

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY

LINDSAY SIMMONS )  
Kansas City, MO )  
And ) Case No.  
CLAY SAMUELSEN ) ) Div.  
Overland Park, KS )  
And )  
DOUG DODSON ) )  
Kansas City, MO 64114 )  
And )  
DEIDRE CHASE-ESTES ) )  
Kansas City, MO 64114 )  
And )  
ANDREW LETOURNEAU ) )  
Kansas City, MO 64111 )  
And )  
NATHAN DORSEY ) )  
Kansas City, MO 64130 )  
Plaintiffs, )  
v. )  
SOUTHERN UNION COMPANY, )  
a Texas Corporation, doing business as )  
MISSOURI GAS ENERGY COMPANY, )  
SERVE REGISTERED AGENT: )  
CT Corporation System )  
120 South Central )  
Clayton, Missouri 63105 )

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And )  
MICHAEL A. PAILER )  
[REDACTED] )  
Richmond, Missouri 64085 )  
 )  
And )  
 )  
HEARTLAND MIDWEST, LLC, )  
SERVE REGISTERED AGENT: )  
John Clisbee )  
9233 Ward Parkway, #175 )  
Kansas City, MO 64114 )  
 )  
And )  
 )  
TIME WARNER CABLE MEDIA, INC., )  
SERVE REGISTERED AGENT: )  
CT Corporation System )  
120 South Central Ave. )  
Clayton, MO 63105 )  
 )  
And )  
 )  
MISSOURI ONE CALL SYSTEM, INC., )  
SERVE REGISTERED AGENT: )  
Charlotte Baclesse )  
824 Weathered Rock Road )  
Jefferson City, MO 65101 )  
 )  
And )  
 )  
USIC LOCATING SERVICES, INC., )  
SERVE REGISTERED AGENT: )  
CT Corporation System )  
120 South Central Ave. )  
Clayton, MO 63105 )  
 )  
Defendants. )

**PETITION**

COMES NOW Plaintiffs; Lindsay Simmons, Clay Samuelsen, Doug Dodson, Deidre Chase-Estes, by and through their attorneys of record, and for their causes of action against the Defendants, alleges and states as follows:

**PLAINTIFFS**

1. Plaintiff Lindsay Simmons is and at all times was herein has been, a resident and citizen of Jackson County, Kansas City, Missouri, 64131.
2. Plaintiff Clay Samuelsen is and at all times was herein has been, a resident and citizen of Johnson County, Overland Park, Kansas, 66212.
3. Plaintiff Doug Dodson is and at all times was herein has been, a resident and citizen of Jackson County, Kansas City, Missouri, 64114.
4. Plaintiff Deidre Chase-Estes is and at all times was herein has been, a resident and citizen of Jackson County, Kansas City, Missouri, 64114.
5. Plaintiff Andrew LeTourneau is and at all times was herein has been, a resident and citizen of Jackson County, Missouri, 64111.
6. Plaintiff Nathan Dorsey is and at all times was herein has been, a resident and citizen of Jackson County, Kansas City, Missouri, 64130.
7. Each Plaintiff named herein was an employee of JJ's Bar and Grill ("JJ's"), a popular Kansas City restaurant, which was located at 910 W. 48<sup>th</sup> Street, Jackson County, Kansas City, Missouri. Each Plaintiff was working at JJ's when the Defendants caused or contributed to cause a massive natural gas explosion and fire that destroyed the restaurant building and injured each plaintiff.

## DEFENDANTS

8. Defendant Southern Union Company is, and at all relevant times, has been a Texas corporation doing business as Missouri Gas Energy Company, authorized to do business and doing business in Missouri. Defendant Southern Union Company ("MGE") and may be served by serving its Missouri Registered Agent at the address stated in the caption.

9. Defendant Southern Union Company d/b/a Missouri Gas Energy ("MGE"), is a private company which operates at a public utility providing natural gas throughout Missouri and Jackson County. MGE is responsible to the safe maintenance of natural gas piping which run beneath the city, up to the meter of a home or building.

10. At all relevant times, MGE had a duty to safely maintain the natural gas piping which was breached, duty to respond, shut off gas, stop any leak, evacuate people in the vicinity.

11. Defendant MGE is the entity with the greatest expertise in the safety procedures involved in responding to and repairing natural gas leaks.

12. Defendant Michael Palier is and at all relevant times was a citizen and resident of Richmond, Missouri and an emergency response worker for Defendant MGE at all relevant times. At all relevant times, Defendant Michael Palier was acting as an agent and/or employee of Defendant MGE.

13. That Defendant Heartland Midwest, LLC. ("Heartland"), is a Kansas limited liability company in good standing, doing its usual and customary business in Jackson County, Missouri, and may be served by serving its Missouri Registered Agent at the address stated in the caption.

14. At all relevant times Defendant Heartland was working as a contractor for Time Warner Cable Inc. near 910 W. 48th St., outside or near JJ's Restaurant building, performing underground digging and excavation (as defined in §319.015 RSMo and Kansas City, Missouri Ordinance 64-111) as part of the requested work. During this work, an agent servant, and/or employee of Defendant Heartland ruptured a natural gas pipe that was maintained by Defendant MGE thereby causing a gas leak (allowing gas to escape).

15. That Defendant Time Warner Cable Media, Inc., ("Time Warner") is a New York corporation in good standing, doing its usual and customary business in Jackson County, Missouri, and may be served by serving its Missouri Registered Agent at the address stated in the caption.

16. That Defendant Missouri One Call System, Inc. ("Missouri One Call"), is a Missouri Not-for-Profit Corporation in good standing, doing its usual and customary business in Jackson County, Missouri, and may be served by serving its Missouri Registered Agent at the address stated in the caption.

17. That Defendant USIC Locating Services, Inc. ("USIC"), is an Indiana corporation in good standing, doing its usual and customary business in Jackson County, Missouri, and may be served by serving its Missouri Registered Agent at the address stated in the caption.

18. Defendants Missouri One Call and USIC are underground facility and utility locating services. At some point prior to the digging and excavation work that was performed by Defendant Heartland, Defendants Missouri One Call and USIC were asked to locate the underground utilities and mark them on the surface of the alleyway.

19. There was an alleged miscommunication between the corporations boring the route for the cable and the locating/marketing companies. As a result, the corporations boring the hole for the cable bored right into the natural gas pipeline.

#### VENUE

20. Venue is proper and convenient in this Court pursuant to § 508.010.4 of the Missouri Revised Statutes, in that Plaintiffs were first injured by the wrongful acts and/or negligent conduct of the defendants in Jackson County Missouri.

#### FACTUAL ALLEGATIONS APPLICABLE TO ALL COUNTS

21. All actions of Defendants alleged in this Petition were either caused by decisions made at a corporate level or performed by and through their agents, servants and employees, who at all times were acting within the course and scope of their employment or agency with Defendants.

#### Timeline of Events

22. During the afternoon of February 19, 2013, each of the Plaintiffs reported to JJ's Restaurant and began to prepare for the dinner crowd, just as they would on any other weekday.

23. During all relevant times on and before February 19, 2013, Defendant Time Warner had contracted with Defendant Heartland to perform construction work in the vicinity of JJ's. The work being performed by Defendant Heartland included drilling, boring, digging and excavation by, near, or adjacent to the JJ's building.

24. Prior to February 19, 2013, Defendant Heartland notified the gas company and other utilities through Defendant Missouri One Call that a crew from

Defendant Heartland drill a route to lay cable or fiber optics and all defendants knew they would be drilling near or in the vicinity of a natural gas pipeline.

25. Defendant USIC, the largest nationwide locating and marking service was contracted by Defendant MG, and/or other defendants, to locate the underground natural gas piping and provide accurate markings on the surface to indicate the location and depth of the piping. Markings were drawn or painted in the proposed work area at some time in the two weeks before February 19, 2013.

26. Once markings were made, Defendant Heartland was required by law to hand dig "potholes" in the area of the markings to ensure they are fully aware of the location and depth of the underground piping, before excavation, tunneling, digging or drilling equipment is utilized.

27. The combination of erroneous markings and miscommunications between the boring companies and the marking companies caused or contributed to cause the boring drill to run into the gas pipeline and rupture the pipeline.

28. In the late afternoon of February 19, 2013, a call to 911 was made by a contractor working at the scene near JJ's Restaurant regarding a broken gas pipe. The contractor stated it had hit a gas line and there was a gas leak.

29. Soon thereafter, Defendant MG was alerted of the broken gas pipeline that was leaking natural gas. Thereafter, Defendant MG's first responder, Michael Palier, arrived at the scene.

30. It is KCPD's policy to defer to the public utility, in this case Defendant MG, KCPD claims that MG is the entity with the greatest expertise in the safety procedures involved in responding to and repairing natural gas leaks. Defendant MG's

agents and/or employees advised KCFD that Defendant MGE had the situation under control.

31. MGE told people at the scene, including employees of JJ's that the gas leak would soon be repaired and that there was no reason to evacuate. MGE repeatedly told people at the scene not to worry and that everything was under control.

32. MGE failed to inform Plaintiffs that there was a danger and it was urgent that any and/or all people must leave the scene as soon as possible. Plaintiffs were not ordered to evacuate and were not told that there was danger of fire or explosion.

33. MGE employees detected gas in structures at a level that would require evacuation but failed to timely order an evacuation or communicate the urgent need to leave buildings and structures in and around the gas leak.

34. A massive explosion destroyed the JJ's building and a massive fire ensued. All Plaintiffs were inside the restaurant building when the explosion occurred.

35. Each of the acts or omissions by Defendants MGE, Heartland, Time Warner, Missouri One Call, and USIC, as set forth in this Petition contributed to and directly and proximately caused the explosion that injured Plaintiffs.

#### INJURIES

36. Due to the carelessness and recklessness of the Defendants, Plaintiff Lindsay Simmons suffered and will continue to suffer from serious, permanent and progressive injuries which include: injuries to his body and mind, including but not limited to lacerations and scaring to scalp and hands, scraps and contusions on her back, severe lacerations and/or burns and scaring on top of both feet, and contusions to left ankle and foot; injuries to his head and brain due the powerful concussive blast. In

addition, Plaintiff suffered and will continue to suffer from serious, permanent and progressive psychological and emotional injuries, including Post Traumatic Stress Disorder.

37. Due to the carelessness and recklessness of the Defendants, Plaintiff Clay Samuelson suffered and will continue to suffer from serious, permanent and progressive injuries which include: injuries to his body and mind, including but not limited lacerations and/or burns and scaring of the head, left arm, wrist, hand and thumb, contusions on the upper back, shoulder, left knee and hands; injuries to his head and brain due the powerful concussive blast. In addition, Plaintiff suffered and will continue to suffer from serious, permanent and progressive psychological and emotional injuries, including Post Traumatic Stress Disorder.

38. Due to the carelessness and recklessness of the Defendants, Plaintiff Doug Dodson suffered and will continue to suffer from serious, permanent and progressive injuries which include: injuries to his body and mind, including but not limited to hearing damage, lacerations and/or burns and scaring to the face, hands, and other body parts; nerve damage, periorbital hematoma, and contusions; injuries to his head and brain due the powerful concussive blast. In addition, Plaintiff suffered and will continue to suffer from serious, permanent and progressive psychological and emotional injuries, including Post Traumatic Stress Disorder.

39. Due to the carelessness and recklessness of the Defendants, Plaintiff Deidre Chase-Estes suffered and will continue to suffer from serious, permanent and progressive injuries which include: injuries to his body and mind, including but not limited to hearing damage, vision problems, fractures of the left side of face, fractured

bones; lacerations and/or burns and scaring on the left side of her face and back of head, severe laceration and scaring to the her left ear, injuries to her head and brain due the powerful concussive blast. In addition, Plaintiff suffered and will continue to suffer from serious, permanent and progressive psychological and emotional injuries, including Post Traumatic Stress Disorder.

40. Due to the carelessness and recklessness of the Defendants, Plaintiff Andrew LeTourneau suffered and will continue to suffer from serious, permanent and progressive injuries which include: injuries to his body and mind, including but not limited to lacerations and/or burns and scaring to his back, ear and head; a torn ear; injuries to his head and brain due the powerful concussive blast; and a severe contusion and hematoma. In addition, Plaintiff suffered and will continue to suffer from serious, permanent and progressive psychological and emotional injuries, including Post Traumatic Stress Disorder.

41. Due to the carelessness and recklessness of the Defendants, Plaintiff Nathan Dorsey suffered and will continue to suffer from serious, permanent and progressive injuries which include: injuries to his body and mind, including but not limited to hearing damage; lacerations and/or burns and scaring to his hand; burns to his head and face; contusions to his face and ear; injuries to his head and brain due the powerful concussive blast. In addition, Plaintiff suffered and will continue to suffer from serious, permanent and progressive psychological and emotional injuries, including Post Traumatic Stress Disorder.

**COUNT I-NEGLIGENCE**  
**(AGAINST MGE AND PALIER)**

42. Plaintiffs adopt and incorporate by reference each and every allegation contained in Paragraphs 1 through 41 of Plaintiffs' Petition.

43. Defendants MGE and Palier owed a duty to obey the requirements of common law, the applicable standards of care, and to use reasonable care in the use, maintenance, repairing natural gas lines and responding to natural gas leaks.

44. At all relevant times, Defendant Palier was acting as an agent and/or employee of Defendant MGE.

45. The Defendants breached that duty and were negligent in the following respects:

- a. in knowing natural gas was leaking and expressly telling people in the vicinity that there was no need to evacuate or leave the area;
- b. in failing to communicate the danger of the gas leak and communicate the urgent nature for all people in the vicinity to leave the scene immediately;
- c. by communicating to the people in the vicinity of the leak that everything was under control and there was no need to evacuate or similar words that caused people to stay in the area rather than evacuating;
- d. in failing to follow company protocol and industry rules regarding the procedures to follow in this type of gas leak;
- e. in failing to timely order an evacuation or communicate the urgent need to leave buildings and structures in and around the gas leak

once MGE employees detected gas in structures at a level that would require evacuation;

- f. in failing to ensure complete containment of the highly volatile natural gas;
- g. in failing to properly train employees, agents, and/or representatives in proper procedure in responding to gas leaks;
- h. in failing to properly warn Plaintiffs and other persons of the dangers presented by this natural gas leak;
- i. in failing to properly and timely warn Plaintiffs and other persons that it was urgent that they leave the area immediately;
- j. in failing to properly repair the natural gas line or lines in question in a timely and proper manner in order to prevent explosion and fire;
- k. in failing to warn Plaintiffs of the dangers related to the natural gas leak when Defendants knew or should have known of the risk involved;
- l. in failing to properly assess the extent of damage to the natural gas line or lines;
- m. in failing to properly assess the rate of flow of natural gas or the total amounts of natural gas that was caused to leak into and around the JJ's building and the risk of explosion and fire related to the leak;
- n. in failing to properly warn the Plaintiffs and others of the rate of

flow of natural gas or the total amounts of natural gas that was caused to leak into and around the JJ's building and the risk of explosion and fire related to the leak;

- o. in failing to take all other necessary and reasonable precautions to prevent such loss and damage sustained by Plaintiffs;
- p. in failing to locate and utilize adequate shut off valves in order to lessen the amount of natural gas that was allowed by Defendants to be expelled into the area surrounding the rupture;
- q. in failing to properly maintain appropriate and easily accessible natural gas shut off valves in a manner that would allow quick access;
- r. in failing to ensure that appropriate and easily accessible natural gas shut off valves were free of obstruction, debris or defects that would hinder quick access;
- s. in failing to timely and prudently evacuate Plaintiffs and other persons within the potential danger zone before the massive explosion;
- t. in failing to ensure that all gas piping, lines, and valves were properly maintained and in proper and safe working order at all relevant times;
- u. in failing to properly maintain or utilize available valves or cut-offs to stop the flow of natural gas in to buildings surrounding the leak;

- v. in recklessly and carelessly ensuring persons in buildings surrounding the gas leak, including the Plaintiffs and their co-workers, that the situation was under control and that they were not in danger;
- w. in failing to maintain and keep emergency excavation equipment (i.e. a backhoe) within safe and reasonable proximity to worksite;
- x. in failing to implement and reasonable emergency response protocols;
- y. any and all other negligent acts or violations of law that become known through the course of discovery.

46. All of Defendant MGE employees at the scene were acting within the scope and course of their employment with MGE during all of the actions and allegations of negligence and/or recklessness stated herein.

47. By reason of all of the foregoing, Plaintiffs have each been caused to suffer injuries and damages as described herein and are each entitled to fair and reasonable compensation.

48. As a direct and proximate result of the negligence of Defendants, Plaintiffs suffered the injuries described herein above and incorporated into this Count by reference.

49. Prior to the aforesaid injuries, Plaintiffs were each able-bodied persons capable of doing and performing work and labor. As a direct and proximate result of their injuries, they have and in the future they will suffer loss of wages, earnings, salaries,

profits, and lost earnings capacity. They have and in the future will suffer an impaired and diminished capacity for work, labor and pleasure.

50. As a direct and proximate result of the negligence of the Defendants, jointly and severally, Plaintiffs have suffered great pain and anguish of body and mind. By reason of these injuries and the effects thereof, Plaintiffs are obligated for numerous medical bills, hospital bills, drugs and related expenses. These injuries, caused by the negligence of Defendants MGE, Palier, Heartland, Time Warner, Missouri One Call, and USIC, and the resulting required medical treatment have caused Plaintiffs loss of earnings and their power to work and labor have been permanently effected. Plaintiffs have been caused to suffer great physical pain and mental anguish and will also suffer in the future. All such permanent injury, pain and suffering, lost earnings and impairment of earning capacity have greatly damaged Plaintiffs.

51. Plaintiffs were damaged as a direct result of the unreasonably dangerous conditions that existed or were created by the negligence and recklessness of the Defendants.

WHEREFORE, Plaintiff prays for judgment Defendants MGE and Palier, and each of them jointly and severally, for damages, including prejudgment interest, in a fair and reasonable sum in excess of the jurisdictional limit of the Associate Circuit Courts, their costs herein incurred, and for such other relief as is deemed appropriate by the Court.

**COUNT II-NEGLIGENCE**  
**(AGAINST HEARTLAND AND TIME WARNER)**

52. Plaintiffs adopt and incorporate by reference each and every allegation contained in Paragraphs 1 through 51 of Plaintiffs' Petition.

53. Defendants Heartland and Time Warner owed a duty to obey the requirements of common law, the applicable standards of care, and to use reasonable care in the use, maintenance, locating, marking, repairing natural gas lines, as well as in the excavation, drilling and construction at or near natural gas lines and responding to natural gas leaks.

54. Defendant Time Warner has a non-delegable duty to Plaintiffs in this case because of the inherently dangerous nature of drilling, boring, tunneling, digging and/or excavating next to natural gas lines.

55. Defendant Time Warner is responsible and liable for the actions of Defendant Heartland because of the inherently dangerous nature of drilling, boring, tunneling, digging and/or excavating next to natural gas lines.

56. Defendant Time Warner was negligent because it knew or should have known that its contractor, Defendant Heartland, was routinely drilling, boring, tunneling, digging and/or excavating to lay Time Warner cable without first obtaining the necessary permits from the proper authorities.

57. Defendants Time Warner and Defendant Heartland were involved in a joint venture involving underground drilling, boring, tunneling, digging and/or excavating to lay Time Warner cable and fiber optics.

58. Defendant Time Warner is responsible and liable for the actions of Defendant Heartland because of the joint venture that it engaged in with Defendant Heartland.

59. Defendant Heartland with acting as the agent of Defendant Time Warner in all of the negligent acts described below.

60. Defendant Heartland was drilling or boring down the alley to the immediate east of JJ's restaurant and hit a natural gas line with the drilling or boring equipment.

61. After Defendant Heartland's boring tool had hit and punctured the natural gas line, Defendant Heartland's employee called and reported to authorities that it had hit a natural gas line and there was a gas leak.

62. All the employees working for Heartland on the project at or near 910 W. 48<sup>th</sup> Street, Kansas City, Missouri were in the scope and course of their employment when they were boring underground and came in contact with the natural gas pipeline.

63. The Defendants breached that duty and were negligent in the following respects:

- a. in failing to use the requisite care in properly locating and identifying all underground utilities and gas lines before beginning excavation, digging or drilling that breached the natural gas line or lines in question;
- b. in failing to ensure complete containment of the highly volatile natural gas;
- c. in engaging in a combination of erroneous markings and miscommunications between the boring companies and the marking companies caused or contributed to cause the boring drill to run into the gas pipeline and rupture the pipeline;
- d. in failing to properly research and engineer the locating and marking of underground utilities, including the natural gas line or

lines in question;

- e. in failing to properly research and engineer the excavation, digging and/or drilling around or near of underground utilities, including the natural gas line or lines in question;
- f. in failing to train employees, agents, and/or representatives to properly identify, and inspect, the construction site and to ensure all underground utilities, including the subject natural gas line or lines, were properly identified, marked and avoided in a reasonably safe and skillful manner and in accordance with all applicable ordinances, statutes, regulations and industry standards;
- g. in failing to properly train employees, agents, and/or representatives in proper procedure in responding to gas leaks;
- h. in failing to properly warn Plaintiffs and other persons of the dangers presented by this natural gas leak;
- i. in failing to properly and timely warn Plaintiffs and other persons that it was urgent that they leave the area immediately;
- j. in knowing natural gas was leaking and expressly telling people in the vicinity that there was no need to evacuate or leave the area;
- k. in failing to communicate the danger of the gas leak and communicate the urgent nature for all people in the vicinity to leave the scene immediately;
- l. in representing that they possessed expertise in location, boring, digging, drilling or excavation services when it knew or should

have known that improper location, digging, drilling or tunneling would potentially put buildings, structures, and lives, including Plaintiffs' lives and well-being, at risk;

- m. in failing to properly assess the extent of damage to the natural gas line or lines;
- n. in failing to timely and prudently evacuate Plaintiffs and other persons within the potential danger zone before the massive explosion;
- o. in recklessly and carelessly ensuring persons in buildings surrounding the gas leak, including the Plaintiffs and their co-workers, that the situation was under control and that they were not in danger;
- p. in failing to implement and reasonable emergency response protocols;
- q. any and all other negligent acts or violations of law that become known through the course of discovery.

64. Defendant Time Warner knew or should have known that its contractor, Defendant Heartland, routinely bored, drilled or excavated to place cable or other lines without first properly obtaining permits from authorities.

65. By reason of all of the foregoing, Plaintiffs have each been caused to suffer injuries and damages as described herein and are each entitled to fair and reasonable compensation.

66. As a direct and proximate result of the negligence of Defendants, Plaintiffs suffered the injuries described herein above and incorporated into this Count by reference.

67. Plaintiffs were damaged as a direct result of the unreasonably dangerous conditions that existed or were created by the negligence and recklessness of the Defendants.

WHEREFORE, Plaintiff prays for judgment Defendants Heartland and Time Warner and each of them jointly and severally, for damages, including prejudgment interest, in a fair and reasonable sum in excess of the jurisdictional limit of the Associate Circuit Courts, their costs herein incurred, and for such other relief as is deemed appropriate by the Court.

**COUNT III- NEGLIGENCE**  
**(AGAINST MISSOURI ONE CALL AND USIC)**

68. Plaintiffs adopt and incorporate by reference each and every allegation contained in Paragraphs 1 through 67 of Plaintiffs' Petition.

69. Defendants Missouri One Call and USIC owed a duty to obey the requirements of common law, the applicable standards of care, and to use reasonable care in the locating and marking of utilities, including natural gas lines, in the vicinity of excavation and boring activities.

70. The Defendants breached that duty and were negligent in the following respects:

- a. in failing to use the requisite care in properly locating and identifying all underground utilities and gas lines before the start of

excavation, boring, digging or drilling that breached the natural gas line or lines in question;

- b. the combination of erroneous markings and miscommunications between the boring companies and the marking companies caused or contributed to cause the boring drill to run into the gas pipeline and rupture the pipeline;
- c. in failing to properly research and engineer the locating and marking of underground utilities, including the natural gas line or lines in question;
- d. in failing to train employees, agents, and/or representatives to properly identify, and inspect, the construction site and to ensure all underground utilities, including the subject natural gas line or lines, were properly identified, marked and avoided in a reasonably safe and skillful manner and in accordance with all applicable ordinances, statutes, regulations and industry standards;
- e. in representing that they possessed expertise in marking or locating services when it knew or should have known that improper marking or location would potentially put buildings, structures, and lives, including Plaintiffs' lives and well-being, at risk;
- f. in failing to take all other necessary and reasonable precautions to prevent such loss and damage sustained by Plaintiffs;
- g. any and all other negligent acts or violations of law that become known through the course of discovery.

71. All of Defendant USIC's employees who worked on the project at or near 910 W. 48<sup>th</sup> Street, Kansas City, Missouri were doing so within the scope and course of their employment with Defendant USIC.

72. All of Defendant Missouri One Call's employees who worked on the project at or near 910 W. 48<sup>th</sup> Street, Kansas City, Missouri were doing so within the scope and course of their employment with Defendant Missouri One Call.

73. By reason of all of the foregoing, Plaintiffs have each been caused to suffer injuries and damages as described herein and are each entitled to fair and reasonable compensation.

74. As a direct and proximate result of the negligence of Defendants, Plaintiffs suffered the injuries described herein above and incorporated into this Count by reference.

75. Plaintiffs were damaged as a direct result of the unreasonably dangerous conditions that existed or were created by the negligence and recklessness of the Defendants.

WHEREFORE, Plaintiff prays for judgment Defendants Missouri One Call and USIC, and each of them jointly and severally, for damages, including prejudgment interest, in a fair and reasonable sum in excess of the jurisdictional limit of the Associate Circuit Courts, their costs herein incurred, and for such other relief as is deemed appropriate by the Court.

**COUNT IV-STRICT LIABILITY FOR INHERENTLY DANGEROUS ACTIVITY  
(AGAINST ALL DEFENDANTS)**

76. Plaintiff adopts and incorporates by reference each and every allegation contained in Paragraphs 1 through 75 of Plaintiffs' Petition.

77. Owning, maintaining, and excavating in the vicinity of a pipeline containing an combustible with the explosive propensities of natural gas are inherently dangerous activities because they present a substantial risk of harm unless adequate precautions are taken.

78. Defendants did all know or should have known of the dangerous nature of this gas and the exponentially increased danger of failing to properly locate and mark the gas lines; in failing to perform the excavation in a careful and prudent manner; in failing to timely and prudently cut off the flow of leaking natural gas and in failing to properly warn the Plaintiffs and other persons in the immediate area of the dangers associated with this leak.

79. The Defendants breached that duties as outlined herein above and were negligent as in outlined herein above.

80. As a direct and proximate result of the negligence of Defendants, Plaintiffs suffered the injuries described herein above and incorporated into this Count by reference.

81. Plaintiffs were damaged as a direct result of the unreasonably dangerous conditions that existed or were created by the negligence and recklessness of the Defendants.

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them jointly and severally, for damages, including prejudgment interest, in a fair and reasonable sum in excess of the jurisdictional limit of the Associate Circuit Courts, their costs herein incurred and for such other relief as is deemed appropriate by the Court.

**COUNT V-PUNITIVE DAMAGES**  
**(DEFENDANTS MGЕ, HEARTLAND, TIME WARNER AND USIC)**

82. Plaintiffs adopt and incorporate by reference each and every allegation contained in Paragraphs 1 through 81 of Plaintiffs' Petition.

83. Defendants knowingly participated in an inherently dangerous activity and were aware of the dangers that existed when locating, marking and excavating near and around natural gas lines at the excavation site and this danger was increased when the gas pipeline was ruptured, leaking natural gas.

84. Defendants MGЕ, Time Warner, Heartland, and USIC knew, or should have known, that as a result of their acts and omissions as setout above, serious bodily harm was substantially certain to occur to Plaintiff and to others.

85. Although Defendants possessed the knowledge discussed above, they nonetheless recklessly and carelessly failed to take steps to ensure that harm would not occur. Defendants' conduct was thereby outrageous and demonstrated a conscious disregard for the safety of Plaintiffs and others, justifying an award of punitive damages in an amount sufficient to punish and to deter Defendants and others from like conduct.

WHEREFORE, Plaintiff prays for judgment against Defendants MGЕ, Time Warner, Heartland, and USIC, and each of them jointly and severally, for damages, including prejudgment interest, in a fair and reasonable sum in excess of the jurisdictional limit of the Associate Circuit Courts, her costs herein incurred, punitive damages and for such other relief as is deemed appropriate by the Court.

**DEMAND FOR JURY TRIAL**

Plaintiff requests a trial by jury on all issues.

Respectfully submitted by,

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**ATTORNEYS FOR PLAINTIFFS**