

**Katherine A Geiger (KAG) Versus the City of Milwaukee, WI**  
Claim (#1048-2022-447)

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notice given on April 1st, 2022  
Updated Nov 27, 2023

While I've recently been revising, updating, and revisiting this Description of The Incident, it's brought back so many Traumatic Memories of the physical, mental, and emotional pain I went through dealing with the Water Damage caused by a City Water Main Leak in front of my house two years ago at this time from Sept-Dec 2021. During this same time, I was also having many procedures to diagnose and treat Breast Cancer. In fact, last week I had a routine follow up MRI to make sure there's no re-occurrence of the Cancer. A rash of scary, painful memories of my first two MRI's flooded my body and mind. I then realized I was suffering from Post Traumatic Stress Disorder (PTSD). I believe this contributed to the long delay in getting estimates and no repairs have been done. There were so many contractors to deal with and many never sent an estimate because I made the mistake of saying it was for a Claim against the City.

Due to technological snafus when writing the original April 1,2022 claim, I humbly petitioned for an extension in order to provide you with a truer picture of the damages.

Per the instructions for filing a claim against the City of Milwaukee; I "must prove that the City or its employees acted unlawfully or negligently". I will address and prove that the City of Milwaukee did not perform it's "**Due Diligence**" in my case and the City of Milwaukee was thereby **Negligent**.

**"Due Diligence"** means "required carefulness" or "reasonable care". Webster's defines it in law as: "the care that a reasonable person exercises to avoid harm to other persons or their property."<sup>1</sup>

According to FindLaw.com: "**Negligence** in the legal sense refers to whether a person has a "**Duty of Care**" to another, and whether he or she has failed in that duty. If so, that person may be liable for any resulting injuries."<sup>2</sup>

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1 [www.merriam-webster.com](https://www.merriam-webster.com/dictionary/due%20diligence) Definition of Due Diligence, <https://www.merriam-webster.com/dictionary/due%20diligence>, viewed, 5/26/22

2 FindLaw.com, Elements of a Negligence Case, updated May 30, 2022, <https://www.findlaw.com/injury/accident-injury-law/elements-of-a-negligence-case.html>, viewed 7/8/22

To prove negligence on the city's part, several of the following **"Elements" of a Negligence case** must be proved: <sup>3</sup>

**A. Duty: Legal Duty of Care, "Standard of Care"**

The defendant (City) owes the plaintiff, Katherine A Geiger (KAG), a **"Legal Duty of Care"** or a legal duty to act with reasonable and proper **"Standard of Care"** in a certain situation. **"Standard of Care"** refers to the degree of attentiveness, caution and prudence that a reasonable person in the circumstances would exercise"<sup>4</sup>

US law is based on British law. According to Simons and Simons<sup>5</sup>; a test for establishing Duty of Care must include:

**A1. Foreseeability: Is this kind of Damage Foreseeable?**

According to the Legal Information Institute(LII) of Cornell University:

"Foreseeability asks how likely it was that a person could have anticipated the potential or actual results of their actions. This is a question in **contract** and **tort** law. The standard that courts use is that of "reasonability." In contract law, reasonability asks if the harms resulting from a **breach** were a natural result of that breach. In tort law, the "**reasonable person**" standard asks if an ordinary person in that same circumstance would have reasonably acted in the same way. In tort negligence lawsuits, foreseeability asks whether a person could or should reasonably have foreseen the harms that resulted from their actions."<sup>6</sup> (or inactions.)

Also, according to the Legal Information Institute(LII) of Cornell University, **"Higher or broader Standards of Care apply to professionals and people of authority"**.<sup>7</sup> The City (people of Authority) and its workers are professionals and **should adhere to higher "Standards of Care."**

**B. Breach of Duty:**

The defendant (City) breached that legal Duty by acting or Failing to act in a certain way. The City failed to meet that duty in a timely manner.

**C. Cause in Fact: "But-for" Causation**

often referred to as "But-for" Causation: "But for" the Defendant's (City) failure, I would not have been injured or suffered damages.

**D. Proximate Cause: The Defendant's failure (and not something else) caused these damages and injuries.**

**E. Damages:** Listed separately.

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3 FindLaw.com, Elements of a Negligence Case, updated May 30, 2022, <https://www.findlaw.com/injury/accident-injury-law/elements-of-a-negligence-case.html>, viewed 7/8/22

4 Megalomaniac

5 Simmons+Simmons, Good Neighbors: Establishing Duty of Care in Negligence, 12/12/17, <https://www.simmons-simmons.com/en/publications/ck0bggu4po4sw0b8501q7oqhw/051217-everybody-needs-good-neighbours>, viewed 7/7/22

<sup>6</sup> Legal Information Institute, updated August, 2021, [foreseeability | Wex | US Law | LII / Legal Information Institute \(cornell.edu\)](https://www.law.cornell.edu/wex/foreseeability), viewed 7/7/22

7 Legal Information Institute, updated Sept 21,2021,Standard of Care, viewed 5/9/22,<[https://www.law.cornell.edu/wex/standard\\_of\\_care](https://www.law.cornell.edu/wex/standard_of_care)>

### **Description of the Incident**

My basement basically has been used for storage since my son moved to Chicago and I retired from Milwaukee Public Schools in 2013 as a Bilingual Spanish Preschool/Kindergarten teacher who still occasionally substitute teaches in Montessori or Bilingual Pre-Kdg/Kdg. So, about half of my basement was full of Bilingual Pre-Kdg/Kdg teaching materials, manipulatives, books, and files.

Since I've had plantar fasciitis on my left foot for the last 2 years; I was going to physical therapy in the fall of 2021 once/week for it. I didn't go down to the basement that often except to do laundry or go to the freezer. So, I didn't notice the water immediately. The puddles probably started accumulating as early as August 2021 or before. However, they were covered with either furniture or plastic shelving units with bins against the walls; thereby "hiding" the puddles.

#### **1st or 2nd week of September 2021**

Sometime in the first or second week of September 2021, I went down the basement to use my anti-gravity table for the degenerated lower discs of my back. This is probably when I first discovered the puddle creeping out from underneath the red couch pictured in one of the accompanying photo pages. Then I knew this could be a serious problem in the basement.

#### **September 14th or 15th, 2021**

I believe my first call to the city water department about the leak was either September 14th or 15th, 2021.(I was not able to obtain these records from the city water department, but all my calls will be in their records.) It turned out that a friend was working in my second-floor bathroom on that day and had to cut a pipe which required that my water be turned off. When the water department was checking for the leak, at the end of their investigation, we realized that the water was turned off. To hear a leak, they would need to return when the water was turned back on.

They returned the next day or so and couldn't locate a leak inside my house or outside. I believe they did not drill any testing drill listening holes outside on either of these first two visits. They listened to the pipes inside my house on all floors and to the outside intake water pipe between the curb on Iron and the sidewalk; but did no digging on the first two visits.

However, **the MWW workers did suggest that I might need basement**

**waterproofing and recommended that I check into that.** I began calling waterproofing businesses, most of which had weeks or months wait for estimates, except Everdry who came out the next week.(Sept 22, '21)

### **The week of September 20th, 2021**

The water continued coming into my basement. At this point, I'm discovering more and more puddles seeping out all over the basement. **I called the City a third time to come out and check for a leak.** I was told by the dispatcher that they already had been out twice. **They** found no leak and **would NOT come out a third time; no matter how much I pleaded!** I asked her "Why not?" She looked up the records of the first two visits from the previous week. She responded that the second report was written by a highly respected supervisor which nobody would question.

**However, the puddles continued, and got bigger. By this time, I was wet vacuuming 20+ gallons of water, every three to five hours around the clock all by myself to keep the water away from the contents of my basement and my furnace!**

FYI, I live alone and turned 70 years old in June,'23 and was fully recovered from a June 2020 right hip replacement. When I first noticed the water in the basement; I was in physical therapy once a week for planters' fasciitis. It was getting harder and more painful for me to do the stairs. Due to excessive physical exertion and reoccurring right hip pain, **my physical therapist recommended** increasing physical therapy to twice per week and **a ten-pound weight limit.** I started to use a cane and/or walker again when necessary.

Every 3-5 hours, with a back brace velcro'ed around my back, I was hauling 50lbs of wet towels across the basement to the washer to spin dry. I then put them in the dryer; all of which further strained my degenerated discs. This required me to increase my chiropractor appointments from once per month to once per week to prevent my back from "going out". I also had to get checked out by my orthopedic surgeon to make sure I didn't do any damage to my new hip replacement.

During the summer 2021, I had been following up on a series of medical appointments, exams, biopsies, MRI's, concerning possible cancer. On November 4, 2021, I was diagnosed with Paget's disease of the breast. This culminated for me with breast surgery on December 7<sup>th</sup>, 2021, followed by 16 daily radiation sessions ending February 23, 2022. I suffered from extreme fatigue and brain fog during and approximately 6 weeks after the radiation. I

still experience brain fog and fatigue intermittently; especially after getting Covid! Therefore, I was petitioning in an email to Patrick Pauly (MWW) for an extension on the due date for this claim. Because of my medical situation, I have only recently been able to prepare this Claim Description. In addition, I am still waiting for some estimates for damages that may be submitted separately later.

### **9/19/21 Sunday**

I hired a helper who attempted caulking at the gushing spot along the red wall running parallel to Linebarger. (see photo PPg.#3) Our attempt was unsuccessful. He wet-vacuumed, moved furniture, etc. away from walls to investigate the source(s) of the puddles. See separate condensed Zip Photo files my son did for me.

### **9/21/21 Tuesday**

Between shifts of wet vacuuming every 3-5 hours, I went to Goodwill and bought 3 huge bags of big bath towels to use to soak up and direct the water from the contents of my basement & my furnace (See receipt p 3).

My 28-year-old son came up from Chicago to help move more items away from the walls to see where the water was coming in. In the late afternoon another helper, Dwayne, arrived to help haul out the water damaged items and furniture: couch, Lazy boy recliner, wooden computer desk, a corner entertainment table, drafting table, an exercise bike, a set of wooden TV trays with holder, a teenager's bike, teenager trick trail bike, Spanish and English Books for 3,4,5,& 6-year-old, etc.

(See PPg # 4 & 5, Zip photo files& cash labor summation sheet)

### **9/22/22 Wednesday**

In less than 24 hours, I realized I needed more towels from Goodwill. This would enable me to replace all the wet towels during the "switch out" time. I was still wet vacuuming over 20 gallons of water every 3 to 5 hours, around the clock; so, by that time I knew I needed more towels. I ended up using 3 huge Large Capacity dryer size loads of towels during the rotation every 3 to 5 hours for at least a month solid mostly all by myself. Thank goodness I rescued an old broken-down luggage wheelie that I had put on the curb for the garbage. Luckily my 50-pound wastebasket of wet towels balanced and saved my back a little bit. A small win finally! (see photo of wheelie & Towel Receipt p3)

The previous week (of 9/15/21), **one of the city water crews that was inspecting and assessing the basement water puddles suggested my basement needed waterproofing.** Very few basement companies were available to come out soon, except Everdry.

**On 9/22/21,** Everdry Waterproofing came at 5:00pm to give me an estimate. After **five hours of a High-Pressure Sales Pitch;** I signed a \$25,000 contract with Everdry that day for their “patented interior/exterior basement water proofing”. I paid Everdry a \$1000.00 deposit on my charge card. I signed up for "On Call " which hopefully got me an earlier date than January and a \$5,000 discount. However, I needed to have the basement emptied and be ready to have them start the job within 48 hours' notice if they were to get a cancellation of another job. Meanwhile the water is still coming into my basement!

During Everdry's estimate, it was discovered that my basement root cellar's (southwest corner) Linebarger wall (closest to where leak was finally found Dec 3rd, 21) had multiple cracks; and measurements indicated wall shifting and it would need 6 reinforcement support beams per building code mandates. Due to building codes, they must address this in the contract.

**It should be noted that since early September, '21 until about Jan, '22 there have been several inches deep of standing water in this un-insulated cellar room.** It has a door to shut it off from the bar/rec room.(see photo of warped door) So I kept that door closed to keep the water from going into the bar/rec room. I was having enough problems keeping up with the wet vacuuming of the rest of the basement.

There was also water seeping through the South side of the foundation along Iron street and underneath the basement stairway floor. Water from under the stairs formed puddles leading to the Bar/rec room and the furnace room from the bottom of the stairs and into the laundry room.

**Since the water wasn't stopping at all or slowing down and the city would Not come out to check for a leak again; by Friday September 24th, it was suggested that I call my Alderperson to get some action from the city in finding the leak.**

### **9/26/22 Sunday**

I purchased Sandbags with which my other son tried to build a dam to contain or divert water without much success. The water seeped through the

sandbags. The sandbags merely slowed the flow of water down temporarily until the next wet vacuuming 2-5 hours later. See PPg # 6 & Zip photo files

### **9/27/21 Monday**

I called my Alder-person Marina Dimitrijevic and continued wet vacuuming and switching towels every 3-5 hours around the clock. I called and messaged anyone and everyone to help empty the contents of my very full basement in preparation for the Everdry waterproofing job on a forty-eight-hour notice basis. A friend helped me clear room on the second floor to make space for basement shelves and contents. I didn't want to have to rent a storage "pod" for my driveway!

### **9/28/21 Tuesday**

I rallied a few friends, hired a few helpers and my son from Chicago all helped for about six hours move most all the contents of my basement either into my garage, my first or second floor of my house. A good friend's son even rode his bike after work from Wauwatosa, moved stuff for the last two hours and rode his bike back home by sundown! By this time, I had re-injured my new hip so badly that I couldn't go up-and-down the stairs anymore. I had to use either a cane or a walker. So, I sat at the top of the stairs and told each person that came up with boxes to take them to either the garage, upstairs or living room.

### **9/30/21 Thurs**

Apparently calling my Alderwoman did the trick and a Milwaukee water department crew returned to search for the leak again. This time they dug up Iron street, next to my driveway where there was the original old lead lateral intake water pipe. They found the old lateral. There was no leak in that lead lateral, and they shut the water off for that old lead lateral. They filled up the hole and the site was left unfinished for quite a while such that I couldn't enter my driveway and had to park on Linebarger getting special night parking permission for weeks.

**Even though there was no leak in that lead pipe; there was water accumulating in the hole they dug. This indicated that the ground around my house on my corner was very saturated.** The grass on that portion of Iron street was super green during the very dry months, which is notable because I have never, EVER watered my lawn.! Interestingly during this dry spell, my lawn was the only green lawn in the neighborhood and my neighbors all watered theirs and I never did!!

Now that the basement was empty, any time there was a city crew working outside, I'd invite them down to the basement to see the puddles themselves and how fast they were coming in. I would show them all the areas of the basement with all the walls now exposed. I'd show them the "gusher" site along the red wall (Linebarger wall.) **I'd wet-vac it and within 30 seconds of taking away the vacuum, about a twelve-inch puddle would form.** I showed them how the water was coming near my furnace. I was hoping that would give them a better assessment of the whole situation thus better enabling them to find the leak as soon as possible.

### **Oct 1,2021 Friday**

The city continued looking for a leak by digging up the intersection of Iron & Linebarger. Faint hisses of a leak could be heard on one of the four water mains under that intersection. That hole was filling up with water so quickly that it required a vacuum truck to suck out the water very often so they could listen to the pipes. They listened to each of the four water mains to determine from which one the hiss was coming.

They pursued the hiss of the northbound Linebarger water main. They continued to drill listening holes every yard or so northbound over the water main on Linebarger in front of my house. ***I remember remarking that I was happy they were drilling there because that Linebarger wall was the side with the fastest leaks in my basement.*** As darkness approached, about twenty feet north of where the leak was finally found on Dec 3,'21; they stopped drilling the listening testing holes in front of my house at my front door sidewalk. They said the hiss was getting fainter and fainter as they went North. **However, they NEVER EXCAVATED where there was a louder hiss; the site of broken main!. They said it got fainter, so they discontinued the search and filled up the excavation site at the intersection!**

It turns out that **2 months (64 days later), on December 3<sup>rd</sup>, the leak was found in exactly that section of the northbound water main line, over which they had test drilled & listened to the louder hiss on Oct 1,'21.** As tested and listened north of the louder hiss, they listened through the testing holes and said the hiss got fainter as they went north. They stopped testing there at my front door sidewalk. **They never excavated there, where the louder hiss was, which is exactly where the leak was found 64 days later!!!**

At each location at which the crew dug; the holes always filled up with water;



but no "gusher" was found. They said: "it could be a pinhole leak many blocks away that somehow follows the water mains and it's difficult to locate those pinhole leaks." But then how does the water find its' way to my property we all wondered? My property was like a sponge soaking up the water probably at least since August, 2021.

To find the source and type of water that was coming in, an Everdry supervisor suggested I test the water for chlorine. If the water has chlorine, this may indicate that it was city treated water. I did get a swimming pool test and tried that. I also mentioned it to Patrick Pauly. He sent someone out to collect a sample of basement water from the dam that we had built with the sandbags. (At that time, the depth of water inside the dam was about 1 ½ -2 inches, depending on how long between wet vacuuming, every 3-5 hours around the clock) Please See the Oct 7,'21 email letter from Patrick Pauly, which indicates that the sample taken from my basement was city treated water; containing Bromate (a result of ozonation), Chlorite and Chlorate (results of chlorination) and not sewer water. That was the good news.! At least it was clean water! At this point in time, the city doesn't know how its clean water is getting into my basement.

#### **Fri 10/1/22 cont.**

An Everdry supervisor came out and Jack hammered open my basement floor drain. He lifted a "door flap" of a 2' diameter Palmer valve. Clean water gushed into the floor drain for several minutes now that the Palmer valve door flap was opened. The water gushed full force for a while, eventually lessening to a pencil thin trickle. I took pictures and a video of the trickle in the drain and emailed them to Patrick Pauly soon afterwards. (Photos in Zip File & videos had to be emailed separately. Sorry I'm not that technologically savvy.)

Opening the Palmer valve helped the drain tiles to function. The Everdry supervisor & a city worker I asked down the basement to evaluate the situation; realizing the amount of work there was and the pain I was in just going up and down the stairs; suggested that if I could get someone to clean up the wet towels and wet vac the rest of the basement that, ***theoretically***, the puddles should drain by the next few days.

Luckily, dear friends arrived at 10 PM with much needed prepared food. They wet vac'ed my basement, switched out all the towels for me because I couldn't do the stairs anymore at that point. **The water only dissipated a bit; but continued coming in.** With the Palmer valve now opened, the drain tiles were now helping somewhat. **However, a pencil thin stream of clean water**

**continued trickling through the Palmer valve into the floor drain. The water kept coming through the red Linebarger wall spot, collecting in and breaking through the sandbag dam; still creating puddles that would creep towards my furnace.** I emailed Patrick Pauly pictures and videos of this. See photo pg. 7, zip photo files and videos.

Soon after this(Oct 1,'21) **the city stopped further digging for the leak, due to what they claimed were inconclusive results.** One city worker told me that the leak could be a pinhole many blocks away that trickles its way along the pipes to my yard. **Patrick Pauly of the water department wished me luck and hoped that Everdry Waterproofing would solve my problem.**

### **October and November 2021**

In October 2021; I sought out a Home Equity Line of Credit with Educator's Credit Union. Due to my limited fixed income, I only qualified for \$30,000.00, which was enough to cover the **initial contract with Everdry.**

**During October and November,'21,** I continued wet vacuuming 20+ gallons and switching out towels about 3-4 times per 24 hours, going to the chiropractor weekly and physical therapy twice per week, and medical appointments which lead to a Dec 7,21breast surgery. I anxiously awaited a start date from Everdry.

### **10/30/21 Saturday**

Since the basement was now empty, it required less trips down to wet vac & switch out towels. **The pencil thin water was still trickling into the floor drain BUT puddles were still accumulating.** I needed to keep the water away from my furnace. Needless to say, I did have two dehumidifiers and seven fans going around the clock. **One dehumidifier gave out and stopped working.** My washer and dryer were being used constantly to spin and dry 3 huge loads of Goodwill towels that I needed ready to go to replace the wet towels.(See photos, zip files, videos of drain,& utility bill history analysis)

### **11/28/21, Sunday**

In preparation for the Wednesday, December 1st Ever dry waterproofing interior/exterior job; I hired my neighborhood helper, Sean, to rake the leaves away from my house. Everdry would be digging a trench around my house. I requested that he leave the pile of leaves on Iron street to prevent them from blowing back onto my yard if they were left on Linebarger. (My house is located on the Northeast corner of Linebarger and Iron street.) In the process of raking the street near the curb totally clean; Sean discovered a wet area on Linebarger amongst an older asphalt patch in front of my house. The water

from that patch trickled North on Linebarger towards a sewer. (See photo) That evening I immediately emailed Patrick Pauly pictures of that possible leak site and of the continuing puddles in my basement. This was the Exact same area over which the city had been drilling test listening holes and listening for a leak two months earlier on Oct.1 2021!

### **11/30/21 Tuesday**

Not having heard back from Patrick Pauly, I called him regarding the possible leak site. Over the next couple of days, we discussed sending a crew out again to investigate that site.

That night, since I was so sore and I couldn't do the stairs very well at this point, a good friend graciously came over to help me finish emptying the last of the basement contents. Since Everdry would be Jack hammering, spewing dust everywhere in my basement, I wanted to remove as much as possible to decrease further damages to the contents.

See photos

### **12/1, 12/2/21 Weds & Thurs.**

Everdry began digging trenches around my house and cut out the hedges in front of my house on the Linebarger side. (See Summary List of Damages) They were also Jack hammering in the basement getting ready to install new interior drain tiles and a sub pump. (photos & videos)

### **12/2/21 Thursday**

Everdry discovers re-bar in my foundation and realizes that I have a monolithical foundation, which is basically a thick solid concrete foundation without footers. This meant Everdry now could not do their patented interior waterproofing system. The workers were told to stop and pack up everything. The job would have to be re-negotiated (at a much higher price) because they could not do the interior portion. Only a costly \$40,000 exterior waterproofing job could be done. That entailed digging all the way down to the foundation and bringing in a backhoe to excavate. They said they could probably come back in a few weeks. (See photo, videos )

### **12/2/21 Thursday**

Patrick Pauly and I spoke on the phone late afternoon. It might have been on that phone call that Patrick mentioned that the photo I'd emailed him on Sunday, 11/28/21 was the sight of a previous patch. He surmised this from the photo because of the asphalt patching that was wet from which water was trickling to the curb and heading north to the sewer. Since it was going to be

dark soon, it was too late to send out a crew that day to investigate this new possible leak site that Sean and I discovered **five days earlier** (11/28/21). The following day a crew showed up. (See photo )

### **12/3/21 Friday**

I left that day quite early to get to Froedtert hospital in Wauwatosa to attend my first radiologist appointment and my pre-operative physical for my upcoming December 7th surgery the following Tuesday. When I returned from my appointments around 11:30am, I was happily surprised to see the City crew working. They had found the leak! It was a gusher that I missed seeing! Since the Bluetooth went out on my hearing aides; I immediately had to leave for an audiology/ hearing aides appointment at Froedtert Drexel in Oak Creek. When I returned that afternoon again by that time, the crew had cut out the leaky pipe, replaced it, fixed the leak, and filled the hole by dark!! Hallelujah!!!

Patrick Pauly of the City Water Department called that afternoon to tell me that it looked like they found the leak. He said, **“We’re usually pretty good at finding these leaks but if it weren’t for your persistence and tenacity, we probably would not have found it!”**

With surgery the following Tuesday, Dec 7<sup>th</sup>, I did not have time to research any other waterproofing companies, much less get estimates. That same afternoon, I signed a new \$40,000 contract with Everdry for the exterior waterproofing job. They said that they could probably do it in a few weeks and would get back to me with the exact date. Over the next weeks, it was determined that January 3rd would be the date that Everdry could begin again.

### **12/3/21-1/2/22 Dec 21-Jan 22**

**During this month I had no fans or dehumidifiers going and observed water drying up and no more puddles. The water trickling from the Palmer Valve into my floor drain stopped once the water main leak was fixed. This indicated that the Leak found in the Water Main in front of my house on Dec 3<sup>rd</sup>, 2021 was The Cause of the water in my basement!**

It also did rain during that time after the pipe repair and the same previous puddles did NOT appear! During that month, while I recovered from my surgery, I observed my basement drying up and no more puddles reappearing. As the waterproofing job date approached, I wondered if I needed my basement waterproofed.(See photo, zip files and videos)

**1/3/22 Monday**

Everdry returns for the exterior waterproofing job. During the discussion in which the final details of this job were being discussed, I realized that Everdry was not aware that the city had found the water main break and fixed it. While touring the basement with the supervisor, I explained everything, and we could see that there was no more incoming water. The supervisor wondered if a total waterproofing job was now necessary and offered to put the job off until after spring rains to see if any more water comes in. He wondered out loud if perhaps I only needed partial waterproofing around the Southeast corner cellar that needed the 6 support beams. I gladly agreed to hold off on this total exterior, (now a \$40,000 job), which also might have taken out part or all my deck & maybe my magnolia tree, etc. They mixed up cement to fill the spots that they had Jack hammered. They packed up their mini-backhoe, other equipment and left a mess; to return in spring (April 25, 2022) to finish refilling the rest of the trenches once the dirt thawed out.

I'm now left with a dust laden, emptied basement. I hired Sean for a few hours to temporarily move some of the things that were cluttering up my 1st floor living room back down into the basement on some plastic shelving units. (See zip photos)

**1/26/22-2/23/22**

I began 16 daily radiation sessions which caused great fatigue and brain fog during radiation and about 6 weeks afterwards. This is the reason I have delays in my ability to be able to pull all the information, estimates etc. together for this Claim and Damages.

**April 25, 2022, Mon**

Once the ground thawed out, Everdry returned to fill in the trenches, cement holes, etc. I asked them about my Sept 27, 2021, \$1000.00 credit card deposit not being credited back. I called their office and talked to the finance department head. She informed me that on October 15, 2021, they installed their EZ Breathe unit valued at \$1,975.00. Therefore, they claim I owe them \$975.00; even though I told them I didn't want it. They said they couldn't re-use it, so I owed them!!! \*\*\* See copy of letter from Everdry to be included in Damages total.

### **April 29, 2022, Friday**

The City of Milwaukee sent out Kevin from Custard Insurance Adjusters to inspect the property for damages. As I showed him everything, while we were in the Bar/Rec Room; he noticed the loose floor tiles and commented that they looked like asbestos. Almost every contractor that walked through that room for some estimate said the same thing. I asked if the City would pay to have the tiles tested for asbestos. He said yes; but no one ever came to test them.

The reason for testing is because of the strict Laws and Guidelines for Asbestos Removal and Disposal that should be followed. Asbestos removal by Certified Professionals can be costly.

I believe Kevin mentioned that his quote for my property would be done as if it were "Mold free" and "Asbestos-free". Perhaps this is why the appraiser's estimated cost of repairs was unreasonably low?

I requested a copy of this appraisal of my property but was denied. I only learned of the appraiser's recommended Cost of Repairs of \$17,610.84 from The City Attorney's Letter of Denial.

### **May 28,'22 Saturday**

My neighborhood Helper, Sean, who discovered the leak on November 28, 2021, stopped by to ask about cutting my "No Mow May" lawn. However, before he could mow, he needed to clear many concrete pieces from the two parkways or verges (lawn sections between the sidewalk and curb) bordering Iron Street from the corner of Linebarger to my driveway. He hand-picked out of the tall grass approximately 15 pounds of excess concrete pieces that the city workers had indiscriminately thrown onto the parkway grass. He explained that these were residual scraps of excess cement the city workers had scraped off the seams and tossed those scrapings onto my verge lawn. (See Attached Photo boxes of concrete pieces and the cement patch seams.)

### **October 4, 2022**

After getting such conflicting estimates to rectify the root cellar problem, I was willing to pay a \$395 fee for an independent basement consultant's advice. Chuck Webber came and was walking around inspecting the outside and saw the remnants of Ever Dry's damage. When he heard the name Ever Dry, he asked if I had an open contract with them. If so, he would not step foot in my house. Since I hadn't gotten my security deposit back yet from Ever Dry, I thought it might be open. He said that he often testifies at these types of cases and Ever Dry is one of The Most Litigious companies! He used the term "contract interference" and would not come in my basement. At this point, I've yet to get an independent opinion on the root cellar for which according to building codes, Ever Dry said I needed 6 support beams!

### **E: Damages**

Given the complex nature of this case, covid delays and complications along with my medical diagnosis of Breast Cancer, treatment, and follow-up care before, during and after the water incident; I couldn't get satisfactory recommendations or estimates to be able to have repairs made at this point.

On April 1, 22; I submitted a printout of my WE energies bill history from August '20 until March '22 to show a history of electric and gas usage. My retired accountant friend did an analysis comparing energy usage to last year and figured the increase energy cost for those months. (His email analysis will be forwarded separately to the city attorney today.)

Due to over exertion, it was necessary for me to increase my physical therapy appointments and increase seeing the chiropractor from once per to once per week. I also had to have a follow up appointment and x-rays with my hip replacement doctor. I was told that since I'm on Medicare, claiming medical damages can be a nightmare. So, I'll forgo that and call it Trauma, Pain & Suffering at ??? \$\$\$.

The damaged furniture and other water damaged items: couch, Lazy boy recliner, wooden computer desk, a corner entertainment table, drafting table, an exercise bike, a set of wooden TV trays with holder, a teenager's bike, teenager trick trail bike, Spanish and English Books for 3,4,5,& 6 year olds is estimated at \$1000.00.

(See PPg # 4 & 5 & Costs summary)

Enclosed in the zippered orange plastic pouch delivered to the City Clerk's office on April 1, 2021, at 4:28pm, please find 7 documents: utility bill history, labor costs, and future work estimates and Photo pages. I'm having some difficulty getting estimates for the structural damage to the cellar. Some contractors hesitate to give an estimate and recommend a structural engineer consultation first. Or once the contractor hears it's for a claim against the city, they don't bother sending the estimate.

The Damage Summary Sheet follows on the next page for ease of reading.

**E: Damages for Basement Water Incident Sept-Dec 2021 Costs and Estimates  
for Future Remediation/Repairs**

**A. COSTS Incurred and Paid**

<u>Sept '21 Costs (Receipt p4)</u>	<u>\$407.43</u>
<u>Physical Hourly Labor (cash)</u>	<u>500.00</u>
<u>Increase in Gas &amp; Electric Bill (3 months)</u>	<u>274.64</u>
<u>Walgreens Photo Developing For April 1, 22 Claim</u>	<u>12.75</u>
<u>Pelonis 50-pint Dehumidifier (Menards)</u>	<u>283.99</u>
<u>Estimated Value of Tossed Water Damaged Items</u>	<u>1000.00</u>
(Lazy Boy Recliner, Red Couch, Computer Desk, Drafting Table, etc)	
<b><u>Subtotal A</u></b>	<b><u>\$2,478.81</u></b>

**B. Estimates for Future Remediation & Repair**

**Lisbon Storm & Screen, Updated Revised:**

(3 pre-hung Custom Doors with Installation, Delivery)      \$3,180.83

**Paul Davies Restoration & Remodeling**

(Remediation of Basement, could be more if asbestos)      19,050.94

**Stanley Steemer ( Air Duct Cleaning & Sanitizing)**      1,620.00

**Ever Dry Open Contract Costs (\$1000 deposit and balance**

of EZ-Breathe Unit      \$1,975

Restoration of Evergreens (email Hawks Landscape)      2000.00

**Subtotal B**      **27,826.77**

**+ Subtotal A**      **2,478.81**

=====  
**Total**      **\$30,305.58**

**\*\*Bar/Rec Room Replacement/Restoration**      **\$40,000-\$70,000**

(if not replaced, will be Future Property Value Loss when Sell House)

**\*\*Trauma, PTSD, Physical, Mental, Emotional, Pain & Suffering ????**



**To prove the City's negligence**, these terms will be revisited and applied when necessary and appropriate.

Per the instructions for filing a claim against the City of Milwaukee; I "must prove that the City or its employees acted unlawfully or negligently". I will address and prove that the City of Milwaukee did not perform its "**Due Diligence**" in my case and the City of Milwaukee was thereby **Negligent**.

**"Due Diligence"** means "required carefulness" or "reasonable care". Webster's defines it in Law as: "the care that a reasonable person exercises to avoid harm to other persons or their property."<sup>8</sup>

According to FindLaw.com: "**Negligence** in the legal sense refers to whether a person has a "**Duty of Care**" to another, and whether he or she has failed in that duty. If so, that person may be liable for any resulting injuries."<sup>9</sup>

To prove negligence on the city's part, several of the following "**Elements**" of a Negligence case must be proved: <sup>10</sup>

**A. Duty: Legal Duty of Care, "Standard of Care"**

The defendant (City) owes the plaintiff, Katherine A Geiger (KAG), a "**Legal Duty of Care**" or a legal duty to act with reasonable and proper "**Standard of Care**" in a certain situation. "**Standard of Care** refers to the degree of attentiveness, caution and prudence that a reasonable person in the circumstances would exercise"<sup>11</sup>

US law is based on British law. According to Simons and Simons<sup>12</sup>; a test for establishing **Duty of Care** must include:

**A1. Foreseeability:** Is this kind of Damage Foreseeable?

According to the Legal Information Institute(LII) of Cornell University:

"Foreseeability asks how likely it was that a person could have anticipated the potential or actual results of their actions. This is a question in [contract](#) and [tort](#) law. The standard that courts use is that of "reasonability." In contract law, reasonability asks if the harms resulting from a [breach](#) were a natural result of that breach. In tort law, the "[reasonable person](#)" standard asks if an ordinary person in that same circumstance would have reasonably acted in the same way. In tort negligence lawsuits, foreseeability asks whether a person could or should reasonably have foreseen the harms that resulted from their actions."<sup>13</sup> (or inactions.)

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8 Webster's

9 FindLaw.com

10 "

11 Megalomaniac

<sup>12</sup>Simmons+Simmons, Good Neighbors: Establishing Duty of Care in Negligence, 12/12/17,

<https://www.simmons-simmons.com/en/publications/ck0bgqu4po4sw0b8501q7oqhw/051217-everybody-needs-good-neighbours>, viewed 7/7/22

<sup>13</sup> Legal Information Institute, updated August, 2021, [foreseeability | Wex | US Law | LII / Legal Information Institute \(cornell.edu\)](#), viewed 7/7/22

Also, according to the Legal Information Institute(LII) of Cornell University:

**“Higher or broader Standards of Care apply to professionals and people of authority”.<sup>14</sup> The City (People of Authority) and its workers are professionals and should adhere to higher “Standards of Care.”**

**B. Breach of Duty:**

The defendant (City) breached that legal Duty by acting or Failing to act in a certain way. The City failed to meet that duty in a timely manner.

**C. Cause in Fact: “But-for” Causation**

often referred to as “But-for” Causation: “But for” the Defendant’s (City) failure, I would not have been injured or suffered damages.

**D. Proximate Cause:** The Defendant’s failure (and not something else) caused these damages and injuries.

**E. Damages:** Listed separately. (Some may be submitted at a later date.)

**Timeline Summary of Elements of Neglect**

1. **Sept 14-16, '21 (Tues-Thurs)** The first two crews that came out to investigate the water in my basement couldn’t explain it and recommended that I seek help from a basement waterproofing company. **“But for”(C)** the city water crews had done their **“Due Diligence”** to further investigate the source of the water; I would not have sought out a basement waterproofer, especially Everdry! **The City “Breached (B) its’ “Legal Duty Of Care (A), or Standard Of Care and passed the “But For Test” Causation (C) Cause In Fact) prompting me to hire a contractor unnecessarily. This resulted in further Damages (E). (Elements Neglect Satisfied: A,A1.,B,C & E )**
2. **Week of Sept 20<sup>th</sup> '21** The water continued coming in my basement. I called the city dispatcher a 3<sup>rd</sup> time for them to come out to investigate. The dispatcher said they **would Not come again** per the highly respected supervisor’s report. **The City Failed their legal Duty of Care. “Higher or broader Standards of Care apply to professionals and people of authority”.<sup>15</sup> The City as “People of Authority” and its’ Professional workers Breached their Legal Duty of Care and failed to adhere to a Higher “Standard of Care” in a Timely manner.**  
(Elements A, A1, & B)
3. **Sept 27, '21, Monday** I had to call the office of my Alderwoman, Marina Dimitrijevic, to get some action in this urgent matter as water continued coming in my basement. The **City failed their Duty in a TIMELY MANNER.( Element A& B)**

14 Legal Information Institute, updated Sept 21,2021,Standard of Care, viewed 5/9/22,<[https://www.law.cornell.edu/wex/standard\\_of\\_care](https://www.law.cornell.edu/wex/standard_of_care)>

15 Legal Information Institute, updated Sept 21,2021,Standard of Care, viewed 5/9/22,<[https://www.law.cornell.edu/wex/standard\\_of\\_care](https://www.law.cornell.edu/wex/standard_of_care)>

4. **Oct. 1,'21, Friday** At the excavation of the intersection of Linebarger and Iron St, the 4 water main pipes were uncovered. A “hiss” of a leak was heard on the Northern Linebarger water main. City crews followed the “hiss” by drilling test holes every yard to yard and a half until they said the hiss got too faint to pursue. They discontinued drilling test holes that late afternoon and NEVER excavated the area that night from which the “louder hisses” were coming, the Actual Leak! Different crews said hisses indicate leaks. It turns out that the city crews had excavated just a few feet away from where the actual leak was discovered 64 days later Dec 3, 21. **(Elements A, A1,B,C,D,E)**

**4.Oct 1,'21, Friday** The city crews neglected to dig in the area of the “Hisses” (where leak was later found Dec 3,'21) and stopped looking for the leak on Oct 1, '21. The crews said it could be a pinhole leak blocks away. The crews stopped further investigation and filled the hole at Linebarger and Iron with gravel. **Patrick Pauly wished me luck and hoped that Everdry would solve my water problem.**  
**(Elements A,A1, B,C,D,E)**

**5. Fri 10/1/21 cont.**

An Everdry supervisor came out and Jack hammered open my basement floor drain and opened a 2' diameter Palmer valve with water gushing from Palmer valve full force for a while. The gush eventually went down to a pencil thin stream of clean water that continued trickling into the floor drain. The water kept coming through the red Linebarger wall spot, collecting in and breaking through the sandbag dam, still creating puddles that would creep towards my furnace. **Opening the Palmer Valve was of minimal help. The puddles only dissipated a bit; but the water continued coming in. I spoke with and emailed Patrick Pauly pictures and videos of this. Patrick Pauly wished me luck and hoped that Everdry would solve my problem.**

See photo pg. 7, zip photos & videos**(Elements A, B,C,D,E)**

**6. Oct 7,2021,Thursday** The Email from Patrick Pauly confirms that the water sample the city took from my basement was indeed city treated water. **(Element C:Cause In Fact, D: Proximate Cause)**

**7.Nov 28<sup>th</sup>, '21, Sunday** My “leaf raker” Sean, discovers a wet patch of asphalt on Linebarger, inches away from test drill holes of the previous Oct 1,'21 excavation by the city. That evening I emailed to Patrick Pauly, photos of that wet patch and the trickle of water emanating from the patch heading north along the curb towards the sewer. The water department had stopped searching on Oct 1, '21 for the leak. causing the flood in my basement. I also emailed Patrick Pauly photos of the puddles of water continuing in my basement.  
**(Elements A, A1,B,C,D,E)**

**7.Nov 30<sup>th</sup>, '21,Tuesday** Not hearing back from Patrick Pauly regarding my email of two days prior containing photos of the possible leak site; I initiate a phone call. We discuss the photos and the ***possibility*** of sending a crew out to investigate. **(Elements A,A1, B,C,D,E)**

**8. Dec 2, '21, Thursday** Patrick Pauly and I speak on phone late afternoon. He'll **send a crew out the next morning, Friday, Dec 3, 2021, five days later than the initial email notification with photos of this probable leak site. (Another failure of Due Diligence in a Timely Manner. Elements A, B,C,D,E)**

**9. Dec 3, '21, Friday** The city crew excavated the site of the photos I'd sent and it was a "Gusher". Sean and I had discovered the leak and the city proved us right. **(Elements A,A1, B,C,D,E)**

**10. 12/3/21-1/2/22 Dec 21-Jan 22**

During this month, after the City Fixed the Leak, I had no fans or dehumidifiers going and observed water drying up and no more puddles. **The pencil thin water trickling into my basement floor drain had stopped once the leak was fixed.! This indicates that the Leak found on Dec 3<sup>rd</sup>,2021 was The Cause of the water in my basement!** It also did rain during that time and the same previous puddles did NOT appear! During that month, while I recovered from my surgery, I observed my basement drying up and no more puddles reappearing.

**(Elements A, B,C,D,E)**

**11. May 28, 2022** Helper Sean finds 15 lbs. of cement scrapings indiscriminately tossed carelessly on my lawn near my Driveway from the repair of the 1<sup>st</sup> dig site (9/30/21) investigating the abandoned lead lateral. **(Elements A,A1,B,C,D) see photo**

As one can see from the above Timelines of the Incident and Summary of the Incidences of Neglect with the corresponding Elements of Neglect attached to each of the 11 Occurrences of Neglect; there can be no doubt that the city was Negligent in taking over three months to find this leak. This has caused me the aforementioned financial, physical, mental and emotional damages.

Thank you for your patience and kind consideration.

Sincerely,

Katherine A Geiger  
2650 S Linebarger terrace  
Milwaukee 53207  
Hm: 414-231-9023  
Cell 414-698-1537

Kathygbogan@aol.com