

PLAINTIFF DEMANDS A TRIAL BY JURY
IN THE CIRCUIT COURT FOR THE CITY OF ARCADIA

SALLY WILREIZ,)

Plaintiff,)

v.)

STATE OF ILLYRIA,)

Defendant,)

Service Address:)

432 Municipal Street)

Utopia, Illyria 23456)

and)

CITY OF ARCADIA,)

Defendant,)

Service Address:)

123 State Street)

Arcadia, Illyria 23464)

and)

HORSEPOWER, INC.)

Service Address:)

987 Pony Drive)

Detroit, Michigan 48201)

Defendant.)

Complaint

Case No. 11cv1234

COMPLAINT

The Plaintiff, Sally Wilreiz, by counsel, for her Complaint against Defendants, State of Illyria, City of Arcadia, and HorsePower, Inc., states as follows:

Parties



This resource was downloaded from <http://etl.du.edu>

EDUCATING
TOMORROW'S
LAWYERS®

IAALS

INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

1. The Plaintiff, Sally Wilreiz, is a citizen of the State of Illyria. The City of Arcadia and State of Illyria are citizens of the State of Illyria. HorsePower, Inc. is a citizen of Detroit, Michigan.

Facts Common to All Counts

2. On or about February 2, 2009, Sally Wilreiz was driving her Stallion vehicle on Route 3 toward the location in which the line where the responsibility of the City for the road changes to the responsibility of the State.

3. She owned the 2008 Stallion manufactured by HorsePower.

4. She had not driven on this road previously.

5. She was driving within the posted speed limit.

6. As she was driving along, she fell into a pothole that resulted in her car flipping over.

7. The pothole had been growing over several months and the City and State neglected to repair it, creating a dangerous condition.

8. When she flipped over, the roll bar crumpled and Sally was severely injured.

9. Sally suffered lacerations to her face, a concussion that put her in a coma, broken bones, partial paralysis, six months hospitalization, severe pain and suffering and other damages to be proved at trial. Her Stallion was totaled, rendering it valueless.

Claims Against City of Arcadia

Negligence- Personal Injuries

10. The preceding allegations are hereby restated and incorporated as if set forth here.

11. Pursuant to Va Code § 15.2-209, Plaintiff has given the proper notice of her claim to the Defendant City, a copy of which is attached to this Complaint as Exhibit A.

12. The City of Arcadia has a duty to maintain safe highway, streets, and otherwise exercise ordinary care such as to prevent injury to others.

13. The City breached that duty for the reasons set forth above, including but not limited to allowing a pothole to grow over a period of time to the point where it was approximately 31 inches deep and four feet wide.;

14. The breach of that duty is what proximately caused the injuries to the plaintiff.



This resource was downloaded from <http://etl.du.edu>

EDUCATING
TOMORROW'S
LAWYERS®

IAALS

INSTITUTE for the ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

15. Plaintiff seriously injured as explained above as a result of the City's negligent breach proximately causing her damages.

16. The City consciously disregarded the danger presented by the pothole that grew in size over a significant period of time in a location of which the City knew or should have known of the grown danger, thus giving rise to reckless disregard, conscious disregard, willful and wanton conduct, and/or gross negligence.

Negligence-Property Damage

17. The preceding allegations are hereby restated and incorporated as if set forth here.

18. Pursuant to Va Code § 15.2-209, Plaintiff has given the proper notice of her claim to the Defendant City, a copy of which is attached to this Complaint as Exhibit A.

19. The City of Arcadia has a duty to maintain safe highway, streets, and otherwise exercise ordinary care such as to prevent damage to others' property.

20. The City negligently failed to repair the pothole, thus breaching its duty.

21. The City's negligence was a proximate cause of Ms. Wilreiz' accident and property damage—including but not limited to the damage to her car and/or other property.

22. The City consciously disregarded the danger presented by the pothole that grew in size over a significant period of time in a location of which the City knew or should have known of the grown danger, thus giving rise to reckless disregard, conscious disregard, willful and wanton conduct, and/or gross negligence.

Claims Against State of Illyria

Negligence-Personal Injuries

23. The preceding allegations are hereby restated and incorporated as if set forth here.

23. Plaintiff has given the proper notice of this claim under the Virginia Tort Claims Act, Va Code § 8.01-195.6.

24. The State of Illyria has a duty to maintain safe highway, streets, and otherwise exercise ordinary care such as to prevent injury to others.

25. The State breached that duty for the reasons set forth above, including but not limited to allowing a pothole to grow over a period of time to the point where it was approximately 31 inches deep and four feet wide.

25. As a proximate result of the State's breach of its duty, Ms. Wilreiz suffered the severe injuries described above.



This resource was downloaded from <http://etl.du.edu>

EDUCATING
TOMORROW'S
LAWYERS®

IAALS

INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

Negligence-Property Damage

27. The preceding allegations are hereby restated and incorporated as if set forth here.
28. Plaintiff has given the proper notice of this claim under the Virginia Tort Claims Act, Va Code § 8.01-195.6.
29. The State of Illyria has a duty to maintain safe highway, streets, and otherwise exercise ordinary care such as to prevent injury to others.
30. The State breached that duty for the reasons set forth above, including but not limited to allowing a pothole to grow over a period of time to the point where it was approximately 31 inches wide and four feet deep.
31. As a proximate result of the State's breach of its duty, Ms. Wilreiz suffered the property damage to her vehicle and/or other property.

HorsePower, Inc.

Products Liability-Negligence-Personal Injuries

32. The preceding allegations are hereby restated and incorporated as if set forth here.
33. HorsePower, as a manufacturer of vehicles, is obligated to use ordinary care in the design and manufacture of vehicles so as to avoid injury to others or their property.
34. HorsePower breached the above duty by negligently designing the roll bars and/or negligently manufacturing the roll bars to the vehicle in question
35. HorsePower's breaches described above proximately caused Sally's injuries.
36. Sally was severely injured as set forth above and continues to suffer as a result of HorsePower's negligence.

Negligence-Property Damage

38. The preceding allegations are hereby restated and incorporated as if set forth here.
39. HorsePower, as a manufacturer of vehicles, is obligated to use ordinary care in the design and manufacture of vehicles so as to avoid injury to others or their property.
40. HorsePower breached the above duty by negligently designing the roll bars and/or negligently manufacturing the roll bars to the vehicle in question
41. HorsePower's breaches described above proximately caused Sally's injuries.
42. As a proximate result of HorsePower's breaches, Ms. Wilreiz suffered the property damage to her vehicle and/or other property.



EDUCATING
TOMORROW'S
LAWYERS®

This resource was downloaded from <http://etl.du.edu>

IAALS

INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

Breach of Express Warranty

43. The preceding allegations are hereby restated and incorporated as if set forth here.
44. HorsePower expressly warranted the safety of its vehicle, including but not limited to its roll bar, by affirmation or representation including advertising.
45. HorsePower breached its express warranty set forth above
46. HorsePower breach caused the injuries to Sally and property damage to her vehicle.

Breach of Implied Warranty of Merchantability—Personal Injuries

47. The preceding allegations are hereby restated and incorporated as if set forth here.
48. HorsePower is a merchant because it manufactures vehicles such as the Stallion that Sally bought and drove at the time of the accident, it earns profits from selling goods such as the vehicle in question, etc.
45. HorsePower deals with goods of the kind, including the Stallion and the roll bar with which it was equipped.
46. The roll bar was unfit for its ordinary purpose because it crumbled upon impact.
47. Sally was injured as a result of the breach described above

Breach of Implied Warranty of Merchantability—Property Damage

48. The preceding allegations are hereby restated and incorporated as if set forth here.
49. HorsePower is a merchant because it manufactures vehicles such as the Stallion that Sally bought and drove at the time of the accident, and it earns profits from selling goods such as the vehicle in question, etc.
50. Sally was injured as a result of the breach described above
51. The roll bar was unfit for its ordinary purpose because it crumbled upon impact.
51. The breach of implied warranty resulted in the damage to Sally's vehicle.

WHEREFORE, the Plaintiff demands the following relief judgment against the Defendants:



This resource was downloaded from <http://etl.du.edu>

EDUCATING
TOMORROW'S
LAWYERS®

IAALS

INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

a) Compensatory damages in a sum of at least or exceeding \$10 million dollars, exclusive of interests and costs, the complete amount to be determined at trial;

b) Punitive damages in an amount of at least or exceeding \$15 million against Defendant City of Arcadia.

SALLY WILREIZ

By: _____

Of Counsel

Benjamin V. Madison, III
Virginia State Bar Number 25434
The Law Offices of Madison and Associates
Suite 353, Robertson Hall
1000 Regent University Drive
Virginia Beach, VA 23464
benjmad@regent.edu
757.352.4586
757.352.4325 (facsimile)



This resource was downloaded from <http://etl.du.edu>

EDUCATING
TOMORROW'S
LAWYERS®

IAALS

INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM