

IN THE IOWA DISTRICT COURT IN AND FOR WOODBURY COUNTY

ALICE M. HANSEL, TROY A. NELSON,  
LAURA J. MYERS, MARK L. WRIGHT,  
TINA R. WRIGHT, MATTHEW D. ELKS,  
AMY M. RIEF-ELKS, DAN H.  
PROTEXTER, NANCY A. PROTEXTER,

Plaintiffs,

v.

CITY OF SIOUX CITY,

Defendant.

CASE NO. \_\_\_\_\_

**PETITION AT LAW AND IN  
EQUITY**

COMES NOW, Plaintiffs, and for their causes of action against Defendant state:

**COMMON ALLEGATIONS**

1. Defendant, the City of Sioux City, is a municipality organized and existing under the laws of Iowa.
2. Plaintiffs are Alice M. Hansel, Troy A. Nelson, Laura J. Meyers, Mark L. Wright, Tina R. Wright, Matt D. Elks, Amy M. Rief-Elks, Dan H. Protexter, and Nancy A. Protexter, residents of Woodbury County, Iowa.
3. Plaintiff Alice M. Hansel resides at 2919 South Lyons Street, Sioux City, Iowa, legally described as: Lot Ten (10), Eastbrook Addition to Sioux City, Woodbury County, Iowa.
4. Plaintiff Troy A. Nelson resides at 2915 South Lyons Street, Sioux City, Iowa, legally described as: Lot 9, Eastbrook Addition to Sioux City, Woodbury County, Iowa.
5. Plaintiff Laura J. Meyers resides at 2915 South Lyons Street, Sioux City, Iowa, legally described as: Lot 9, Eastbrook Addition to Sioux City, Woodbury County, Iowa.

6. Plaintiff Mark L. Wright resides at 2921 South Lyons Street, Sioux City, Iowa, legally described as: Lot Twenty (20) in Eastbrook Second Addition to Sioux City, Woodbury County, Iowa.

7. Plaintiff Tina R. Wright resides at 2921 South Lyons Street, Sioux City, Iowa, legally described as: Lot Twenty (20) in Eastbrook Second Addition to Sioux City, Woodbury County, Iowa.

8. Plaintiff Matthew D. Elks resides at 5600 Lyons Court, Sioux City, Iowa, legally described as: Lot Eighteen (18) in Eastbrook Second Addition to Sioux City, Woodbury County, Iowa.

9. Plaintiff Amy M. Rief-Elks resides at 5600 Lyons Court, Sioux City, Iowa, legally described as: Lot Eighteen (18) in Eastbrook Second Addition to Sioux City, Woodbury County, Iowa.

10. Plaintiff Dan H. Protexter resides at 2911 South Lyons, Sioux City, Iowa, which is legally described as: Lot Eight (8) in Eastbrook Second Addition to Sioux City, Woodbury County, Iowa.

11. Plaintiff Nancy A. Protexter resides at 2911 South Lyons, Sioux City, Iowa, which is legally described as: Lot Eight (8) in Eastbrook Second Addition to Sioux City, Woodbury County, Iowa.

12. At all times relevant herein, defendant controlled, owned, operated and maintained a sanitary sewer system within its boundaries.

13. On or about July 16, 2011, plaintiffs owned and possessed, as part of their residence, well-constructed, clean and orderly homes, in which all lived and stored articles of

personal property including their children's' playthings, photographs, family heirlooms, and other mementos.

14. On or about July 16, 2011, plaintiffs' residences were connected to the defendant's sanitary sewer.

15. On or about July 16, 2011, excrement and other dirty water from a branch of defendant's sanitary sewer backed up into the home of each of the plaintiffs.

### **COUNT I – NEGLIGENCE**

For cause of action defendant premised upon negligence, plaintiffs state:

16. Plaintiffs replead and reallege each and every allegation set forth in paragraphs 1-15 of the "Common Allegations" with the same force and effect as if set forth verbatim here.

17. The sanitary sewer backup occurring on July 16, 2011, resulted from the negligence of defendant from one or more of the following particulars and based upon reasons that may become known during discovery:

- a. Defendant failed in its duty to keep the sanitary sewer clear and free so as to allow sewage to flow away from the plaintiffs' residences;
- b. Defendant failed in its duty to prevent the sanitary sewer from becoming a source of discomfort and injury to the plaintiffs;
- c. Defendant knew or should have known of defects in the design, installation or operation of the sanitary sewer system and failed to repair them or otherwise maintain the system in proper working order; and/or
- d. Defendant failed to exercise reasonable care under the circumstances then existing.

18. As a proximate cause of defendant's negligence, Plaintiffs suffered extensive damage including, without limitation:

- a. The cost of repairing the damage to their homes;
- b. The cost of replacing or repairing personal property and fixtures damaged or destroyed;

- c. Permanent diminution in the market value of their real property;
- d. The temporary loss of use their real and personal property;
- e. The cost of reasonable expenses incurred in good faith to prevent or minimize damage; and
- f. The cost of incidental expenses directly caused by injury to property.

19. This Court has jurisdiction over the parties and the subject matter herein and this matter exceeds jurisdictional minimums.

WHEREFORE, plaintiffs pray that the court enter judgment against defendant for:

- 1. Actual damages in the sum of with interest at the lawful rate from until judgment;
  - 2. Interest from July 16, 2011, at the maximum statutory rate per annum until paid;
- and
- 3. Costs of suit and such other and further relief to which plaintiffs may be justly and equitably entitled.

### **COUNT II – NEGLIGENCE/RES IPSA LOQUITOR**

For cause of action against defendant premised upon negligence – Res Ipsa Loquitor, plaintiffs states as follows:

20. Plaintiffs replead and reallege each and every allegation set forth in paragraphs 1-15 of the “Common Allegations” with the same force and effect as if set forth verbatim here.

21. On July 16, 2011, defendant had exclusive control and management of the sanitary sewer system which caused the damages and injuries to plaintiffs when it backed up.

22. The injuries and damages suffered by plaintiffs are the types of injuries that in the regular course of events would not have been sustained if defendant had exercised reasonable care.

23. As a proximate cause of defendant's negligence, plaintiffs suffered extensive damage including, without limitation:

- a. The cost of repairing the damage to their homes;
- b. The cost of replacing or repairing personal property and fixtures damaged or destroyed;
- c. Permanent diminution in the market value of their real property;
- d. The temporary loss of use their real and personal property;
- e. The cost of reasonable expenses incurred in good faith to prevent or minimize damage; and
- f. The cost of incidental expenses directly caused by injury to property.

24. This Court has jurisdiction over the parties and the subject matter herein and this matter exceeds jurisdictional minimums.

WHEREFORE, plaintiffs pray that the court enter judgment against defendant for:

1. Actual damages in the sum of with interest at the lawful rate from until judgment;
  2. Interest from July 16, 2011 at the maximum statutory rate per annum until paid;
- and
3. Costs of suit and such other and further relief to which plaintiffs may be justly and equitably entitled.

### COUNT III – COMMON LAW NUISANCE

For cause of action against defendant premised upon common law nuisance, plaintiffs state:

25. Plaintiffs replead and reallege each and every allegation set forth in paragraphs 1-15 of the "Common Allegations" with the same force and effect as if set forth verbatim here.

26. The presence of sewage in the plaintiffs' homes is injurious to health, indecent, offensive to the senses, and an obstruction to the free use of property.

27. As a proximate cause of defendant's nuisance, plaintiffs suffered extensive damage including, without limitation:

- a. The cost of repairing the damage to their homes;
- b. The cost of replacing or repairing personal property and fixtures damaged or destroyed;
- c. Permanent diminution in the market value of their real property;
- d. The temporary loss of use their real and personal property;
- e. The cost of reasonable expenses incurred in good faith to prevent or minimize damage; and
- f. The cost of incidental expenses directly caused by injury to property.

28. This Court has jurisdiction over the parties and the subject matter herein and this matter exceeds jurisdictional minimums.

WHEREFORE, plaintiffs pray that the court enter judgment against defendant:

1. Enjoining and abating defendant's nuisance;
2. Actual damages in the sum of with interest at the lawful rate from until judgment;
3. Interest from July 16, 2011 at the maximum statutory rate per annum until paid;

and

4. Costs of suit and such other and further relief to which plaintiffs may be justly and equitably entitled.

**COUNT IV – STATUTORY NUISANCE PURSUANT TO IOWA CODE § 657.1**

For cause of action against defendant premised upon statutory nuisance pursuant to Iowa Code § 657.1, plaintiffs state:

29. Plaintiffs replead and reallege each and every allegation set forth in paragraphs 1-15 of the “Common Allegations” with the same force and effect as if set forth verbatim here.

30. The presence of sewage in the plaintiffs’ homes is injurious to health, indecent, offensive to the senses, and an obstruction to the free use of property.

31. Pursuant to Iowa Code § 657.1, defendants have allowed a nuisance to exist.

32. As a proximate cause of defendant’s nuisance, plaintiffs suffered extensive damage including, without limitation:

- a. The cost of repairing the damage to their homes;
- b. The cost of replacing or repairing personal property and fixtures damaged or destroyed;
- c. Permanent diminution in the market value of their real property;
- d. The temporary loss of use their real and personal property;
- e. The cost of reasonable expenses incurred in good faith to prevent or minimize damage; and
- f. The cost of incidental expenses directly caused by injury to property.

33. This Court has jurisdiction over the parties and the subject matter herein and this matter exceeds jurisdictional minimums.

WHEREFORE, plaintiffs pray that the court enter judgment against defendant:

1. Enjoining and abating defendant’s nuisance;
2. Actual damages in the sum of with interest at the lawful rate from until judgment;
3. Interest from July 16, 2011 at the maximum statutory rate per annum until paid;

and

4. Costs of suit and such other and further relief to which plaintiffs may be justly and equitably entitled.

## **COUNT V – INVERSE CONDEMNATION**

For cause of action against defendant premised upon inverse condemnation, plaintiffs state:

34. Plaintiffs replead and reallege each and every allegation set forth in paragraphs 1-15 of the “Common Allegations” with the same force and effect as if set forth verbatim here.

35. The presence of sewage in the plaintiffs’ homes is injurious to health, indecent, offensive to the senses, and an obstruction to the free use of property.

36. As a proximate cause of defendant’s inverse condemnation, Plaintiffs suffered extensive damage including, without limitation:

- a. The cost of repairing the damage to their homes;
- b. The cost of replacing or repairing personal property and fixtures damaged or destroyed;
- c. Permanent diminution in the market value of their real property;
- d. The temporary loss of use their real and personal property;
- e. The cost of reasonable expenses incurred in good faith to prevent or minimize damage; and
- f. The cost of incidental expenses directly caused by injury to property.

37. The presence of sewage in the plaintiffs’ homes has also resulted in permanent diminution in the value of their property.

38. Plaintiffs’ have a constitutionally protected property interest that has been taken by defendant.

39. Defendant has not instituted a formal condemnation proceeding of any kind on the taking of plaintiffs’ property.

40. Defendant has not provided just compensation for the taking.



WHEREFORE, Plaintiffs pray that the court enter judgment against defendant:

1. Actual damages in the sum of with interest at the lawful rate from until judgment;
2. Interest from July 16, 2011 at the maximum statutory rate per annum until paid;

and

3. Costs of suit and such other and further relief to which plaintiffs may be justly and equitably entitled.

### **COUNT VI – TRESPASS**

For cause of action against defendant premised upon trespass, plaintiffs state:

41. Plaintiffs replead and reallege each and every allegation set forth in paragraphs 1-15 of the “Common Allegations” with the same force and effect as if set forth verbatim here.

42. Defendant has unlawfully entered upon plaintiffs’ property, disturbed plaintiffs’ use, occupation, and enjoyment thereof.

43. As a proximate cause of defendant’s trespass, plaintiffs suffered extensive damage including, without limitation:

- a. The cost of repairing the damage to their homes;
- b. The cost of replacing or repairing personal property and fixtures damaged or destroyed;
- c. Permanent diminution in the market value of their real property;
- d. The temporary loss of use their real and personal property;
- e. The cost of reasonable expenses incurred in good faith to prevent or minimize damage; and
- f. The cost of incidental expenses directly caused by injury to property.

44. This Court has jurisdiction over the parties and the subject matter herein and this matter exceeds jurisdictional minimums.

WHEREFORE, plaintiffs requests that judgment be entered against Defendant for:

1. Actual damages in the sum of with interest at the lawful rate from July 16, 2011 until judgment;
  2. Interest from July 16, 2011 at the maximum statutory rate per annum until paid;
- and
3. Costs of suit and such other and further relief to which plaintiffs may be justly and equitably entitled.

**DEMAND FOR JURY TRIAL**

COMES NOW plaintiffs and pursuant to Iowa R. Civ. P. 1.902 (2008), hereby demands trial by jury of all issues herein.

Respectfully submitted,

BERENSTEIN, MOORE, HEFFERNAN,  
MOELLER & JOHNSON, L.L.P.

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