

COMMONWEALTH OF KENTUCKY
CALLOWAY CIRCUIT COURT
CASE NO. 19-CI-00270

SUSAN HOOD

PLAINTIFF

VS.

PLAINTIFF'S RESPONSE TO
MOTION FOR SUMMARY JUDGMENT

CITY OF MURRAY, KENTUCKY and
CITY OF MURRAY PUBLIC WORKS AND UTILITIES

DEFENDANTS

Comes the Plaintiff, Sue Hood, by and through counsel and hereby responds to the
Defendants' motion for summary judgment:

Introduction

This civil action stems from an accident which occurred on September 5, 2018 in Murray, Calloway County, Kentucky. The plaintiff, Sue Hood, was walking with her daughter in her neighborhood. Ms. Hood and her daughter crossed Olive Street and attempted to make their way to the sidewalk to continue their walk. While crossing a strip of grass between the street and sidewalk, Ms. Hood stepped onto a water meter lid with her left foot. This water meter was owned and operated by the Defendants (hereinafter referred to as the "Water Company." The lid was not properly secured to the water meter "jar," causing the lid to flip open. Ms. Hood's foot and leg went into the water meter opening, causing her to fall and injure herself. (Hood depo pgs. 59-60).

Workers from the Water Company came to the scene to assist Ms. Hood and to determine the cause of the accident. The workers were able to resecure the lid to the water meter jar. Ms. Hood witnessed the workers clean out dirt and debris from underneath the lid to allow it to be secured. Additionally, Ms. Hood was told by one of the workers that there was a crack in the rim of the water meter which caused the problem. (Hood depo. pg. 73). The day after Ms. Hood's

fall, the Water Company dug up and replaced the water meter jar with a new water meter and housing.

Ms. Hood was initially diagnosed with torn ligaments in her left ankle. She has since been diagnosed with complex regional pain syndrome (CRPS). (Hood depo. Pg. 89).

The Water Company has filed a motion for summary judgment, arguing that they had no idea the water meter in which Ms. Hood fell into was in poor condition and needed to be replaced. It also argues they are immune from suit. The Water Company's motion for summary judgment should be denied because it is clear from the evidence that this water meter was dilapidated, defective and that the lid was left unsecured by the last Water Company employee to read the meter. Secondly, the Water Company is not immune from tort liability due to actions of its employees, which will be discussed below.

Summary Judgment Standard

Summary judgment must be cautiously applied and never used as a trial substitute. *Steelvest, Inc. v. Scansteel Svc. Ctr., Inc.*, 807 S.W.2d 476, 483 (Ky. 1991). Rather, summary judgment "should only be used 'to terminate litigation when, as a matter of law, it appears that it would be impossible for [Plaintiff] to produce evidence at trial warranting a judgment in his favor and against [Defendant].'" *Id.* (citation omitted). The record evidence must be viewed in the light most favorable to Plaintiff, the party opposing summary judgment. Defendant bears the burden of convincing the Court of the absence of any genuine issue of material fact. *O'Bryan v. Cave*, 202 S.W.3d 585, 587 (Ky. 2006).

Argument

1. The Water Company Had Actual and Constructive Notice of the Dilapidated Condition of the Water Meter.

It is the duty of a water company to maintain in a reasonably safe condition its meters located in or near a street or sidewalk of a city, and that leaving a meter cap unlocked is violative of this duty. *Louisville Water Co. v. Cook*, 430 S.W.2d 322, (1968)

The City argues that it had no actual or constructive notice of the defective condition of the water meter.

If the defect has existed for such a period of time that the authorities, by exercise of ordinary care and diligence, should have discovered it, notice will be assigned. Since notice is assigned if a reasonable inspection would have disclosed the defect, the question of what constitutes a reasonable inspection frequently arises in applying the rule. *Com., Dept. of Highways v. Maiden*, 411 S.W.2d 312, (1966) (citation omitted).

Our water meter in Murray, Kentucky was read by a worker on a monthly basis. It was last read on August 15, 2018, 21 days prior to Ms. Hood's fall. The water meter did not become dilapidated in 21 days. The decrepit condition of the water meter undoubtedly took place over several decades of use. This water meter is so old, the Water Company has no idea when it was installed. (Defendant's answers to interrogatories). The Water Company argues that Ms. Hood has to provide evidence of how long the water meter lid was unsecured. The evidence before the Court is that the lid was unsecured for at least 21 days.

The facts of this case have been reviewed and analyzed by William Gulya, Jr. Mr. Gulya is an expert in construction and construction safety for over 40 years. Mr. Gulya concluded that

the only plausible explanation for this accident was that the last worker to inspect the water meter failed to properly secure the lid to the jar due to the water meter's poor condition. Please see attached Mr. Gulya's report.

If the worker who read the meter on August 15, 2018 properly secured the lid to the water meter housing, it should have remained secure 21 days later. There is no evidence of any tampering of the lid by anyone after the meter was read. There is no evidence of any intervening event such as an earthquake that would explain the damage to the water meter and the inability of the lid to be secured. There is no evidence that new grass or earth had "popped" off the lid in that three (3) week period. Such possibilities are far-fetched.

What is probable however is that the last worker to read this meter failed to properly secure the lid to the housing because it was too old and rickety. A request for a replacement of this water meter should have been performed by the worker inspecting it, but that did not happen. The Water Company looked at this meter every month. The company had plenty of actual and constructive knowledge that the meter was damaged and needed replacing. Again, the damage to the water meter did not happen overnight or over the course of 21 days. It occurred over years. A complaint from a citizen should not be required for the company to act.

The Water Company cites to the unpublished case of Penix v. Mt. Sterling Water & Sewer, 2017-CCA-001661-MR, 2020 WL 3605843 (Ky. App. June 26, 2020). The facts of our case are quite different than the Penix case. In Penix, the plaintiff stated she fell into an open water meter but when the water company employees arrived on scene, the lid was secured to the jar. Additionally, the water meter in Penix had not been inspected by the city in over seven (7) months. In our case, it is undisputed that the water meter lid was not secured and the water meter was read every month, so the Water Company had plenty of actual and constructive notice of its condition.

Additionally, the Water Company argues that plaintiff has produced no evidence that the meter was defective at all. Not true. Firstly, Ms. Hood testified that she observed one of the city workers clear debris from the water meter housing in order to secure the lid. This was also observed by Ms. Hood's husband. (Hood depo. pg. 75). Secondly, one of the workers on scene, most probably Roger Hale, told Ms. Hood there was a crack in the rim of the water meter. (Hood depo. Pg. 730. Thirdly, as explained above, the Water Company replaced the entire water meter less than 24 hours after Ms. Hood fell into it.

There were photos taken by workers of the defective water meter minutes after Ms. Hood fell into the meter. These photos clearly show that the water meter housing was in poor condition. Earth and debris had encroached into the housing from the cracks. The Water Company states in their motion that it is very expensive to replace the old clay water meters. They only replace if the area is being unearthed due to new construction or if the water meter is damaged. There was no new driveway being put in where Ms. Hood fell. The *only* reason they would have replaced this water meter is if it were damaged. The Water Company did not do it out of the goodness of their heart or to appease Ms. Hood. If there was truly nothing wrong with the water meter, there would have been no reason to replace it. The old adage rings true: *"if it ain't broke, don't fix it."*

It is clear from the photographs, testimony and monthly meter readings that the Water Company had actual and constructive notice that this water meter was in poor condition and that the lid was unable to be secured.

2. The Defendants are Not Immune from Suit.

Alternatively, the Water Company is arguing that they are immune from suit based on the Kentucky's Claims Against Local Governments Act (CALGA).

The Kentucky Supreme Court observed that under the statute, "a municipality [i.e., local government] is immune only for torts committed in the performance of legislative or judicial or quasi-legislative or quasi-judicial functions and can be held vicariously liable for the torts of its employees." Queen v. City of Bowling Green, 956 F.3d 893, 900 (Cir. 2020) (citation omitted).

In our case, the tort of negligence was only partially caused by the failure of the Defendants to fix or replace the decrepit water meter prior to Ms. Hood's fall. The *primary* act of negligence was the failure of the employee who reads meters to secure the lid to the water meter jar at the last meter reading prior to Ms. Hood's fall: August 15, 2018.

The Water Company argues that they should not be required to fix every sidewalk crack on every street in town. Plaintiff agrees that such an endeavor would be impossible. However, hidden dangers such as a defective water meter should have been prioritized and fixed. The Defendants' cite to the unpublished case Russell v. City of Owensboro, 2012-CA-002006-MR, 2014 WL 1407238 (Ky. App. April 11, 2014), which involved sidewalk cracks which are open and obvious. Unlike a sidewalk crack, the unsecured water meter lid concealed a hidden danger lurking underneath that could not be detected by a pedestrian. The Russell case is not applicable to our facts.

Something that may seem obvious but needs to be mentioned is that these water meter lids are designed to be stepped on. They are flat and flush with the ground. A person who walks on a meter has a reasonable expectation that they will not fall in.

The Water Company has provided no evidence that they used discretion in determining that the water meter which is the subject of this litigation was not prioritized for replacement before Ms. Hood's fall. The Water Company also argues that they cannot be held liable for failing to inspect the water meter. This argument fails as well as the water meter was read on a monthly

basis including just 21 days prior to Ms. Hood's fall. The Defendants did not fail to inspect. They made plenty of inspections but did not act.

It would be a different scenario if the Water Company had identified the need to replace our water meter and had put it on the list to get replaced. In the meantime, it could have and should have publicly identified the water meter with an orange cone to warn pedestrians of the danger. In our case however, the Water Company does not have a valid argument that they chose not to prioritize the water meter replacement when they failed to take any action to replace it prior to Ms. Hood's fall.

Conclusion

It is clear from the evidence that the water meter Sue Hood stepped through was old, decrepit and in dire need of replacement. It is also clear from the evidence that the water meter lid was not sealed by the last meter reader on August 21, 2018 and it stayed unsecured until Ms. Hood stepped on it 21 days later. Sue Hood and her husband witnessed the Water Company worker clean and dig out around the water meter jar and at least attempted to secure the lid back. This earth or debris did not grow overnight. It did not force the lid off from being secured. The debris which came through the crack of the rim prevented the lid from being sealed. The Defendants' replaced the entire water meter the next day as it was obviously determined that the old meter was not salvageable.

The Defendants are not immune from suit as the evidence clearly indicates the worker who last read the meter negligently and recklessly failed to properly secure the lid.

The Defendants' Motion for Summary Judgment should be denied.

RESPECTFULLY SUBMITTED,



DAVID TROUTMAN
MARK EDWARDS
EDWARDS & KAUTZ, PLLC.
222 Walter Jetton Blvd.
P.O. Box 1837
Paducah, KY 42002
(270) 442-9000

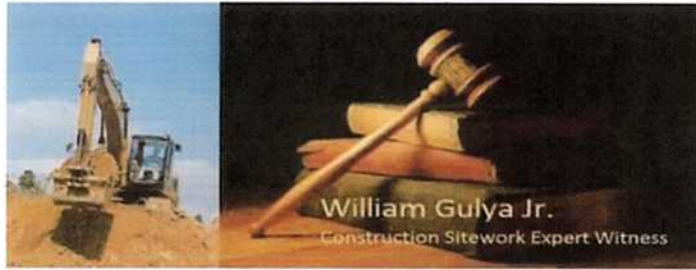
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that the original has been mailed to: Kristen Worak, Esq., KEULER KELLY HUTCHINS BLANKENSHIP & SIGLER, 100 South 4th Street, Ste. 400, Paducah, KY 42001, on this the 16th day of July, 2021.



DAVID TROUTMAN



wgulya@siteworkexpert.com

211 Del Rocco Court, Raritan NJ 08869

Voice 908-313-3216

SUSAN HOOD

Plaintiff

VS.

CITY OF MURRAY, KENTUCKY AND

CITY OF MURRAY PUBLIC WORKS AND

UTILITIES

DEFENDANTS

Report by William Gulya



wgulya@siteworkexpert.com

211 Del Rocco Court, Raritan NJ 08869

Voice 908-313-3216

Exhibit "A"

Confidential

Rim of meter Lid
Clear of debris.

Water Meter

Lid Locking
Bolt

William Gulya, Jr.

CONSTRUCTION SITE & EXCAVATION
EXPERT WITNESS



211 Del Rocco Court, Raritan, NJ 08869 ~ 908-313-3126 ~ wgulya@siteworkexpert.com ~ www.siteworkexpert.com

*CURRICULUM VITAE***Professional Experience**

President & CEO, Middlesex Trenching Company, 1972 – Present

Excavation & Construction Site Preparation – earthwork and grading; water mains; sewer installation; trenching; underground utilities; directional drilling; asphalt; concrete curbs; concrete walks; concrete flat work; heavy equipment purchases & rentals; shoring; de-watering; OSHA and construction safety; industry standards and best practices in my fields of expertise. 48 years of construction experience.

Consulting, Dispute Resolution, and Expert Witness Testimony Experience

Construction Contract Disputes; Scheduling; Delay Claims; Differing Site Condition Claims; Change Order Justification; Excavation & Construction; Site Work & Preparation – earthwork and grading, water mains, sewer installation, trenching shoring & support; Scaffolding safety and regulations; Nonpayment Issues, Back Charges, Heavy Equipment Safety and operation, Purchases, Rentals; Crane safety; Material handling safety; Asphalt Mix and Installation; Concrete Defects; Causation; Remediation; OSHA Standards Compliance, Violations; Construction Safety.

Certifications

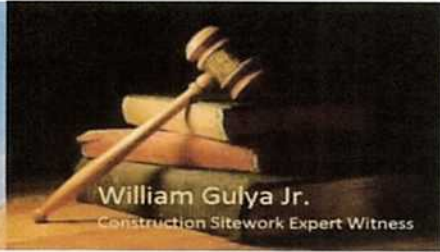
Alternative Dispute Resolution UNCW
OSHA 40 hour
OSHA Competent Person
MSHA Certified Training
NJBIA New Jersey Business & Industry Association
Building Trades Association
UTCA Utility & Transportation Contractors Association
Quest Construction Estimating Institute
Hard Dollar Estimating
OSHA 30 hour (2013)

Education and Training

Civil Design, Union Technical Institute, 1972
Alternative Dispute Resolution, University of North Carolina, 2006
BA, Major Communications, Minor Criminal Justice, Ashford University, 2013

Publications

Articles in the Binder Machinery Spotlight magazine
Article in Construction magazine for Kerr concrete pipe
Articles in Middlesex Trenching Company Site-Lines publication
Articles at www.siteworkexpert.com
Articles at HGExperts.com
Articles at JurisPro.com
Book – *The Straight Truth: The Life of an Expert Witness*

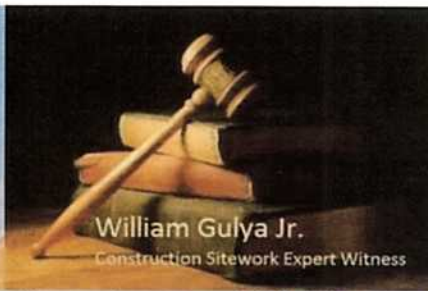


Index

Case Title Page	1 page
Expert Report	15 pages
William Gulya CV	1 page
List of exhibits	1 Page
Exhibit A	1 Pages

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
DEFENDANTS,

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wgulya@siteworkexpert.com

211 Del Rocco Court, Raritan NJ 08869

Voice 908-313-3126

SUSAN HOOD

Plaintiff

VS.

CITY OF MURRAY, KENTUCKY AND

CITY OF MURRAY PUBLIC WORKS AND UTILITIES

DEFENDANTS

ASSIGNMENT

At the request of Mr. David Troutman of Edwards & Kautz, PLLC, I was authorized to perform an investigation of the above-referenced matter. My investigation was based on the documents listed in this report, research, education, and experience.

OBJECTIVE

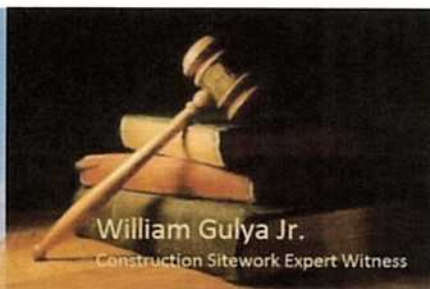
Objectively assess the facts and evidence of the case in order to form expert opinions and conclusions.

BACKGROUND

On or about September 5, 2018, Plaintiff was walking with her daughter on a sidewalk that abutted Olive Street in Murray, Calloway County, Kentucky. The Plaintiff and her daughter decided to cross the street to avoid a lawnmower. When the Plaintiff stepped off the sidewalk and into the grass that separates the street from the sidewalk, she stepped on a water meter lid cover. When her left foot landed on the lid cover, the lid cover flipped open, and her left leg fell into the water meter opening/Jar. The Plaintiff was injured as a result of her fall.

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
DEFENDANTS,

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wgulya@siteworkexpert.com

211 Del Rocco Court, Raritan NJ 08869

Voice 908-313-3126

Documents Reviewed

- 1) Complaint
- 2) Other Pleadings.
- 3) City of Murray Kentucky and City of Murray public works and utilities answers to Complaint.
- 4) Plaintiff's answers to City of Murray Kentucky and City of Murray Public Works and Utility interrogatories.
- 5) Photos.
- 6) Customer meter readings.
- 7) Murray Public Work and Utilities work order 99251 (Blank).
- 8) Murray Public Work and Utilities work order 90927 dated 9/5/2018.
- 9) Defendant's Responses to Supplemental Interrogatories and supplemental request for production.
- 10) City of Murray Kentucky Safety Manual.

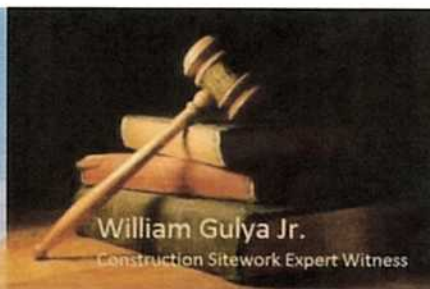
Applicable Standards

- 1) Water Company and Utility companies Industry Standards of care and best practices.
- 2) City of Murray Kentucky and City of Murray Public Works Protocols for water meter jars, lids, and meter replacements from its website and employee testimony.

Deposition of Susan Hood

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
DEFENDANTS,

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wgulya@siteworkexpert.com

211 Del Rocco Court, Raritan NJ 08869

Voice 908-313-3126

Examination by Kristen Worak representing the City of Murray

- 1) Mrs. Hood testified that the accident happened on September 5 2018, in the morning (pg 50 lines 13-17).
- 2) Mrs. Hood testified I was with my daughter, and we went walking. We walked down Payne Street, and we walked down Tenth Street, and I spoke to some roofers that were roofing a house, and they just finished our house. And we got to Olive Street, I saw my foot touch the lid just barely of this water meter and slid right into it, and I fell. I stopped immediately. (pg 60 lines 8-17).
- 3) Mrs. Hood testified I was with my daughter, and we did not have our phones. My daughter ran back to get her dad. I was wearing tennis shoes (pg 66 lines 18-24, pg 67 line 1).
- 4) Mrs. Hood testified I walked where the water meter pit was, although I did not know it was there because someone was mowing their lawn with the chute pointing at them (pg 68 lines 1-13).
- 5) Mrs. Hood testified the lid was covering the circle/meter opening (pg 70 lines 1-7).
- 6) Mrs. Hood testified the ball of her foot and toes touched the cover/lid of the water meter. (pg 70 lines 8-15).
- 7) Mrs. Hood testified the lid gave way, and I fell (pg 70 lines 17-19).
- 8) Mrs. Hood testified her foot was wedged in the hole (pg 71 lines 15-22).
- 9) Mrs. Hood testified she got her foot out of the hole with the assistance of her daughter (pg 72 lines 6-8).
- 10) Mrs. Hood testified the lady across the street called the City, and they showed up at the same time as her husband (pg 72 lines 13-16).

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
DEFENDANTS,

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	 <p>William Gulya Jr. Construction Sitework Expert Witness</p>	 <p>Occupational Safety And Health Administration Safety Regulation And Standards Compliance</p>	
wgulya@siteworkexpert.com 211 Del Rocco Court, Raritan NJ 08869 Voice 908-313-3126			

- 11) Mrs. Hood testified in her answers to interrogatories a city employee she believed to be a senior employee "examined the lid and said there was a crack on the rim and that was the cause" (pg 72 lines 17-22).
- 12) Mrs. Hood testified that she and her husband were shown the crack (pg 74 lines 2-3).
- 13) Mrs. Hood testified pointed to the indentation of the photo in exhibit 2 as the crack (pg 74 lines 4-12).
- 14) Mrs. Hood testified it just wasn't set in there. All this stuff was holding it from sitting in correctly. A city employee scraped around it with a knife. Now it sits in just fine, and (the city employees) made sure that we all saw it. I recall him (a city employee) saying (The lid) wasn't locked, as well (pg 75 lines 2 to 14).
- 15) **Mrs. Hood testified the City employee said it wasn't appropriately seated, nor was it locked (pg 75 lines 16-21) (Emphasis Added).**

Deposition of Roger Hale

Examination by Mr. Troutman representing the Plaintiff

- 1) Mr. Hale testified he worked for the city water department for 26 years (pg 4 line 25, pg 5 line 2).
- 2) Mr. Hale testified he worked as an inspector for the last 12 years of the water company inspector (pg 7 lines 3-4).
- 3) Mr. Hale testified he did nothing when doing inspections to inspect water meters (pg 7 lines 15-17).
- 4) Mr. Hale testified his day-to-day activities do not include water meter readings (pg 5 lines 16-18).

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES DEFENDANTS,

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- 5) Mr. Hale agreed in 12 years, he did not spend much time working on water meters. (pg 7 lines 17-21).
- 6) Mr. Hale testified the rim was not broken (pg 12 lines 19-24).
- 7) Mr. Hale testified the lid was not broken (pg 13 lines 1).
- 8) Mr. Hale testified the water meter/jar was replaced the next day, not the same day (pg 17 lines 11-18).
- 9) Mr. Hale testified the City replaced the clay jar water meter with a concrete jar and meter (pg 19 lines 10-16).
- 10) Mr. Hale testified the old clay jars are being replaced one by one as time goes on (pg 20 lines 19-21).
- 11) Mr. Hale testified as an inspector, and he did not make monthly inspections of the water meters (pg 21 lines 12 to 16).

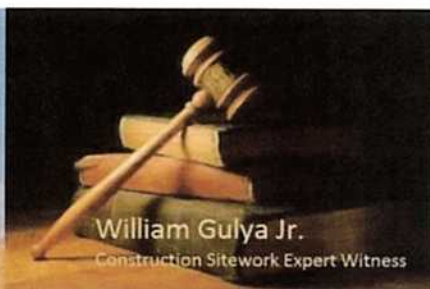
Deposition of Brad House

Examination by Mr. Troutman representing the Plaintiff

- 1) Mr. House testified he worked for the City for 18 years in finance, service tec, and does service connections and disconnections (pg 4 lines 23-25).
- 2) Mr. House testified he was present after Mrs. Hood fell (pg 6 lines 21-23).
- 3) Mr. House testified Tommy Ross and Roger Hale are shown in the pictures (pg 7 lines 15-17).
- 4) Mr. House testified when he got to the scene, Roger had already put on the meter lid and was checking to make sure it was secure (pg 9 lines 6-10).
- 5) Mr. House testified he remembers us (the city workers) checking the meter lid and putting it on, making sure it was on good. (pg 11 lines 10-12).

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
DEFENDANTS,

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Voice 908-313-3126

- 6) Mr. House testified sometimes, over time, the water meter jars get damaged (pg 13 lines 5-7).
- 7) Mr. House testified the meters are read once a month to invoice customers for water consumption (pg 21 lines 7-12).

Examination by Mrs. Worak representing the defendant(s) /city.

- 1) Mr. House testified frequently the same meter reader read the same meters for several months in a row (pg 21 lines 21-25).

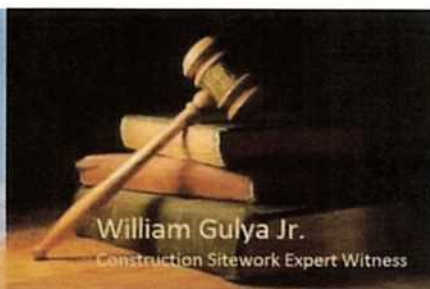
Deposition of Tommy Ross

Examination by Mr. Troutman representing the Plaintiff

- 1) Mr. Ross testified he worked for the City of Murray for 9 years as a Water Meter Technician (pg 4 lines 9-17).
- 2) Mr. Ross testified that sometimes meter lids will get broken (pg 9 lines 2).
- 3) Mr. Ross testified when he approached the meter Roger Hale already had the lid back on (pg 17 lines 23-24),
- 4) Mr. Ross testified the water company replaced the whole thing (Jar, meter, and lid (pg 21 lines 6-12).
- 5) Mr. Ross testified the replacement of lids or jars is based on observed physical damage. (pg 22 lines 5-12).
- 6) Mr. Ross testified the meter readers will remove debris when they have to ensure the lid is secure (pg 36 lines 21-25).

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
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- 7) Mr. Ross testified a meter reader always makes sure the lid is secure (pg 37 lines 9-16).
- 8) Mr. Ross testified there had been times in his career he could not get the lid securely back on the jar. When that occurs, the protocol is to change the jar and the lid.

Opinions & Conclusions

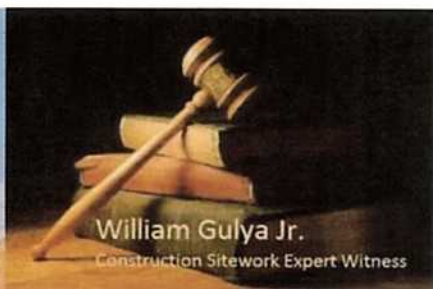
Based on a thorough review of the evidence, regulations, and standards of care as listed in this report, my education, training, and over 40 years of Construction and Construction Safety experience, it is my expert opinion to a reasonable degree of professional certainty:

It is undisputed that the water meter lid flipped out and therefore could not have been securely seated. It is undisputed that Mrs. Hood fell into the jar sustaining various injuries. Mrs. Hood testified the ball of her foot and toes touched the cover of the water meter. (pg 70 lines 8-15) Mrs. Hood further testified the lid gave way, and I fell (pg 70 lines 17-19). In addition, Mrs. Hood testified her foot was wedged in the hole (pg 71 lines 15-22).

Mrs. Hood testified in her answers to interrogatories a City employee she believed a senior employee "examined the lid and said there was a crack on the rim and that was the cause" (pg 72 lines 17-22). Mrs. Hood testified that she and her husband were shown the crack (pg 74 lines 2-3).

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Mrs. Hood, in her sworn testimony, said it (the lid) just wasn't set in there. Mrs. Hood testified the **City employee said it wasn't appropriately seated, nor was it locked (Emphasis Added)** (pg 75 lines 16-21).

While there may be conflicting testimony by Mr. Roger Hale, where Mr. Hale testified the rim was not broken (pg 12 lines 19-24) and the lid was not broken (pg 13 lines 1). There can be no question that in order for the lid to flip out, the lid could not have been seated correctly, secure or locked. I have installed, supervised, and or inspected thousands of various locking water meter, gas valve, underground electric junction boxes, and manhole covers in my career. In my expert opinion, to a reasonable degree of certainty, if the lid that is the subject of this litigation had been seated correctly, secure and locked, it would not have flipped open, and Mrs. Hood would not have fallen into the water meter jar. The City of Murray, Kentucky, and City of Murray Public Works and Utilities had a duty and responsibility to ensure the public's safety and ensured that the water meter lid was secure and locked.

There is a bolt on the lid that is very visible on the photos of the lid that is the subject of this litigation. This bolt is intended to screw into a portion of the rim that is affixed to the jar (See Exhibit A); this bolt secures the lid to the rim of the lid so the lid is securely seated and cannot flip out, it acts as a lock for the lid. If the bolt is working correctly, tightened correctly, and the rim or lid is not cracked or broken, the lid could not possibly flip out simply by Mrs. Hood stepping on it. The securing bolt would have prevented the lid from moving at all. Therefore, it is my opinion to a reasonable degree of certainty that either the bolt, rim, or the lid was cracked or otherwise broken, preventing the bolt from holding, locking down the lid securely. In the alternative, the meter reader who removed and replaced the lid did not seat the lid properly, tighten the

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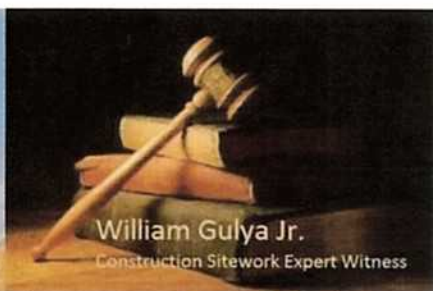
bolt and check to make sure the lid was locked down and securely fastened (See Exhibit A). Mr. Ross testified a meter reader always makes sure the lid is secure (pg 37 lines 9-16). However, in this case, the meter reader either did not make sure the water meter lid was secure or failed to report they could not secure it. Mr. Ross testified there had been times in his career he could not get the lid securely back on the jar. When that occurs, the protocol is to change the jar and the lid.

If the lid or rim were not cracked or broken, as Mr. Hale maintains, the meter reader who removed and replaced the lid did not seat the lid properly; tighten the bolt and check to make sure the lid was locked down and securely fastened, which is the meter readers responsibility to do so. In the alternative, the meter reader, an employee, and agent of the City of Murray, Kentucky, and or the City of Murray Public Works and Utilities failed to inform his superiors or the City of Murray, Kentucky, and or the City of Murray Public Works and Utilities that the lid could not be secured and presented a safety hazard to the general public, including Mrs. Hood.

To support that the lid, rim, or jar was damaged or could not be secured or locked, the City of Murray, Kentucky, and or the City of Murray Public Works and Utilities replaced the meter, installed a new concrete jar, and a new lid the following day. Mr. Hale testified the water meter jar and lid were replaced the next day, not the same day (pg 17 lines 11-18). It should be noted that work order number 90927, dated, 9/5/2018 seems to indicate the jar lid and other materials were performed on September 5, 2018. Mr. Hale also testified the City replaced the existing clay jar water meter with a concrete jar and meter (pg 19 lines 10-16). Although Mr. Hale testified the rim or lid were not broken or damaged as the saying goes, "if it's not broken, don't fix" The City of Murray, Kentucky, and or the City of Murray Public Works and Utilities must have

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
DEFENDANTS,

08/11/2022 08:10:43 PM
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wgulya@siteworkexpert.com

211 Del Rocco Court, Raritan NJ 08869

Voice 908-313-3126

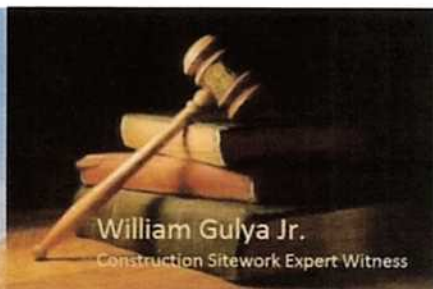
concluded that the lid, jar, or rim were damaged or defective and could not be secured and or locked and it needed to be replaced for the safety of the public.

Mr. House testified frequently the same meter reader reads the same meters for several months in a row (pg 21 lines 21-25). Mr. House testified the debris could accumulate within one month (pg 22 lines 16-18). To the best of my knowledge, the meter lid needed to be unbolted/unlocked and removed in order to read the meter in question. Mr. Ross testified the meter readers will remove debris when they have to ensure the lid is secure (pg 36 lines 21-25). Therefore, it is with a reasonable degree of certainty that the management, meter readers, supervisors, and agents of the City of Murray, Kentucky, and City of Murray Public Works and Utilities had a duty, responsibility, and obligation to make certain its employees, supervisors managers, inspectors, and agents ensured the all water meter lids are put back on the jar and are seated, bolted down, and secured correctly for the safety of the public including but not limited to Mrs. Hood.

In my expert opinion, to a reasonable degree of certainty, there is no reason a locking water meter lid should be left uncured, i.e., not bolted/locked down, cracked, or loose, which exposes a known safety hazard to the public, including but not limited to Mrs. Hood. Mr. House testified the meters are read once a month to invoice customers for water consumption (pg 21 lines 7-12). In my expert opinion, to a reasonable degree of professional certainty, it is improbable that grass, weeds, or other debris could get under the seated and bolted down lid in a 30-day period and cause it to become loose and unsecured (See Exhibit A). The flat bottom of the water meter lid sits flat and tight on the rim. The only reason that the lid would flip out is because it was left improperly secured, seated, locked down, or broken to the extent it could not be secured.

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
DEFENDANTS,

08/11/2022 08:10:11 PM
MEDIA5022



wgulya@siteworkexpert.com

211 Del Rocco Court, Raritan NJ 08869

Voice 908-313-3126

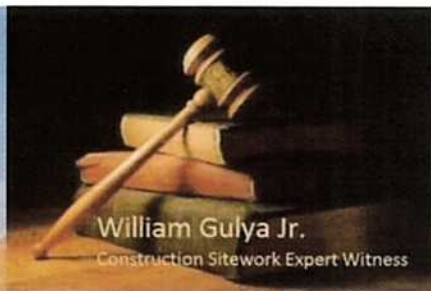
City of Murray, Kentucky, and City of Murray Public Works and Utilities
have the following protocols and procedures to warn the general public of an
unsafe water meter:

1. All meters are read one time per month.
2. When damage is identified, an order is placed to repair or replace the meter lid or jar. The meter is marked with a cone if warranted.
3. When an issue is identified, an electronic message is sent to a supervisor, who will generate a report indicating the account, customer, name, address, meter number, and comment. Comments may include issues encountered such as bad dog, gate locked, broken meter (refers to meter only), dirty glass, lid missing/broken, change out (refers to meter only), clean box, cannot find meter, leak check, trim bushes, or broken meter box.
4. Upon completion of a route, meter readers go back to change, clean, or repair meters. Meter readers generate work orders for broken meter boxes.

If the meter lid and jar that is the subject of this litigation was read in August of 2018, the meter reader knew or should have known that the lid could not be secured or locked, preventing it from flipping out. As stated earlier in this report, it is improbable that grass, weeds, or other debris could get under a tightly seated and bolted down lid in a 30-day period and cause it to become loose and unsecured. There is no evidence that any electronic message was sent to a supervisor in the month prior to Mrs. Hood stepping on a broken and or unsecured meter lid, causing the lid to flip out and Mrs. Hood to fall into the meter jar. By their own admission to this interrogatory, "Defendants did not utilize such a form" There is no evidence of an inspection program by the City of

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
DEFENDANTS,

08/11/2022 08:10:11 PM
MEDIA5022



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Murray, Kentucky, and City of Murray Public Works and Utilities to inspect the old clay water meter jars and lids, despite their knowledge that these very old clay jars and lids are subject to damage or simply wear out and break. There is no evidence that the City of Murray, Kentucky, and City of Murray Public Works and Utilities placed a cone on the unsecured meter lid that is the subject of this litigation, as is their policy.

Concluding Statement

Based on a thorough review of the evidence, regulations, and industry standards of care as listed in this report, my education, training, and over 40 years of Construction and Construction Safety experience, it is my expert opinion to a reasonable degree of professional certainty.

It is undisputed that the lid flipped out. It is undisputed that Mrs. Hood only slightly stepped on the lid, and the unsecured and unlocked lid flipped out, and she fell into the jar and sustaining injuries. It is undisputed the City of Murray, Kentucky, and City of Murray Public Works and Utilities responded to the scene and placed the lid back on the meter jar. As to how secure the lid was at that time is unclear. The City of Murray, Kentucky, and City of Murray Public Works and Utilities employees replaced the existing meter, clay jar, rim, and lid with a new one the next day. However, the work order work order 90927 dated 9/5/2018 implies it was replaced on September 5, 2018.

It is undisputed that the water meter lid/cover, flipped out was loose or unsecured and created a known safety hazard that caused Mrs. Hood to fall into the jar and sustain injuries

There are thousands of City Public Utility Companies or Water Companies that serve particular areas throughout the country. Each of them has various rules, regulations, specifications, and safety protocols. No two are exactly the same. However,

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
DEFENDANTS,

08/11/2022 08:10:33 PM
MEDIA5022



in my expert opinion and experience within a reasonable degree of certainty, there is a constant whereby there is a specific program to inspect various portions of the utility components, especially those that are known to fail or break for the protection of public safety. Mr. Ross testified that sometimes meter lids will get broken (pg 9 lines 2). Therefore, the City of Murray and or the City of Murray Public Works and utility knew or should have known that the old clay jar meter lids were subject to damage a could present a safety hazard to the public, including but not limited to Mrs. Hood.

The various rules, regulations, specifications, and safety protocols of the various City Public Utility Companies or Water Companies and other regulations and safety recommendations have been developed over years of reviewing accident data and developing a safer way to perform a task, product, service, or inspection programs. These combine to establish the industry standard of care and best safety practices in the industry. Mr. Ross testified a meter reader always makes sure the lid is secure (pg 37 lines 9-16). Evidently, the meter reader did not make sure the lid that is the subject of this litigation was secure and locked down in this case and or failed to inform their superiors or the City of Murray, Kentucky, and or the City of Murray Public Works and Utilities that the lid could not be secured and presented a safety hazard to the public, including but not limited Mrs. Hood. If the lid that is the subject of this litigation were secured and locked down tightly, it would not have flipped out, and Mrs. Hood would not have fallen into the jar.

Mr. Hale testified that sometimes meter lids will get broken (pg 9 lines 2). There is no evidence produced as of the date of this report the City of Murray or the City of Murray Public Works and Utilities had any written or formal inspection program or schedule for inspecting water meter jars and lids, even though the City of Murray or the City of Murray Public Works and Utilities knew or should have known these old clay jars

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
DEFENDANTS,

08/11/2022 08:10:11 PM
MEDIA5022

			
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were subject to failure/damage and the water meter lids would become unsecured and present a hazard to the public. There is also no evidence that the City of Murray or the City of Murray Public Works and Utilities had any form or formal procedure or form for the meter readers to fill out in order to report unsure or broken lids, rims, or jars prior to Mrs. Hood's accident. Mr. Hale testified as an inspector; he did not make monthly inspections of the water meters (pg 21 lines 12 to 16).

The City of Murray Public Works and Utilities knew that the old clay jars are prone to damage, and the meter lids can become unsecured. Mr. Hale, as an inspector, and the duties placed on him by the City of Murray Public Works and Utilities did not include this vital public safety inspection of old clay jars and ensure meter lids were secure.

The meter reader has to remove the meter lid/cover in order to read the meter. Mr. Ross testified a meter reader always makes sure the lid is secure (pg 37 lines 9-16). There can be no doubt that the lid that is the subject of this case was not securely fastened and flipped out, causing Mrs. Hood to fall into the jar.

The meter reader knew or should have known if the water meter lid, rim, or jar were damaged or the water meter lid/cover could not be securely fastened and would present an apparent safety hazard and danger to the public, including but not limited to Mrs. Hood. The meter reader had a duty and responsibility to immediately report it to their supervisors. There is no evidence the meter reader informed their supervisors at all prior to Mrs. Hood's accident.

The City of Murray Public Works and Utilities knew or should have known they had a duty and responsibility to assigned personal to place safety fencing cones or barricades around any unsecured lid to protect the public, including the unsecured

SUSAN HOOD Plaintiff VS. CITY OF MURRAY, KENTUCKY AND CITY OF MURRAY PUBLIC WORKS AND UTILITIES
DEFENDANTS,

08/11/2022 08:10:11 PM
MEDIA5022

			
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meter lid, including but not limited to the meter jar Mrs. Hood fell into until it could be permanently repaired.

Therefore, for the reasons stated in this report, the City of Murray Public Works and Utilities, its management, supervisors, inspectors, agents, and employees were negligent and responsible for any physical or emotional damages Mrs. Hood has suffered continues to suffer.

Signed



William Gulya