open and obvious grease rails coated over 100 feet within the South Drive Sewer.

25. For example, the following grease rails existed prior to and on November 9, 2013 within the South Drive Sewer at the location of 55 feet west of Manhole No. 259 between Manhole No. 262 and No. 259:



26. Prior to November 9, 2013, the above grease rail accumulations were open and obvious defective conditions upon sewer inspection and readily visualized upon any type of reasonable inspection before November 9, 2013 including but not limited to:

- 26.1. Conducting a visual inspection using the Troy Sewer Inspection Camera System on one of the Troy Sewer Inspection TV Trucks; and/or
- 26.2. Using other types of visual sewer inspection systems including but not limited to inspection camera and/or inspection mirror other than the Troy Sewer Inspection TV.

27. Prior to November 9, 2013, the City of Troy had adequate time and adequate opportunity to perform inspections including manual inspections, camera inspections and/or TV inspections as these grease accumulations existed in the days, weeks and/or months before November 9, 2013.

28. Due to these grease deposits breaking away from the sewers and traveling downstream, prior to or on November 9, 2013, a large grease ball obstruction formed in the North Big Beaver Trunk Sewer.
29. On November 9, 2013, due to a large grease ball obstruction, raw, untreated sanitary sewage containing feces, urine, and other human waste backed-up due to the grease ball and invaded the Plaintiffs' homes from the Hamlet and Shakespeare municipal sanitary sewers.

DAMAGES

30. As a substantial and proximate cause of these acts and/or omissions by Defendant, Plaintiffs have sustained substantial and significant injury and damage in excess of the jurisdictional limit of this Court as to each household.
31. These substantial damages proximately caused by Defendant to the Plaintiffs include the following damages set forth for purposes of description but not limitation:
- 31.1. With the exception of the Plaintiffs Reddy, the Plaintiffs suffered the following non-economic nuisance damages stated for purpose of description but not limitation and including but not limited to the following non-economic nuisance damages:
- 31.1.1. Plaintiffs inhaled the sewage-laden interior atmosphere including suffering the odors and stench arising from a raw sewage invasion;
- 31.1.2. Plaintiffs came into contact with the raw, untreated sewage including but not limited to their efforts to salvage personal belongings and/or clean-up these sewage invasions;
- 31.1.3. Plaintiffs suffered physical symptomatology associated with breathing and/or contact with the sewage infused air and liquid atmospheres within their homes;
- 31.1.4. Plaintiffs suffered inconvenience and/or annoyance and/or other stress arising from these sewage home invasions;
- 31.2. All Plaintiffs suffered some form of economic loss stated for purposes of description but not limitation and including but not limited to the following economic losses:
- 31.2.1. Plaintiffs suffered total destruction and/or partial destruction of real property or components of the real property including but not limited to damage to wall-to-wall

carpet, drywall, paneling, doors, base molding, base cabinetry and/or other components of the finished lower levels/basements;

- 31.2.2. Plaintiffs suffered total destruction to and/or partial destruction and/or damage to personal property including but not limited to damage to furniture situated in the lower levels/basements;
- 31.2.3. Plaintiffs paid out out-of-pocket expenses, including but not limited to the cost of cleanup, remediation, tearing out drywall, tearing out studs to which the drywall was attached and/or rebuilding their pre-existing finished lower levels/basements;
- 31.2.4. Plaintiffs suffered lost time and additional labor costs including but not limited to the performance of sewage clean-up, the performance and/or coordination of the moving of personal property, the performance and/or coordination of the tear out of real property and/or other related work done causing the loss of time;
- 31.2.5. Plaintiffs suffered loss of use of Plaintiffs' real and personal property;
- 31.2.6. Plaintiffs suffered reduced market value due to having to report under the Michigan Real Estate Disclosure Act facts relating to this sewage invasion;
- 31.2.7. Plaintiffs suffered increase in insurance premiums caused Defendant's conduct;
- 31.3. The Plaintiffs have future remediation and mitigation costs stated for description but not limitation and including but not limited to:
 - 31.3.1. Installation of sewage backflow preventer(s) to prevent a reoccurrence of sewage backups;
 - 31.3.2. Air-quality testing to determine that remediation has fully eliminated air and water borne sewage bacteria, molds and other internal air pollutants due to the sewage backup;
 - 31.3.3. Full repair and restoration of their real property; and
 - 31.3.4. Full replacement and/or restoration of their personal property.
- 31.4. The Plaintiffs suffered other injury and damages, both economic and non-economic;
- 31.5. Plaintiffs suffered these injuries and damages, past, present and into the future; and

COUNT 1: CITY: 691.1416(A) SEWAGE DISPOSAL SYSTEM EVENT EXCEPTION TO GOVERNMENTAL IMMUNITY

32. The Plaintiffs incorporate the foregoing averments herein.

33. Per MCLA Sec. 691.1416(A), the City of Troy was under a duty to properly operate its sanitary sewage system including to perform reasonable inspections at reasonable times to determine any operational problems such as grease accumulations.

34. **Operational Negligence:** Despite full knowledge of these physical defects, the Defendant CITY failed to take any operational action including but not limited to:

34.1. The City failed to place the South Drive Sewer on a the Sewer Watch List;

34.2. The City failed to monitor the South Drive Sewer at any time in October 2013;

34.3. The City failed to properly inspect the South Drive Sewer at reasonable periodic times including the the weeks and months before the November 9, 2013 grease obstruction;

34.4. The City failed to mobilizing its workforce to monitor the South Drive Sewer before November 9, 2013;

34.5. The City failed to perform other operational acts relating to the South Drive Sewer before November 9, 2013.

35. Per M.C.L.A. §691.1416(a), the Plaintiffs owned and/or possessed the affected real property Home Residences which was invaded by sewage from CITY'S Sanitary Subsystem(s) during this November 9, 2013 sewage disposal system events.

36. Per 691.1416(b), the CITY is an "appropriate governmental agency" because the CITY is a governmental agencies that, on the Occurrence Date, operated, controlled and/or owned the Sanitary Subsystem including the South Drive Sewer, Lakeview Sewer and North Big Beaver Trunk Sewer that caused damage to the Plaintiffs.

37. Per M.C.L.A. Sec. 691.141616 (c), the PLAINTIFFS are "claimants" as they owned the real and personal property damaged on the Occurrence Date sewage disposal system events.

- 38. Per M.C.L.A. Sec. 691.1416 (e), maintenance and operational defects existed including but are not limited to the Physical Defects of grease accumulations in the South Drive Sewer.
- 39. Per MCLA Sec. 691.1416 (g), Plaintiffs are "persons" within the meaning of this section.
- 40. Per MCLA Sec. 691.1416 (i), no defects existed within the "service lead" (the instrumentality that connects an affected property, including a structure, fixture, or improvement on the property, to the sewage disposal system and that is neither owned nor maintained by a governmental agency) to the Home Residences.
- 41. Per MCLA Sec. 691.1416 (j), the CITY'S Sanitary Subsystem(s) mean all sanitary interceptor sewers, sanitary sewers, and other sewers, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes, under the jurisdiction and control of the CITY which related to servicing the Plaintiffs' Homes.
- 42. Per MCLA Sec. 691.1416 (k), the November 9, 2013 sewage invasions constituted a "sewage disposal system event" because sewer water from the CITY'S Sanitary Subsystem (which is a sewage disposal system) invaded, back flowed, backed-up and entered onto real property of the PLAINTIFFS.
- 43. Per M.C.L.A. §691.1416(2), these trespassory sewer water invasions constitute a sewage disposal system event because the sewer water invaded the Plaintiffs' Homes from the municipal Sanitary Subsystem including the South Drive Sewer, Lakeview Sewer and North Big Beaver Trunk Sewer.
- 44. Per M.C.L.A. §691.1416(2), the CITY is appropriate governmental agencies as it operates and controls the Sewage Subsystem including the South Drive Sewer, Lakeview Sewer and North Big Beaver Trunk Sewer.

45. Per M.C.L.A. §691.1416(3) (a), CITY is an appropriate governmental agency as the operators this Sewage Disposal Subsystem including the South Drive Sewer, Lakeview Sewer and North Big Beaver Trunk Sewer.
46. Per M.C.L.A. §691.1416(3)(b), the sewage disposal system had maintenance and operational defects as set forth above.
47. Per M.C.L.A. §691.1416(3)(c), the CITY knew, or in the exercise of reasonable diligence, should have known, about these physical defects as these defects were known substantially before the Occurrence Date and could have been repaired, corrected or cured substantially before the Occurrence Date.
48. Per M.C.L.A. §691.141 (3) (d), the CITY is the proper governmental agency, having the legal authority to control the Sanitary Subsystem and failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defects.
49. Per M.C.L.A. §691.141 (3) (e), these defects were a substantial proximate cause of the event and the property damage or physical to PLAINTIFFS.
50. Per M.C.L.A. §691.1417(4) (a), the PLAINTIFFS represent that they suffered property damage to their property and will so testify.
51. Per M.C.L.A., §691.1417(4)(b), Plaintiffs complied by providing notice within 45 days.
52. On the Occurrence Dates, Plaintiffs' persons and properties were physically invaded by the contents of the City of Troy's Sanitary Subsystem, a sewage disposal system(s) owned and/or operated by the CITY.
53. On or about the Occurrence Date of November 9, 2013, due to the negligence of the defendant herein, the CITY'S Sanitary Subsystem surcharged with sanitary sewage, causing back flow into

Plaintiffs' homes.

54. The Sanitary Subsystem Sewage Disposal System that serviced Plaintiffs' properties had a maintenance and/or operation and/or repair defect about which CITY knew, or in the exercise of reasonable diligence, should have known including but not limited to physical defects of accumulated grease deposits in the City sewers which resulted in sanitary sewage invading the Plaintiffs' homes.
55. CITY had the legal authority to repair, correct and/or remedy the defect(s) as the CITY conducted an investigation into the causes of these sewage disposal system events which occurred on the Occurrence Date.
56. The CITY failed to take reasonable steps in a reasonable amount of time to repair, correct or remedy the defects as the CITY knew or should have known of these defects for weeks and/or months before these sewage disposal events.
57. The CITY failed to take any corrective action to prevent these sewage disposal system events including failing to properly, reasonably and timely inspect the South Drive Sewer.
58. As a substantial and proximate cause of these acts and/or omissions by the CITY, the Plaintiffs sustained the damages earlier set forth herein.

WHEREFORE, Plaintiffs request relief against the Defendant City as set forth herein in the Relief Section.

COMMON RELIEF

The PLAINTIFFS JACEK WIERZBICKI, GRAZYNA WIERZBICKI, GREGORY ESKRIDGE, GAIL ESKRIDGE, BETH FARHAT, FAWAZ HASSO, MAHA HASSO, CHARLES MORAN, PATRICIA MORAN, PATRICIA MORAN, JAY PATEL, RUCHA PATEL, DEV PATEL, DIPPE PATEL, MARK THOMAS AND DANA THOMAS, on behalf of themselves and their children, request the following relief against the DEFENDANT CITY OF TROY as follows:

- A. The award of compensatory damages in excess of \$25,000 as to each plaintiff including damages to install a mitigation system to prevent any future sewage invasion;
- B. The award of attorney fees and court costs; and
- C. Such other relief which this Court deems just and right.



Date: Friday, October 16, 2015

/s/Phillip G. Bazzo
Phillip G. Bazzo P25243
Attorney for Plaintiffs
55 East Long Lake Rd., No. 535
Troy, MI 48085
(248) 321-8600

500 W. Big Beaver
Troy MI 48084
(248) 524-3300

The City of Tomorrow...



...Today

December 8, 2011

Somerset Collection
2600 Big Beaver Rd. Suite 300
Troy MI. 48084
Attn. Mark Fortner & John Myszak

Dear Gentleman,

On December 5, 2011, the Troy Water & Sewer Division discovered during routine cleaning of the City's main sanitary sewer system an excessive amount of grease coming from the sewer lateral of The Somerset Collection on the north side of Big Beaver Rd. Upon further investigation with our video inspection equipment, we found massive amounts of grease in the sanitary sewer system and began immediate cleanup procedures.

This condition violates many sections of the City of Troy's Ordinance Code, specifically Chapter 19 Sections 19.05.02 & 19.06.02 (copy enclosed). Please be advised that this is your one and only warning. Any future violations will result in immediate court action.

Please contact me if you have any questions or want to discuss this matter with me. We will be monitoring this situation in the future. I can be reached at 248-524-3395.

Thank you for your attention to this matter.

Sincerely,

Richard Shepler
Water & Sewer Superintendent
r.shepler@troymt.gov

EXHIBIT THREE
WIERZBICKI V. DOETSCH
REQUEST FOR ADMISSIONS
NOV. 28, 2014

I SPOKE WITH MARK FORTNER ON THE PHONE 1-4-12. TOLD HIM WE HAVE CLEANED AND TELEVIEWED ENTIRE SOMERSET NORTH SEWER. THEY ARE NOW CLEAN THEY WILL BE ON A 1 YEAR SCHEDULE. JOHN MYSEK HAS TAKEN THIS LETTER TO ALL RESTAURANTS IN SOMERSET NORTH FOR THEIR KNOWLEDGE AND CLEANUP OF THEIR GREASE TRAPS.

www.troymt.gov

Ruliffe - 1-4-12

WIERZBICKI-ORIG.COMPLAINT EXH. 1

Received for Filing Oakland County Clerk 2015 OCT 16 PM 02:00

TREADWELL & ASSOCIATES, INC., REALTORS

15032 FORT STREET, SOUTHGATE, MICHIGAN, 48195-1301

Phone 734.282.2123 Fax 734.282.7822 Email TREADWELLASSOC@MSN.COM

SOMERSET NORTH SUBDIVISION SEWER BACKUP TROY, MICHIGAN

Appraisal Report for Eight Houses Impacted by Sewer Back-up

Date Written: June 17, 2015

Date of Value: November 9, 2013

**Prepared for: Phillip G. Bazzo, Esq.
55 East Long Lake Road, No. 535
Troy, Michigan 48085-4738**

Authorized by: Phillip G. Bazzo

**Prepared by: Donald H. Treadwell, Jr., MAI
President**

**TREADWELL & ASSOCIATES, INC.
15032 Fort Street
Southgate, Michigan 48195**

(734.282.2123)

TREADWELL & ASSOCIATES, INC., REALTORS

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June 17, 2015

Phillip G. Bazzo, Esq.
55 East Long Lake Road, No. 535
Troy, MI 48085-4738

Re: Somerset North Subdivision
Sewer Backup
Troy, Michigan

Ladies and Gentlemen:

In accordance with your request, we have examined the above referenced properties to estimate the market value of the single-family houses if they were not adversely impacted by the backup of sanitary sewage into the basement areas and their value given the past sewer backup and risk of future backups. The value estimates are for the purpose of deriving an estimate of the damages caused by this problem. The estimate is to be utilized in conjunction with litigation between the property owners and the owners of the Somerset Mall.

The properties appraised are single-family residences. It is our understanding that the primary occupant of each property is the owner with one exception set forth in the subject property details.

The client is Phillip G. Bazzo, Attorney at Law, acting on behalf of the defendants in the case. The appraisal report was authorized by Phillip G. Bazzo and a retainer was paid. The appraisal report is intended to be utilized in the determination of damages through court proceedings and may be utilized by all parties to those proceedings in conjunction with the analysis of the appropriate damages.

The report is not intended to be utilized by any other parties for any other purpose without the specific authorization of the appraiser.

In the event testimony by the appraiser is required at deposition or trial, an additional hourly fee is required.

The fee simple estate is appraised.

The assignment is to prepare an Appraisal Report of the subject properties, valuing each property individually. The data, analysis, and conclusions are in conformance with the current Uniform Standards of Professional Appraisal Practice (USPAP). The data, analysis, and conclusions are considered to be presented in an Appraisal Report prepared in conformance with Standards Rule 2-2(a) of the current Uniform Standards of Professional Appraisal Practice (USPAP).

The subject properties were inspected during March of 2015. The effective date of the appraisal report is May 1, 2014, reflecting the date on which the city of Troy data was researched. The search for market data covered the period from January of 2011 through May of 2015. The diminution in value occurred on November 9, 2013, and the estimated property damages are based on the property values estimated as of November 9, 2013, the date of the sanitary sewer backup.

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The value estimates of the subject properties, in both the "before" and the "after" analyses, are predicated on no environmental contamination or problems other than the risk of future sewage backup in the "after" analyses. Except for the specific items noted within the appraisal, the structures and site improvements are assumed to be in sound condition and all mechanical systems being fully operable. The "before" value estimates are premised on the basement finishes being in a condition consistent with the remainder of the house and the information provided by the owners. The condition observed at the time of the inspection, for most of the properties, was reported to be equivalent to the level of finish that existed prior to the sanitary sewage backup.

The accompanying report includes a complete legal description, a description of the premises and the surrounding area together with other data which we have discovered during our investigation, analysis and the conclusions drawn therefrom.

In our opinion, the market values of the following described properties and the damages created by the potential for future sewer backup, subject to the limiting conditions and assumptions set forth within this appraisal report, as of November 9, 2013, are:

VALUE ANALYSIS SUMMARY

ADDRESS	BEFORE VALUE	AFTER VALUE	DAMAGES
3389 Shakespeare	\$464,000	\$409,000	\$55,000
3390 Shakespeare	\$550,000	\$490,000	\$60,000
3405 Shakespeare	\$586,000	\$526,000	\$60,000
3422 Shakespeare	\$580,000	\$520,000	\$60,000
3438 Shakespeare	\$560,000	\$550,000	\$10,000
1512 Hamlet	\$600,000	\$540,000	\$60,000
1525 Hamlet	\$650,000	\$590,000	\$60,000
1528 Hamlet	\$650,000	\$590,000	\$60,000

Respectfully submitted,

TREADWELL & ASSOCIATES, INC.

*Donald H.
Treadwell, Jr.*

*Digitally signed by Donald H.
Treadwell, Jr.
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o=Treadwell and Associates, Inc., c=,
email=treadwell@treadwell.com, ou=,
c=US
Date: 2013.06.17 13:11:11 -0400*

Donald H. Treadwell, Jr., MAI
President

Mr. Treadwell is a member of the Appraisal Institute holding the MAI designation and is a Certified General Real Estate Appraiser under the laws of the State of Michigan, Identification Number 1201000263.