

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SELECTIVE INSURANCE COMPANY OF AMERICA
as subrogee of Selden Partners LLC, Hudson Business
Enterprises, and Lucille Marusak; SELECTIVE INSURANCE
COMPANY OF THE SOUTHEAST as subrogee of Fidanka
Ognanovich; SELECTIVE WAY INSURANCE COMPANY
as subrogee of Sal's Property Management LLC, and Halal
World Depot LLC; SELECTIVE INSURANCE COMPANY
OF SOUTH CAROLINA as subrogee of Dr. Lisa
Manz-Dulac, Village Optical Inc., Jeffrey Calloway
and Russell Development Inc,

Case No. CZ

Plaintiffs,

Honorable

v.

CITY OF DETROIT; DETROIT WATER AND
SEWERAGE DEPARTMENT; GREAT
LAKES WATER AUTHORITY, CITY OF GROSSE POINTE; CITY OF GROSSE
POINTE PARK; CITY OF GROSSE POINTE WOODS; CITY OF DEARBORN; CITY OF
HAMTRAMCK; and JOHN DOES 1-10,

Defendants.

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JUN 13 2024

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CITY OF GROSSE POINTE WOODS
CLERK'S DEPARTMENT

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 this Court where it was given case number 21-008465-CZ and was assigned to Judge Charlene M. Elder. The action remains pending.

NOW COME Plaintiffs, by and through their counsel, NIELSEN ZEHE & ANTAS, P.C., and for their Complaint state as follows:

THE PARTIES

A. Introductory Statement

1. Plaintiffs are insurance companies that, at all times relevant hereto, provided insurance policies for real and personal property and businesses of their insureds that were damaged as a result of the sewage disposal system events in and around the City of Detroit, Michigan on June 25-27, 2021 ("June 2021 Sewage Disposal System Event"), and July 24, 2021 ("July 2021 Sewage Disposal System Event"). Plaintiffs insured multiple businesses, individuals and properties that sustained significant damages as a result of the sewage disposal system events. Defendants owned and/or operated the defective sewage disposal systems that were the substantial proximate cause of the property damages to Plaintiffs' insureds.

B. Plaintiffs

2. Plaintiff, Selective Insurance Company of American (hereinafter "Selective America" or collectively referred to as "Selective Plaintiffs") is an insurance company with its principal place of business located at 40 Wantage Avenue, Branchville, New Jersey.

3. Plaintiff, Selective Way Insurance Company (hereinafter "Selective Way" or collectively referred to as "Selective Plaintiffs") is an insurance company with its principal place of business located at 40 Wantage Avenue, Branchville, New Jersey.

4. Plaintiff, Selective Insurance Company of South Carolina (hereinafter "Selective South Carolina" or collectively referred to as "Selective Plaintiffs") is an insurance company with its principal place of business located at 40 Wantage Avenue, Branchville, New Jersey.

5. Plaintiff, Selective Insurance Company of the Southeast (hereinafter “Selective Southeast” or collectively referred to as “Selective Plaintiffs”) is an insurance company with its principal place of business located at 40 Wantage Avenue, Branchville, New Jersey.

6. At all times material hereto, the Selective Plaintiffs were authorized to, and did, issue policies of insurance within the state of Michigan.

7. Pursuant to these policies of insurance, the Selective Plaintiffs insured the properties of homeowners and businesses (“Plaintiffs’ Insureds”) located in Wayne County, Michigan (hereinafter, the “Properties”).

8. The Selective Plaintiffs insured the properties located at:

- a. Selden Partners LLC, 644 Seldon, Detroit, Michigan;
- b. Jeffrey Calloway dba J Cally Grooming, 16129 Mack Ave., Detroit, Michigan;
- c. Hudson Business Enterprises, 1447 Woodward Ave., Detroit, Michigan;
- d. Sal’s Property Management LLC, 13944 Michigan Ave, Dearborn, MI;
- e. Lucille Marusak, 14240 Michigan Ave., Dearborn, Michigan;
- f. Halah World Depot LLC, 5808 Schaefer Rd., Dearborn, Michigan;
- g. Russell Development Inc., 16835 Kercheval Ave., Gross Point, MI;
- h. Dr. Lisa Manz-Dulac MD, 20030 Mack Ave., Grosse Pointe Woods, MI;
- i. Village Optical Inc./Bayne Optical Inc., 16841 Kercheval Pl., Grosse Pointe Park, MI;

j. Fidanka Ognanovish dba New Palace Bakery, 9833 Joseph Campau St., Hamtramck, Michigan.

9. As described below, Plaintiffs' Insureds suffered sewer backups and related property damage at the Properties.

10. Plaintiffs' Insureds presented claims to the Selective Plaintiffs for damage, injury and loss to their real property, personal property, commercial property, and business arising from the sewer backups caused by Defendants' conduct described below.

11. Consistent with the Selective Plaintiffs' policies of insurance, and the Plaintiffs' obligations under the law, Plaintiffs investigated, adjusted and paid their Insureds for covered claims arising from the Defendants' conduct.

12. The Selective Plaintiffs have made payments to, or on behalf of, their Insureds for a sum in excess of the jurisdictional minimum of this Court.

13. In consideration of Selective Plaintiffs' payment to its Insureds, the terms of their policies of insurance, equity, and by operation of law, Plaintiffs became an actual, bona fide subrogee of Plaintiffs' Insureds, and became contractually and equitably subrogated to the rights and claims against any person or entity that may be liable for causing damages to Plaintiffs' Insureds.

C. Defendants

14. Defendant City of Detroit is an appropriate governmental agency and a political subdivision of the State of Michigan. The City of Detroit owns and operates the sewage disposal systems within the City of Detroit.

15. Defendant City of Dearborn is a political subdivision of the state of Michigan located in Wayne County, Michigan which, for a fee, provides sewer services to businesses and residences located within its boundaries.

16. Defendant City of Grosse Pointe is a political subdivision of the state of Michigan located in Wayne County, Michigan which, for a fee, provides sewer services to businesses and residences located within its boundaries.

17. Defendant City of Grosse Pointe Park is a political subdivision of the state of Michigan located in Wayne County, Michigan which, for a fee, provides sewer services to businesses and residences located within its boundaries.

18. Defendant City of Grosse Pointe Woods is a political subdivision of the state of Michigan located in Wayne County, Michigan which, for a fee, provides sewer services to businesses and residences located within its boundaries.

19. Defendant City of Hamtramck, is a political subdivision of the state of Michigan located in Wayne County, Michigan which, for a fee, provides sewer services to businesses and residences located within its boundaries.

20. Defendant Detroit Water and Sewerage Department ("DWSD") is an appropriate governmental agency and a public utility and/or department of the City of Detroit that owns and operates the sewage disposal systems within the City of Detroit.

21. Defendant Great Lakes Water Authority ("GLWA") is an appropriate governmental agency and an incorporated regional water authority that operates the regional sewage disposal systems in southeast Michigan, including within the City of Detroit and Wayne County, Michigan.

22. Defendants, John Does 1-10, are employees and/or agents of the above-named Defendants who were, or were supposed to be, working during the rain event of June 25, 2021 through June 27, 2021.

JURISDICTION AND VENUE

23. Plaintiffs incorporate by reference the allegations made in paragraphs 1 through 22, as if fully set forth herein.

24. This Court has subject matter jurisdiction over this lawsuit because the allegations giving rise to the subject Complaint occurred in Wayne County, Michigan and damages are in excess of \$25,000.

25. Pursuant to MCL 600.1621, venue is proper in Wayne County, Michigan because the Defendants are appropriate governmental agencies that are located in, and that do business in, Wayne County, Michigan.

GENERAL ALLEGATIONS

26. Defendant GLWA was created by Court Order in 2014, pursuant to the City of Detroit's bankruptcy proceedings.

27. As part of this deal, among other things, GLWA assumed operational control of the Connor Pumping Station ("CPS") and Freud Sewage Pumping Station ("FSPS"); notwithstanding, DWSD and/or The City of Detroit retain the sole ownership interest in these pumping stations and are, therefore jointly liable for the claims stated herein.

28. GLWA staffs the CPS and FSPS with personnel, including, without limitation, Defendants John Does 1-10.

29. Pursuant to a Memorandum of Understanding and Lease Agreement between GLWA and the City of Detroit, Defendant GLWA operates and maintains the sewage disposal system previously operated/maintained by Defendant City of Detroit, including CPS and FSPS. Pursuant to the Lease Agreement, GLWA pays at least \$50 million per year to the City of Detroit.

30. CPS consists of eight storm pumps and four sanitary pumps. During wet weather, and as needed, the eight storm pumps are designed and intended to handle wastewater from other areas and communities so to prevent or lessen the severity of wastewater backups through the sewer systems into homes and businesses.

31. FSPS has eight storm pumps which are intended to process wastewater that CPS cannot.

32. In the event the capacity of the CPS is exceeded during a storm event, the excess is routed to the Fox Creek and Ashland Relief Sewers which flow to the FSPS for holding until such time that CPS can accept additional flow; if the FSPS storage capacity is exceeded, its eight storm pumps then discharge the wastewater into a common discharge channel.

33. According to GLWA, as of 2020, CPS was under study for major renovation or replacement given its outdated equipment and regular failures. For example, following area sewer back-ups and related flooding in 2016 brought about, in part, by system failures at CPS, GLWA identified several "critical issues" relative to the operation and reliability of CPS including problems with storm pumps 1 and 8 and the need for vacuum priming improvements for all pumps.

34. Excess combined flows from the GROSSE POINTE PARK sewers are routed to the CPS and, as needed as determined by GLWA, to the FSPS.

Interconnections exists such that essentially either pump station can be used for smaller storm flows; however, during heavy storm flows, both pump stations, including all 16 storm pumps, must be fully operational.

35. Defendants GLWA and/or DWSD and GROSSE POINTE PARK have been on notice for many years that during heavy rain events that if all 16 pumps of these stations are not fully operational, back- up of wastewater is foreseeable and likely, including through GROSSE POINTE PARK, which will lead to catastrophic losses to the residents and businesses.

36. Defendant GROSSE POINTE PARK has known for many years of the operational and equipment deficiencies inherent in CPS and FSPS and that the GLWA's sewer system could not be relied upon to process storm water from GROSSE POINTE PARK during a heavy rain event and that back-ups through its sewer system and ultimately into homes and businesses was foreseeable and likely.

37. In 1938, GROSSE POINTE PARK and the City of Detroit entered into an agreement under which allowed GROSSE POINTE PARK to discharge overflow wastewater into Fox Creek, a tributary near the GROSSE POINTE PARK-Detroit border. Release of excess wastewater into Fox Creek was necessary because GROSSE POINTE PARK's "combined" sewer system -- a single sewer line used to transport both sewage and storm water runoff -- would become overtaxed during periods of heavy rainfall resulting in wastewater backups into homes and businesses.

38. From 1940 to 1995, GROSSE POINTE PARK released overflow rainwater and sewage into Fox Creek hundreds of times to prevent or lessen the chance of backup through its sewers. However, as a result of federal litigation initiated in the mid 1990's, GROSSE POINTE PARK could no longer dump over-flow into the Fox

Creek and consequently, it permanently blocked its discharge pipe there. Notwithstanding, GROSSE POINTE PARK has known at least since the mid-1990's, and because of its inability to dump overflow into Fox Creek, that design and operational changes had to be made. Stated otherwise, given the known operational and equipment problems at CPS and FSPS, GROSSE POINTE PARK could not reasonably rely upon GLWA to process its excess wastewater during a heavy rain event and that wastewater backups into residences and businesses would likely continue at significant financial costs unless significant design and equipment changes were initiated.

39. Supposedly to correct this problem, Defendant GROSSE POINTE PARK "separated" its storm and sanitary sewers, to some degree but not completely, by routing some storm run-off to holding tanks at Patterson Park; notwithstanding this change, Defendant GROSSE POINTE PARK had to continue to rely upon CPS and FSPS to process overflow wastewater which remained foreseeable during heavy rain events.

40. Defendant GROSSE POINTE PARK knew, given prior wastewater backup events and consequent flooding, deferred maintenance issues, outdated and aged equipment and other infrastructure and related issues, that Defendants GLWA and/or DWSD would not likely be able to handle its excess wastewater overflow and that, in such situations, wastewater backups were not only foreseeable, but likely during a heavy rain event.

41. In such wastewater backup events, significant real and personal property damage would likely occur and there would be a related risk to the health of the residents of

GROSSE POINTE PARK caused by untreated storm water and raw sewage backing up into residences and businesses.

42. The foregoing would be particularly catastrophic in an unusually, but foreseeably, heavy storm.

43. Additionally, notwithstanding their combined knowledge of system-wide deficiencies and the probability of future catastrophic wastewater back-ups, neither GROSSE POINTE PARK, nor Defendants GLWA and/or DWSD developed a comprehensive emergency contingency plan for the effective disposal of wastewater during a heavy rain event, especially given the closing of what were, before the 1970's, typical ways of disposing of excess wastewater -by dumping into creeks, rivers, lakes, etc.

44. Similarly, Defendant, CITY OF DEARBORN'S sewer and stormwater system, which was designed prior to World War II, was severely outdated and incapable of handling levels of storm water that it has frequently received since its initial construction.

45. Likewise, Defendants, CITY OF HAMTRAMCK, CITY OF GROSSE POINTE and CITY OF GROSSE POINTE WOODS, have severely outdated stormwater and sewer systems that are incapable of handling the levels of stormwater that their system frequently receives, resulting in sewer backups that routinely damage their residents' properties.

46. On June 25, 2021 and continuing through June 27, and again on July 16, 2021, heavy rains fell throughout the metropolitan Detroit area, including in DETROIT,

GROSSE POINTE PARK, GROSSE POINTE, GROSSE POINTE WOODS, HAMTRAMCK, and DEARBORN.

47. As a consequence of such heavy rains, Defendant GROSSE POINTE PARK, apparently as a result of its sewers being at capacity, allegedly attempted to shift wastewater to GLWA which, per agreement, it was to accept and properly dispose in such a way to minimize the threat of water back-up through the GROSSE POINTE PARK's wastewater systems and into residences and businesses.

48. Beginning either very late on June 25 or just after midnight, into the early morning hours of June 26, GLWA was not able to process the wastewater diverted to it by GROSSE POINTE PARK because of admitted pump failures (at least 9 out of 16 storm pumps failed completely and there were problems with some or all of the remaining 7), gross negligence of its personnel, professed "operational failures," power failure/shortages, inaccessibility to grounds or equipment, etc. GLWA's failures were so pervasive that supposed emergency personnel were hampered in their efforts to access the pump stations by flooding in and around the pump station grounds and near- by public and private roads.

49. By way of further example, there were additional, admitted, multiple failures in Defendant GLWA' s equipment, facilities, systems and personnel that proximately caused and contributed to Plaintiffs' losses and damages including, without limitation:

- failed external power supply to FSPS causing equipment and pump failures and malfunctions which negatively impacted pumping capacity;
- at least five out of eight pumps at FSPS and three out of eight at CPS never activated, meaning these pumping stations operated, at best, 50% of capacity;

- GLWA authority learned at about 6:52 a.m. on June 25 that the Ludden Substation, which supplied power to FSPS, was "damaged and out of service" thus interrupting full power and station operation; this problem was not corrected by the time the rain began to fall later and prevented the start-up of all pumps, as was required, which was exacerbated by the lack of an emergency contingency plan or adequate back-up power supply or on-site electrician;
- trouble timely starting and running pumps at both CPS and FSPS before and during the storm; at CPS this was mainly due to a failure of the power and priming system, the root of which is described above; at FSPS, there were multiple causes including power and the well-recognized fact the pumps were in need of replacing at least since 2016; in all, only 5 out of 8 pumps could be operated at CPS and 2 out of 8 (though for whatever reason GLWA claims there are only 6 pumps at FSPS) at FSPS, meaning only 7 out of 16 pumps, 44%, ran at limited capacity; At best, and according to GLWA, the pumping stations were only able to work at about 44% capacity during what GLWA CEO Sue McCormick claimed was a "once in a thousand- year rain event" thus directly and proximately leading to the devastating sewer back-ups and consequent flooding of and damage to property.

50. In addition to the admitted equipment failures, GLWA authority failed to properly recognize, or willfully disregarded, the weather data available to it.

51. As a direct and proximate result of the operational malfunctions and failures of the CPS and FSPS, as generally described herein, the residences of Plaintiffs' Insureds suffered devastating wastewater back-ups causing, in some instances, over eight feet of water in basements, and the consequent destruction and damage to structures (foundations, walls, ceilings, etc.), loss of appliances, furnaces, boilers, hot water tanks, washers, dryers, etc., and the destruction of personal property, some of which held significant sentimental value.

52. Defendants, and each of them, have known for many years of the infrastructure deficiencies of the combined wastewater disposal systems based on

previous wastewater back-up events. It was, therefore, foreseeable to each of the named Defendants that during heavy rain events, especially where CPS and FSPS experienced multiple failures as they repeatedly had in the past, wastewater, including raw sewage, could not be properly handled and would backup on and into the residential and business properties and as a direct, proximate and foreseeable result, would cause damage to real and personal property.

53. Moreover, Defendants, were aware of numerous design and operational deficiencies in their sewage disposal systems, including but not limited to:

- a. Insufficient conveyance capacity for stormwater;
- b. Insufficient storage capacity for stormwater and/or wastewater;
- c. Electrical supply issues at pumping stations;
- d. Power quality issues at pumping stations;
- e. Inadequate and/or unreliable priming systems for pump starts;
- f. Inability to operate a sufficient number of storm pumps during rainfall events;
- g. Insufficient outlets for stormwater;
- h. Insufficient conveyance capacity for stormwater;
- i. Insufficiently trained personnel at pumping stations;
- j. Insufficiently staffed pumping stations.

54. Notwithstanding this knowledge, Defendants, either collectively or individually, failed to take appropriate remedial action to the failing sanitary and storm sewer systems thus making catastrophic flooding more likely to occur and foreseeable,

especially when, as during the subject event, there are multiple failures of GLWA equipment, systems and personnel.

COUNT I - GROSS NEGLIGENCE

55. Plaintiffs incorporate by reference the preceding paragraphs as if set forth fully herein.

56. Defendants breached the foregoing duties in one or more of the following ways:

- a. willfully disregarding the rain measurement data that was available via the GLWA precipitation measuring devices;
- b. willfully disregarding the need to, well in advance of the storm, prime so to properly engage the storm pumps at CPS but, instead, waited until the storm had advanced to the east side of Detroit and GROSSE POINTE PARK to attempt to prime and start;
- c. willfully disregarding long-standing maintenance issues with the storm pumps at CPS and FSPS such that as the storm advanced, only 7 out of 16 storm pumps were operational and most of those that were operational did not function and peak capacity;
- d. willfully failing, notwithstanding weather data justifying same, to draw down plant and reservoirs so that the wastewater run-off from the storm could be properly disposed of;
- e. willfully disregarding the weather data, real-time or otherwise, and the need for additional staffing at CPS and FSPS to address and handle the operational issues, malfunctions, etc. that were foreseeable with a storm of its magnitude;

- f. willfully failing to address the operational issues that did or were likely to arise as a result of the documented issues concerning the in-house electric service at CPS and FSPS and the problems that were likely to arise as a result of a disruption in electric service, especially in light of non-existent or marginal emergency contingency plan and insufficient electrician staffing; and
- g. willfully failing to implement emergency plans to address access to critical components in the event of a power failure;
- h. willfully failing to increase conveyance capacity of stormwater and sewage in their system;
- i. willfully failing to increase storage capacity for stormwater and/or wastewater in their system;
- j. willfully failing to address longstanding electrical supply issues at pumping stations;
- k. willfully failing to address longstanding power quality issues at pumping stations;
- l. willfully failing to address the insufficient outlets for stormwater in their systems;
- m. Failing to adequately staff their pumping stations;

57. When Defendants engaged in the above acts and/or omissions, Defendants knew, or should have known, that their failure to act would likely cause injury and damage to Plaintiffs' Insureds.

58. Plaintiffs' Insureds damages were the direct and proximate result of the Defendants willful disregard of the aforementioned duties.

59. Plaintiffs are contractually and equity subrogated to the rights of their insureds, to the extent of payments made by Plaintiffs to such insureds and may maintain this action.

COUNT II - VIOLATIONS OF MCL 691.1416 - 691.1419

60. Plaintiffs incorporate by reference the preceding paragraphs as if set forth fully herein.

61. The defendants are each and appropriate governmental agency within the meaning of MCL sec. 691.1416 and 691.1417 as each of the defendants are governmental agencies, that at the time of a sewerage disposal system event, owned or operated or directly or indirectly is charged into the portion of the sewage disposal systems the caused the damages and injury.

62. The properties insured by the plaintiffs described above are affected properties because they were affected by a sewage disposal system event.

63. The sewer backups described in the preceding paragraphs which caused damage to the properties of plaintiff's insureds were sewage disposal events involving overflow or backup of a sewage disposal system into real property.

64. Defendants were responsible for their respective sewage disposal systems.

65. As stated above, Defendants had longstanding notice of the many defects in their sewage disposal systems.

66. Prior to the storms of June 25th, 2021 and July 16, 2021, defects existed in the subject sewage disposal systems, and the Defendants knew, or in the exercise of reasonable diligence should have known, of the aforementioned defects in their respective sewage disposal systems

67. The defendants, as governmental agencies, having legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct or remedy the defects that caused the backup into the properties insured by plaintiffs, identified above.

68. The defects in Defendants' sewage disposal systems were the direct, substantial proximate cause of the property damage sustained by Plaintiffs Insureds at the real property locations set forth above.

69. Plaintiffs complied with the notice requirements of section 19 of the act.

70. Plaintiffs are contractually and equity subrogated to the rights of their insureds, to the extent of payments made by Plaintiffs to such insureds and may maintain this action.

**COUNT III - VIOLATION OF ART 10 § 2. MICHIGAN CONSTITUTION -
UNCONSTITUTIONAL TAKING OF PROPERTY**

71. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

72. Art. 10, §2 of the Michigan Constitution requires that "[private] property shall not be taken for public use without just compensation." Thus, "[any] injury to the property of an individual which deprives the owner of the ordinary use of it is equivalent to a taking and entitles him to compensation. So, partial destruction or diminution of value of property by an act of government, which directly and not merely incidentally effects it, is to that extent an appropriation." *Peterman v State Department of Natural Resources*, 446 Mich 177, 190; 521 NW 2nd499, 506-07 (1994).

73. Defendants, and each of them, had a duty to refrain from the unlawful taking/destruction of Plaintiffs' insureds' property without just and due compensation.

74. The action of Defendants, individually or collectively, in failing to properly dispose of the wastewater which fell on June 25 through June 27, 2021, and its consequent and foreseeable backing up of wastewater into Plaintiffs' insureds' properties and intrusion in and upon Plaintiffs' insureds' property, directly damaged the properties, thus amounting to an unlawful taking. Stated otherwise, Defendants' actions, collectively and individually, was a substantial if not sole cause of the damage to Plaintiffs' property and consequent damage and/or decline in value.

75. The foregoing occurred all the while Defendants, and each of them, were aware of the operational and infrastructure deficiencies and need for repairs and

design and infrastructure upgrades to address, among other things, global warming and increased rain falls coupled with, of which Defendants have been aware for at least 20 years.

76. In addition, or in the alternative to the foregoing, Defendants GLWA, DWSD and/or City of Detroit have been aware for many years, and no later than 2016, of the operational and equipment problems at CPS and FSPS, yet chose to not remedy these multiple problems.

77. Instead, GLWA, DWSD and/or City of Detroit ignored the problems and put the onus on correcting the regular and repeated flooding of residences and businesses on local municipalities, (for example by insisting the separation of storm and sanitary sewers) notwithstanding an agreement, for example, with Defendant GPP to accept excess wastewater for proper and timely disposal.

78. Defendant GLWA, for example, for many years disregarded and/or downplayed the problems associated with priming and starting the storm pumps at CPS and the need for replacement of the pumps at FSPS but knew that most of the pumps would likely not become fully operational during a heavy storm, when they were most needed.

79. Likewise, no later than 2016, GLWA knew of the operational deficiencies of all storm pumps at FSPS and their likelihood to fail when needed most - when CPS reached "full" capacity and began to divert wastewater to it.

80. While laudable to work towards the complete separation of storm and sanitary sewer systems, so to prohibit the dumping of untreated wastewater into, for example, the Fox Creek, all Defendants have known for years that limitations on dumping of wastewater to limit pollution necessarily means more wastewater stays within their respective sewer

systems thus greatly increasing the risk of backups into residences and businesses during heavy rain events.

81. These and other acts were direct acts against Plaintiffs' insureds' property because it was foreseeable and likely that wastewater backups through GPP would likely cause damage to Plaintiffs' insureds' properties.

82. Defendants, and each of them, have for many years been aware of the dangers posed by the infrastructure deficiencies of CPS and FSPS, disregarded them, and took affirmative action which exacerbated the problems. For example, and without limitation, Defendant GPP adopted a plan, supposedly in response to multiple prior floods, the last being in 2016, to divert wastewater to GLWA/DWSD, knowing that CPS and FSPS were, responsible for flooding throughout GPP and the lower east side of Detroit (2011, 2014, 2016 and 2018) and CCP and FSPS were badly in need of infrastructure upgrades and could not reasonably be relied upon in a heavy rain event to accept GPP's overflow wastewater. That is, GPP knew that relying on the GLWA/DWSD's for disposal of excess wastewater during a heavy rain event would likely lead to harm to Plaintiffs.

83. Defendant GPP owed a duty to their residents to properly dispose of wastewater through its sewer systems and to otherwise not cause the intrusion of wastewater in and upon Plaintiffs' insureds' property.

84. Defendants GLWA and DWSD and The City of Detroit owed a duty to Plaintiffs' insureds to properly dispose of wastewater through their sewer systems and to otherwise not cause the intrusion of wastewater in and upon Plaintiffs' property.

85. Defendants and each of them breached the foregoing and other duties to Plaintiffs' insureds as recited herein resulting in the unlawful and unconstitutional taking of Plaintiffs' property.

86. As a direct, proximate and foreseeable result of Defendants' unconstitutional taking of Plaintiffs' insureds' properties, Plaintiffs' insureds have experienced a loss and damage of property, substantial loss of value and the loss of the ordinary use and enjoyment of their properties.

87. As a further direct, proximate and foreseeable result of Defendants' unconstitutional taking of Plaintiffs' property, Plaintiff's insureds have been forced to incur remedial and repair costs; Defendants, and each of them, should be adjudged liable for these losses and the judgment should be entered against them, jointly and severally, for the damage caused. Defendants' actions and/or inactions, directly and foreseeably caused harm to plaintiffs' insureds; this harm would not have occurred but for Defendants' actions and/or inaction.

88. As a result of Defendants' wrongful taking and appropriation and damage to Plaintiffs' property, Plaintiffs, and each of them, have sustained damages for which Defendants, jointly and severally, are responsible. These damages include, and without limitation:

- a. direct loss and damage to real property;
- b. direct loss and damage to personal property;
- c. Any other damages which the trier of fact finds Plaintiffs have suffered.

89. Plaintiffs are contractually and equitably subrogated to the rights of their insureds and may maintain this action.

WHEREFORE, Plaintiffs request judgment be entered in their favor, and against Defendants, joint and several, in whatever amount they are found to be entitled together with exemplary and/or punitive damages, interest and attorney fees and that this Court grant Plaintiffs any other relief, equitable or otherwise, to which they are found entitled.

Respectfully submitted,

/s/Erik W. Nielsen

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