

TRAVIS AND EDITH ARNESON, RUSSELL AND LYNN FJELLANGER,
GARY IVERS AND NANCY RAMESBOTHOM, HELEN REUSS,
LUNETTE SANDHOFF, WILLIAM AND CONNIE WARWICK, AND
KEVIN SUIING, ON BEHALF OF THEMSELVES AND OTHERS
SIMILARLY SITUATED,

PLAINTIFFS,

VS.

CITY OF SIOUX FALLS,

DEFENDANT.

CIV. 05-1713

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING ON PROPOSED SETTLEMENT**

YOU HAVE BEEN IDENTIFIED AS ONE OF THE INDIVIDUALS OR ENTITIES THAT SUFFERED DOCUMENTED PROPERTY DAMAGE IN CONNECTION WITH SANITARY SEWER BACKUPS AND SURFACE WATER FLOWS INTO HOMES AND BUILDINGS AND RELATED WATER AND RAW HUMAN WASTE INTRUSION, SUFFERED OR INCURRED ON OR ABOUT MAY 29, 2004 AND JUNE 16, 2004 IN THAT PORTION OF THE CITY OF SIOUX FALLS BORDERED GENERALLY BY 57TH STREET TO THE SOUTH, SOUTHEASTERN DRIVE TO THE EAST, KIWANIS AVENUE TO THE WEST AND RUSSELL STREET TO THE NORTH.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE NOTE THAT BECAUSE YOU PREVIOUSLY RETURNED THE NOTICE FORM REQUESTING INCLUSION AND EXECUTED AN AFFIDAVIT DOCUMENTING YOUR CLAIMED DAMAGES, YOU ARE THEREFORE INCLUDED IN THE CLASS ACTION, YOU MAY BE ENTITLED TO SHARE IN THE PROPOSED SETTLEMENT DESCRIBED IN THIS NOTICE, AND YOU MAY BE REQUIRED TO RELEASE CERTAIN CLAIMS AGAINST THE DEFENDANT. PLEASE READ THIS NOTICE CAREFULLY.

This Notice is given pursuant to SDCL 15-6-23(e) and the Order of the Court entered on July 18, 2011, to inform you of (a) the proposed settlement of the above-entitled class action (the "Action" and the "Settlement"); and (b) the fairness hearing to be held by the Minnehaha County Circuit Court of the Second Judicial Circuit to consider (1) the fairness, reasonableness, and adequacy of the Settlement, (2) the award of fees and expenses to Plaintiffs' counsel ("Class Counsel"), and (3) such other matters as the Court may deem appropriate (the "Fairness Hearing").

NOTICE IS HEREBY GIVEN THAT:

- A. Pursuant to the Order of the Honorable Stuart L. Tiede of the Minnehaha County Circuit Court of the Second Judicial Circuit (the "Court"), dated September 27, 2007, this Action was certified as a class action on behalf of:

All individuals who have suffered property damage in connection with sanitary sewer backups and surface water flows into homes and buildings and related water and raw human waste intrusion, suffered or incurred on or about May 29, 2004 and June 16, 2004 in the approximate geographic location hereinafter described, as follows: a mostly contiguous area situated within that portion of the City of Sioux Falls and bordered generally by 57th Street to the South, Southeastern Drive to the East, Kiwanis Avenue to the West and Russell Street to the North.

(the "Class" or "Class Members").

- B. On June 30, 2011, plaintiffs and certified class representatives TRAVIS and EDITH ARNESON, RUSSELL and LYNN FJELLANGER, GARY IVERS and NANCY RAMESBOTHOM, HELEN REUSS, LUNETTE SANDHOFF, WILLIAM and CONNIE WARWICK, and KEVIN SUING (“Plaintiffs”) and defendant City of Sioux Falls (“City” or “Defendant”) (Plaintiffs and Defendant collectively referred to herein as the “Parties”) entered into a Stipulation and Agreement of Settlement (the “Settlement Agreement”) settling this Action, upon certain terms and conditions, as to claims against Defendant.
- C. Pursuant to the Order of the Honorable Patricia C. Riepel of the Minnehaha County Circuit Court of the Second Judicial Circuit dated July 18, 2011, and pursuant to SDCL 15-6-23(e) of the South Dakota Codified Laws, a Fairness Hearing will be held in Judge Riepel’s courtroom at the Minnehaha County Courthouse, 425 N. Dakota Avenue, Sioux Falls, South Dakota, on Thursday, August 25, 2011 at 9:00 a.m., for the purpose of determining whether the terms of the Settlement are fair, reasonable, and adequate and should be approved by the Court, and the amount, if any, that should be awarded to Class Counsel in fees and reimbursement of litigation expenses.

The Fairness Hearing may be adjourned by the Court from time to time without any further notice.

DESCRIPTION OF THE LITIGATION

There is presently pending in the Minnehaha County Circuit Court of the Second Judicial Circuit a class action complaint, previously certified by the Court, against the City of Sioux Falls. This Action involves the allegation that the City negligently designed, constructed, and maintained its storm and sanitary sewer systems, resulting in economic damages to the Class Members in connection with storm events on May 29, 2004 and June 16, 2004. The complaint raised claims of (1) Negligence; (2) Breach of Contract; (3) Strict Liability; and (4) Trespass against the City. The City of Sioux Falls has denied these allegations. This Action contends that you and other Class Members are entitled to reimbursement of certain expenses (not including loss of property value) resulting from these events documented in the affidavit that you have previously executed pursuant to section 7(a) of the Court’s Order Granting Plaintiffs’ Motion for Class Certification entered on September 27, 2007.

DEFENDANT’S DENIAL OF WRONGDOINGS

The City of Sioux Falls denies the substantive allegations of Plaintiffs’ claims and denies any and all wrongdoing or liability whatsoever to any and all members of the Class. The City contends that it acted properly and lawfully at all times. The City desires to settle and terminate the Action so as to avoid lengthy and time-consuming litigation and the substantial burden, inconvenience and expense connected therewith, and to finally put to rest any and all claims that were or could have been asserted in this Action or arising out of the matters set forth in the pleadings, without in any way acknowledging any fault or liability. The Settlement and all related documents are not to be, and shall not be, construed as an admission by the City of any damage to the members of the Class, or any wrongdoing or liability on the part of the City or any other person.

CLASS CERTIFICATION

On September 27, 2007, the Court certified the Class. The Court also appointed Plaintiffs as the representatives of the Class, and appointed Class Counsel. You previously received a Notice of Class Action regarding the Court’s certification of the Class and had an opportunity to request inclusion in the Class by providing documentation of your applicable damages, and an opportunity to exclude yourself from the Class.

THE PROPOSED SETTLEMENT TERMS

After extensive document and deposition discovery in the Action, Plaintiffs and Defendant entered into the Settlement Agreement on June 30, 2011, which, subject to Court approval and certain other conditions, provides for the following: if the proposed Settlement is approved by the Court, and the Settlement becomes Final as provided in the Settlement Agreement, then Defendant will pay \$1,950,000.00 into a Settlement Account. The funds in the Settlement Account are to be distributed for an award to Class Counsel, the expenses of the Settlement, and to the Class Members. The distribution to Class Members shall be on a pro rata basis, based on the amount of applicable damages already documented by each Class Member in their affidavits (excluding any claimed damages for loss of property value), as compared with the total amount of such applicable damages by all Class Members. *If you are a member of the Class, you will have already executed an affidavit documenting your damages, you will share in the proceeds of the proposed Settlement, and you do not have to take any action. If the proposed Settlement is approved by the Court and becomes effective, you will automatically receive the applicable distribution to be paid in the Settlement, which will be a pro rata percentage of your documented damages, excluding any claim for loss of property value.*

DISMISSAL OF THE ACTION AND CLASS RELEASE/AMENDMENT

If the Settlement is approved, and the Settlement becomes "Final," as that term is defined in the Settlement Agreement, the claims against the City and the Action will be dismissed, with prejudice, and Plaintiffs and each and every member of the Class will release and discharge all of their claims against the City relating to the subject matter of the Action, including any present or future claims concerning these particular storm events.

EFFECTIVENESS OF THE SETTLEMENT

The effectiveness of the Settlement, and Defendant's obligations thereunder, are subject to a number of conditions which may or may not be satisfied. These include, but are not limited to: (a) the Settlement being approved by the Court as fair, reasonable or adequate; and (b) the Settlement becoming "Final" (as defined in the Settlement Agreement) at the Circuit Court or appellate court level. There can be no assurance that any or all of these conditions to the effectiveness of the Settlement can be met. In the event the Settlement is not approved by the Court or does not become effective for any reason whatsoever, all findings, releases, orders and judgments related to the Settlement shall be vacated and become null and void, except as expressly provided in the Settlement Agreement, and the Parties and the claims against the Defendant shall be restored to their respective positions to a date which immediately precedes the date the proposed Settlement was reached.

THE FOREGOING IS A SUMMARY OF THE TERMS AND CONDITIONS SET FORTH IN THE SETTLEMENT AGREEMENT. CLASS MEMBERS AND OTHER INTERESTED PERSONS WHO WISH TO REVIEW ALL TERMS AND CONDITIONS OF THE SETTLEMENT ARE URGED TO REVIEW THE SETTLEMENT AGREEMENT.

THE FAIRNESS HEARING

The Fairness Hearing will be held before the Honorable Patricia C. Riepel in her courtroom at the Minnehaha County Courthouse for the District of South Dakota, 425 N. Dakota Avenue, Sioux Falls, South Dakota, on Thursday, August 25, 2011, at 9:00 a.m. (or at any such adjourned date or time as the Court may direct without further notice), (a) to determine whether the proposed Settlement, on the terms and conditions provided for in the Settlement Agreement, is fair, reasonable and adequate, and should be approved by the Court, and (b) to consider the application by Class Counsel for an award of fees and reimbursement of litigation expenses.

If you are a member of the Class and have previously executed an affidavit documenting your claimed damages and did not previously request exclusion from the Class, then you will receive the benefits provided by the proposed Settlement if it is approved by the Court, and you do not need to appear at this hearing or take any action. If the Settlement becomes "Final," as that term is defined in the Settlement Agreement, and is effectuated, you will automatically receive a distribution from the Settlement Account, and your claims against the City will be automatically dismissed with prejudice and released as provided in the Settlement Agreement.

CLASS MEMBERS' RIGHT TO APPEAR

Any member of the Class may appear at the Fairness Hearing, in person or through counsel, solely at such Class Member's personal expense, to be heard in support of, or in opposition to, the proposed Settlement, the application of Class Counsel for an award of attorneys' fees and reimbursement of litigation expenses, and/or such other matters relevant to the Action of the Settlement, provided that no person or entity shall be heard or entitled to be heard at the Fairness Hearing unless on or before Friday, August 19, 2011 (or unless the Court shall otherwise direct) that person or entity shall file with the Minnehaha County Clerk of Courts and serve, by hand or via First-Class United States Mail, a notice of his, her, or its intent to appear, personally or through counsel, along with a written statement of the basis for any objections, and any supporting papers and briefs relating to such objection(s) that such Class Member wishes the Court to consider, on Class Counsel, addressed to Steven M. Johnson, JOHNSON, HEIDPRIEM, & ABDALLAH, LLP, P.O. Box 2348, Sioux Falls, SD 57101-2348 and John R. Hughes, HUGHES LAW OFFICES, 224 N. Phillips Ave #207, Sioux Falls, SD 57104 and Defendant's Counsel, addressed to William C. Garry, CADWELL, SANFORD, DEIBERT & GARRY LLP, P.O. Box 2498, Sioux Falls, SD 57101-2498 and Gary J. Pashby, BOYCE, GREENFIELD, PASHBY & WELK, P.O. Box 5015, Sioux Falls, SD 57117, and the Claims Administrator, addressed to Arneson v. City of Sioux Falls Administrator, c/o Rust Consulting, Inc., P.O. Box 1029, Minneapolis, MN 55440-1029.

Any member of the Class who fails to appear and/or object in the manner prescribed herein shall be deemed to have waived such objection, and shall be barred from raising any objections to the fairness, adequacy or reasonableness of the Settlement Agreement, Class Counsel's request for an award of attorneys' fees and reimbursement of expenses, and/or any other matters related to the Action or the Settlement.

THE APPLICATION OF CLASS COUNSEL FOR FEES AND EXPENSES

If the Court approves the proposed Settlement, then Class Counsel will petition the Court for an award of attorneys' fees, not to exceed one-third of the Settlement Amount, and reimbursement of litigation expenses actually incurred in connection with the prosecution of this Action. Defendant does not object to such an award of fees and expenses. The award of attorneys' fees and/or reimbursement of litigation expenses will be paid from the Settlement Account.

LIMITATION OF FURTHER ACTION AND BAR ORDER

Pending final determination of whether the Settlement should be approved, the Court has ordered that no member of the Class may commence or prosecute, directly, representatively, or in any capacity, any of the "Settled Claims," as defined in the Settlement Agreement, including any claim which has been or could have been asserted in the Action and which arises out of or is in any way related to the "Settled Claims," in these proceedings or in any other proceedings in this or any other forum. Following the Court's determination of the matters presented to it at the Fairness Hearing, a Class Member who has filed a timely and valid Request for Exclusion from the Class shall no longer be subject to this restriction. Upon the Settlement becoming "Final," as that term is defined in the Settlement Agreement, all Class Members who have not validly and timely requested exclusion from the Class will be permanently barred and enjoined from instituting or prosecuting any action or proceeding against Defendant based upon, related to, or in connection with, the "Settled Claims," in this or any other forum.

EFFECT OF DISAPPROVAL OR TERMINATION OF SETTLEMENT

In the event that the Court or, in the event of an appeal, the highest appellate court to which the Settlement Agreement is presented, refuses to approve the Settlement Agreement (other than Class Counsel's request for attorneys' fees and/or reimbursement of litigation approved by the Court), or modifies the Settlement Agreement, then Defendant may terminate the Settlement Agreement.

If for any reason the Settlement Agreement does not become "Final," as that term is defined in the Settlement Agreement, the Settlement Agreement shall have no further force and effect with respect to any Party in the Action or member of the Class, and shall not be used in the Action or in any other proceeding for any purpose; all negotiations, proceedings and statements made in connection therewith shall be without prejudice to any person or Party thereto, shall not be deemed or construed to be an admission by any Party of any act, matter or proposition, and shall not be used in any manner or for any purpose in any subsequent proceeding in the Action or in any other action or proceeding, including but not limited to the right of any Party to appeal the Court's determination of class certification; all findings, orders, releases and judgments by the Court shall become null and void; the Parties shall revert to their respective positions as of June 30, 2011, the date immediately prior to the Settlement being reached; and the Parties shall proceed in all respects as though the Settlement Agreement had never been executed, except with respect to the Class Notice provisions of the Settlement Agreement.

The Settlement Agreement and any related documents are not and shall not be construed as an admission by the City of the truth or validity of any claim which has or could have been asserted in the Action, or of any fault or liability or wrongdoing whatsoever on the part of Defendant, nor shall they be deemed or construed as an admission by Plaintiffs of a lack of merit to any of their allegations or claims against the City or that the Class damages do not exceed the amount of the Settlement.

SCOPE OF THIS NOTICE

THE ABOVE DESCRIPTION OF THE MATTERS INVOLVED IN THE ACTION AND THE PROPOSED SETTLEMENT ARE ONLY A SUMMARY AND ARE NOT ALL-INCLUSIVE. Members of the Class are referred to the pleadings, Settlement Agreement, and the other documents filed in the Action for a complete description of the terms thereof, all of which are available for inspection by contacting Class Counsel. Capitalized terms not otherwise defined in this Notice have the meaning given to them in the Settlement Agreement.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE RESPECTIVE CLAIMS OR DEFENSES AS TO ISSUES OF LIABILITY OR DAMAGES. THIS NOTICE IS SENT ONLY TO ADVISE YOU OF THE PROPOSED SETTLEMENT DESCRIBED HEREIN AND OF CERTAIN RIGHTS YOU MAY HAVE WITH RESPECT THERETO.

FURTHER INQUIRIES

Any inquiries regarding this Notice or the Action may be directed to the following:

To Class Counsel:

John R. Hughes
HUGHES LAW OFFICES
224 N. Phillips Ave #207
Sioux Falls, SD 57104
Telephone: 1-605-339-3939

Steven M. Johnson
JOHNSON, HEIDEPRIEM & ABDALLAH LLP
P.O. Box 2348
Sioux Falls, SD 57101-2348
Telephone: 1-605-338-4304

Or to Defendant's Counsel:

Mr. William C. Garry
CADWELL, SANFORD, DEIBERT & GARRY LLP
P.O. Box 2498
Sioux Falls, SD 57101-2498
Telephone: 1-605-336-0828

Mr. Gary J. Pashby
BOYCE, GREENFIELD, PASHBY & WELK
P.O. Box 5015
Sioux Falls, SD 57117
Telephone: 1-605-336-2424

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE DIRECTLY FOR SUCH INFORMATION.

BY ORDER OF THE COURT:

Dated: July 18, 2011

HON. PATRICIA C. RIEPEL, CIRCUIT JUDGE
Minnehaha County, Second Judicial Circuit