



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

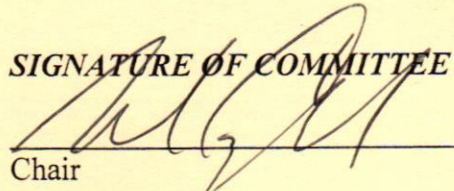
File Number	Title	Status
2000-0011	Claim	Claim Report
Summons & Complaint in the matter of Amanda Kendziora, et al. V. City of West Allis, Et.al. Case No. 00-CV-001333, Case Code 30101 & 30107.		
Introduced: 5/2/2000		Controlling Body: Administration & Finance Committee

COMMITTEE RECOMMENDATION

POF

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
NOV 03 2004			Barczak	✓			
			Czaplewski	✓			
			Dobrowski				
			Kopplin				
	✓		Lajsic	✓			
			Narlock				
			Reinke	✓			
			Sengstock				
			Vitale				
		✓	Weigel	✓			
TOTAL				5	0		

SIGNATURE OF COMMITTEE MEMBER

 _____
Chair Vice-Chair Member

COMMON COUNCIL ACTION **PLACE ON FILE**

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
NOV 03 2004	✓		Barczak	✓			
			Czaplewski	✓			
			Dobrowski	✓			
			Kopplin	✓			
			Lajsic	✓			
			Narlock	✓			
		✓	Reinke	✓			
			Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
TOTAL				10	0		

**STANDING COMMITTEES OF THE
CITY OF WEST ALLIS COMMON COUNCIL
2004**

ADMINISTRATION & FINANCE

Chair: Michael J. Czaplewski
Vice-Chair: Martin J. Weigel
Gary T. Barczak
Thomas G. Lajsic
Rosalie L. Reinke

PUBLIC WORKS

Chair: Richard F. Narlock
Vice-Chair: Linda A. Dobrowski
Kurt E. Kopplin
Vincent Vitale
James W. Sengstock

SAFETY & DEVELOPMENT

Chair: Thomas G. Lajsic
Vice-Chair: Vincent Vitale
Gary T. Barczak
Martin J. Weigel
Rosalie L. Reinke

LICENSE & HEALTH

Chair: Kurt E. Kopplin
Vice-Chair: James W. Sengstock
Linda A. Dobrowski
Richard F. Narlock
Michael J. Czaplewski

ADVISORY

Chair: Rosalie L. Reinke
Vice-Chair: Gary T. Barczak
Linda A. Dobrowski
Vincent Vitale
Martin J. Weigel



CITY OF WEST ALLIS

WISCONSIN



OFFICE OF THE CITY ATTORNEY

October 19, 2004

City Attorney
Scott E. Post

Assistant City Attorneys
Sheryl L. Kuhary
Jeffrey J. Warchol
Janilyn K. Knorr

Common Council
City of West Allis

Re: City Attorney's Report of Claim/Lawsuit

Dear Council Members:

The enclosed claim/lawsuit has been referred to this office in accordance with Section 3.05 (6)(a) of the Revised Municipal Code. This office has examined the facts of each claim/lawsuit and the applicable law. Our Opinion regarding liability is attached to each claim/lawsuit.

It is the recommendation of this office that the following claim/lawsuit be placed on file:

Amanda Kendziora, et al. v. Church Mutual Insurance Co., et al.
Settlement \$50,000.00

Respectfully submitted,

Scott E. Post
City Attorney

SEP:da
Enclosures

cc: Thomas E. Mann, CVMIC



CITY OF WEST ALLIS

WISCONSIN



OFFICE OF THE CITY ATTORNEY

October 15, 2004

Common Council
City of West Allis

City Attorney
Scott E. Post

Assistant City Attorneys
Sheryl L. Kuhary
Jeffrey J. Warchol
Janilyn K. Knorr

RE: City Attorney's Report of Claim/Lawsuit

Dear Council Members:

The enclosed claim/lawsuit has been referred to this office in accordance with Section 3.05 (6)(a) of the Revised Municipal Code. This office has examined the facts of the claim/lawsuit and the applicable law. Our Opinion regarding liability is as follows:

It is the recommendation of this office that the following claim/lawsuit be placed on file:

(Amanda Kendziora, et al. v. Church Mutual Insurance Co., et al. – Settlement - \$50,000.00)

This lawsuit stemmed from a September 10th, 1998, incident at 79th and West Lincoln Avenue. That intersection is adjacent to St. Paul's Lutheran Church with the main school being on the south side of Lincoln Avenue and an auxiliary school located on the north side. The City provided a crossing guard at the intersection. Amanda Kendziora was struck by a car driven by Judy Whitehouse. Amanda was not quite four years old at the time of the accident. Her twin sister, older brother, and mother along with several other children were present. Amanda's mother was employed by the church to escort children between the main school and the auxiliary school. The City crossing guard waited for traffic to clear, entered the intersection with her stop sign up and told the children that it was okay to cross. Amanda's brother Shaun and another boy began crossing when Ashley told her mother that her shoe was untied. Amanda, Ashley and their mother stopped while the mother tied Ashley's shoe. As this was going on, Amanda asked if she could join her brother and her mother said yes. Amanda then entered the crosswalk and was struck by a car driven by Ms. Whitehouse. Amanda filed a suit for the injuries she sustained in the accident. Her father filed a suit for loss of consortium, and her brother and sister filed a suit for the trauma they suffered from seeing their sister struck.

The City took the position that the bulk of the negligence was on the driver of the car, Judy Whitehouse. Nevertheless, it was recognized that the crossing guard would likely be found by a jury to be negligent in some respect as she allowed children to cross when a car was approaching the intersection. The City also took the position that the claims of Chris (father), Shaun and Ashley could not be prosecuted, as they had not complied with the Municipal Claims Statute. In addition, there is a \$50,000.00 statutory

cap on claims. Each plaintiff would have a \$50,000.00 cap. However, since no Notice of Claim was filed, the City was only willing to offer one sum of \$50,000.00 to pay for Amanda's claim with nothing being offered for the other claims.

This case was mediated on September 28th, 2004, and the matter was resolved. The City's portion of the settlement was to pay the \$50,000.00 statutory cap on Amanda's claim. The settlement was approved by the Administration and Finance Committee at the October 5th, 2004, Common Council meeting. The Court approved the settlement on October 8th, 2004. All claims against the City and the Cities & Villages Mutual Insurance Company are being dismissed as a result of the settlement.

Respectfully submitted,



Scott E. Post
City Attorney

SEP:da

L/Scott/Kendziora/ltr to cc-comments-settlement

cc: Thomas E. Mann

Note No. 11 — — —

CITY OF WEST ALLIS

File No. 107

Referred to the

COMMON COUNCIL

City Attorney

Committee

May 2, 2000

Date

To the Honorable, the Common Council:

The Committee on _____ to whom was on

_____, referred the Summons & Complaint in the matter of Amanda Kendziora, et. al.
v. City of West Allis, et. al., Case No. 00-CV-001333, Case Code 30101 & 30107.

beg leave to report same back with _____ and recommended that the

Dated this _____ day of _____, 20 _____.

AMANDA KENDZIORA

A minor by her Guardian ad Litem
Marjan R. Kmiec
1324 South 88th Street
West Allis, Wisconsin 53214

CHRIS KENDZIORA

1324 South 88th Street
West Allis, Wisconsin 53214

SHAWN KENDZIORA

Minors by his Guardian ad Litem
Marjan R. Kmiec
1324 South 88th Street
West Allis, Wisconsin 53214

ASHLEY KENDZIORA

Minors by her Guardian ad Litem
Marjan R. Kmiec
1324 South 88th Street
West Allis, Wisconsin 53214

WPS

1717 W. Broadway
Madison, WI 53708

COMMUNITY HEALTH PLAN OF WISCONSIN

11524 W. Theodore Trecker Way
Milwaukee, WI 53214

Plaintiffs,

v.

Case No.: 00-CV-001333

Case Code: 30101

30107

CHURCH MUTUAL INSURANCE COMPANY

Registered Agent: John F. Cleary
300 Shuster Lane
Merrill, Wisconsin 54452

SENTRY INSURANCE A MUTUAL COMPANY

1800 North Point Drive
Steven Point, Wisconsin 54481
Registered Agent: James L. Derkez
1421 Strongs Avenue N110
Stevens Point, Wisconsin 54481

RECEIVED
APR 18 2000
CITY OF WEST ALLIS
CLERK/TREASURER



CITIES & VILLAGES MUTUAL INSURANCE COMPANY

Registered Agent: Thomas E. Mann
1250 South Sunnyslope Road
Brookfield, Wisconsin 53005

EMCASCO INSURANCE COMPANY

717 Mulberry Street
Des Moines, IA 50309-3816
Registered Agent: Clyde Schweitzer
16455 West Bluemound Rd.
Brookfield, Wisconsin 53005-5976

**ST. PAUL'S LUTHERAN CHURCH, a/k/a
ST. PAUL'S EVANGELICAL LUTHERAN CHURCH OF
WEST ALLIS, WISCONSIN**

Reverend Thomas R. Action
7821 West Lincoln Avenue
West Allis, Wisconsin 53214

CITY OF WEST ALLIS

CITY CLERK-TREASURER: Jerry A. White
7525 West Greenfield Avenue
West Allis, WI 53214

4:18:00 PM
205 PM
[Signature]

JUDY WHITEHAUS

W173 S7150 Grove St.
Muskego, Wisconsin 53150

KIM KENDZIORA

1324 South 88th Street
West Allis, WI 53214

Defendants.

S U M M O N S

THE STATE OF WISCONSIN, to each person named above as defendant:

YOU ARE HEREBY NOTIFIED that the plaintiff(s) named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

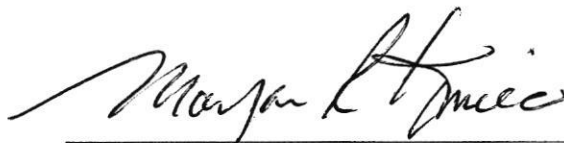
Within forty-five (45) days of receiving this Summons, you

must respond with a written Answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is: Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, WI 53233, and to Kmiec Law Offices, plaintiff(s) attorneys, whose address is: Kmiec Law Offices, 3741 West National Avenue, Milwaukee, WI 53215. You may have an attorney help or represent you.

If you do not provide a proper Answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 10TH day of APRIL, 2000.

KMIEC LAW OFFICES



Marjan R. Kmiec
State Bar No.: 01006951

P.O. Box Address
3741 West National Avenue
Milwaukee, Wisconsin 53215
(414) 649-9790 Phone
(414) 649-9794 Fax

AMANDA KENDZIORA

A minor by her Guardian ad Litem
Marjan R. Kmiec
1324 South 88th Street
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WPS

1717 W. Broadway
Madison, WI 53708

COMMUNITY HEALTH PLAN OF WISCONSIN

11524 W. Theodore Trecker Way
Milwaukee, WI 53214

Plaintiffs,

v.

Case No.:00-CV-001333

Case Code:30101
30107

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Registered Agent: John F. Cleary
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**ST. PAUL'S LUTHERAN CHURCH, a/k/a
ST. PAUL'S EVANGELICAL LUTHERAN CHURCH OF
WEST ALLIS, WISCONSIN**

Reverend Thomas R. Action
7821 West Lincoln Avenue
West Allis, Wisconsin 53214

CITY OF WEST ALLIS

CITY CLERK-TREASURER: Jerry A. White
7525 West Greenfield Avenue
West Allis, WI 53214

JUDY WHITEHAUS

W173 S7150 Grove St.
Muskego, Wisconsin 53150

KIM KENDZIORA

1324 South 88th Street
West Allis, WI 53214

Defendants.

C O M P L A I N T

The above named plaintiffs by their guardian ad litem,
Marjan R. Kmiec and through their attorneys, Kmiec Law Offices,
hereby allege and state as follows:

PARTIES

1. That the plaintiff, Amanda Kendziora, date of birth

December 2, 1994, resides at 1324 South 88th Street, West Allis, Wisconsin. She is represented by her Guardian ad Litem, Marjan R. Kmiec whose offices are located at 3741 West National Avenue, Milwaukee, Wisconsin.

2. That the Plaintiff, Chris Kendziora, is an adult resident of the State of Wisconsin and resides at 1324 South 88th Street, West Allis, Wisconsin. He is the father of Amanda, Ashley and Shawn Kendziora.

3. That the plaintiff, Shawn Kendziora, date of birth May 29, 1992, resides at 1324 South 88th Street, West Allis, Wisconsin. Shawn Kendziora is the brother of Amanda Kendziora. He is represented by his Guardian ad Litem, Marjan R. Kmiec whose offices are located at 3741 West National Avenue, Milwaukee, Wisconsin.

4. That the plaintiff, Ashley Kendziora, date of birth December 2, 1994, resides at 1324 South 88th Street, West Allis, Wisconsin. Ashley Kendziora is the sister of Amanda Kendziora. She is represented by her Guardian ad Litem, Marjan R. Kmiec whose offices are located at 3741 West National Avenue, Milwaukee, Wisconsin.

5. That the plaintiff, WPS, is a plaintiff to the extent that they have paid medical expenses for injuries which are the subject of the present lawsuit, and upon information and belief, the policy or plan, under which the medical expenses were paid,

requires subrogation. WPS has a local office at the address provided in the caption.

6. That the plaintiff, Community Health Plan of Wisconsin, is a plaintiff to the extent that they have paid medical expenses for injuries which are the subject of the present lawsuit, and upon information and belief, the policy or plan, under which the medical expenses were paid, requires subrogation. Community's local office is at the address provided in the caption.

7. That the defendant, Church Mutual Insurance Company (Church Mutual), is a domestic corporation and is located at 300 Shuster Lane, Merrill, Wisconsin. Church Mutual insured the defendants, St. Paul's and Kim Kendziora, for claims as alleged in this complaint. In the above mentioned insurance policy, Church Mutual reserves the right to settle or adjust any claims arising thereunder and to defend any claims as alleged in the complaint. By virtue of the above insurance policy and by reason of sec. 803.04(2), Stats., Church Mutual is a proper party to this lawsuit. The registered agent for Church Mutual is: John F. Cleary, 300 Shuster Lane, Merrill, Wisconsin.

8. That the defendant, Sentry Insurance A Mutual Company (Sentry), is a domestic corporation and is located at 1800 N. Point Drive, Stevens Point, Wisconsin. Sentry insured the defendant, Judy Whitehaus, for claims as alleged in this complaint. In the above mentioned insurance policy, Sentry

reserves the right to settle or adjust any claims arising thereunder and to defend any claims as alleged in the complaint. By virtue of the above insurance policy and by reason of sec. 803.04(2), Stats., Sentry is a proper party to this lawsuit. The registered agent for Sentry is: James L. Derkez, 1421 Strongs Avenue N110, Stevens Point, Wisconsin.

9. The defendant, EMASCO Insurance Company (EMC), is a foreign corporation licensed to do business in the State of Wisconsin and is domiciled at 717 Mulberry Street, Des Moines, Iowa. EMC provided homeowner's insurance which insured the defendant, Kim Kendziora, for claims as alleged in this complaint. In addition, EMC provided automobile insurance policies on several vehicles owned by the Kendzioras, which provided under insurance coverage and other coverages to Amanda Kendziora, Ashley Kendziora, Shawn Kendziora and Chris Kendziora. In the above mentioned insurance policies, EMC reserves the right to settle or adjust any claims arising thereunder and to defend any claims as alleged in the complaint. By virtue of the above insurance policies and by reason of sec. 803.04(2), Stats., EMC is a proper party to this lawsuit. The registered agent for EMC is: Clyde Schweitzer, 16455 West Bluemound Road, Brookfield, Wisconsin.

10. That the defendant, Cities & Villages Mutual Insurance Company(Cities Mutual), is a domestic corporation and is located

at 1250 Sunnyslope Road, Brookfield, Wisconsin. Cities Mutual insured the defendant, West Allis, for claims as alleged in this complaint. In the above mentioned insurance policy, Cities Mutual reserves the right to settle or adjust any claims arising thereunder and to defend any claims as alleged in the complaint. By virtue of the above insurance policy and by reason of sec. 803.04(2), Stats., Cities Mutual is a proper party to this lawsuit. The registered agent for Cities Mutual is: Thomas E. Mann, 1250 Sunnyslope Road, Brookfield, Wisconsin.

11. That the defendant, St. Paul's Evangelical Lutheran Church (St. Paul's), is a domestic religious corporation located at 7821 West Lincoln Avenue, West Allis, Wisconsin. The Senior Pastor of St. Paul's is Reverend Thomas R. Acton whose office is located at the same address.

12. The defendant, the City of West Allis, is a municipal corporation. The registered agent of service is, Jerry A. White, City Clerk-Treasurer, 7525 West Greenfield Avenue, West Allis, Wisconsin.

13. That the defendant, Judy Whitehaus, is an adult resident of the State of Wisconsin and resides at W173 S7150 Grove Street, Muskego, Wisconsin.

14. That the defendant, Kim Kendziora, is an adult resident of the State of Wisconsin and resides at 1324 South 88th Street, West Allis, Wisconsin.

FACTS

15. On September 10, 1998, Amanda Kendziora was crossing Lincoln Avenue at 79th Street in the City of West Allis, when she was struck by a vehicle proceeding eastbound and driven by the defendant, Judy Whitehaus. Judy Whitehaus failed to see the children crossing the street.

16. St. Paul's consists of two locations, the principle school and church located on the south side of West Lincoln Avenue and the West Grant Street school located a block north of West Lincoln Avenue. At the time of the accident, Amanda Kendziora was walking from St. Paul's Lincoln school to the Grant Street school. Amanda Kendziora was in the school cross-walk when she was struck.

17. At all times pertinent herein, St. Paul's had a paid program which allowed parents to drop their children off early, before regular school hours. The parents were to drop the children off at the Lincoln Avenue school site. The younger students, who were taught at the Grant Street site, walked from the drop-off site to the Grant Street school. The defendant, Kim Kendziora was employed at a salary by St. Paul's as a before school employee. Her duties included helping the above children safely cross Lincoln Avenue at 79th street to get to the Grant Street school. As a condition of Kim Kendziora's employment her twin daughters, Amanda and Ashley Kendziora, were at all times,

included as a part of said group of children. Kim Kendziora did not accompany the children across the intersection at the time of the accident. She was helping her daughter Ashley Kendziora down from the south curb and had her back turned to the children as they crossed the intersection. The students and Amanda Kendziora were crossing the intersection in a staggered and dispersed manner without an accompanying adult when Amanda Kendziora was struck by the automobile. Her brother, a student, was a few feet ahead of her.

18. St. Paul's had notice of the unsafe condition of the intersection from its own employees and parishioners. Several families had complained that the intersection was dangerous. Teachers involved with the crossing had reported that traffic often did not stop when directed to do so.

19. St. Paul's had notice or constructive notice of the inherent dangers of the intersection. Between 1994 and 1998 there were at least ten accidents at or near the intersection of Lincoln Avenue and 79th Street.

20. Prior to the accident herein, St. Paul's had commissioned Traffic Engineering Services, Inc. to conduct a traffic study of the intersection in issue. Upon information and belief, the purpose of said study was to persuade the City of West Allis and the neighboring residents to cooperate in the closing of the Grant Street school and allow St. Paul's to expand

the Lincoln Avenue school. Said study determined that the intersection was not safe in its current state but that it could be made more safe for the children. The traffic study listed several conditions which rendered the intersection unsafe and suggested many changes which would improve its safety. The study suggested higher visibility signs, the use of reflective sheeting, additional lights, parking restrictions and other safety measures.

21. In addition to the above, the study specifically informed St. Paul's that "the speed of traffic and obeying the traffic signs is an issue to be addressed." The study warned "[i]t is totally unexpected for motorists to see children crossing busy streets during the mid-day school session...." The accident herein, occurred at 7:45 am, earlier than normal scheduled school crossing time. The study concluded that a letter be sent by St. Paul's to the City of West Allis requesting the changes be implemented and that the signage be changed "as soon as possible." St. Paul's chose not to implement any of the suggested changes. St. Paul's, in effect, informed the City of West Allis that they would forgo the implementation of the study if the City would help them expand and build a bigger school at West Lincoln Avenue. The accident herein, occurred two months later.

22. Subsequent to the accident herein, the City of West

Allis sent a Memorandum dated April 14, 1999, to its Safety and Development Committee and a copy to St. Paul's, which stated that many changes and/or improvements had been made by the City to the school crossing at W. Lincoln Avenue and 79th Street. Yet, the intersection continued to be difficult for pedestrians to cross because of the excessive width of the roadway. The City opined that the intersection continued to be a matter of concern. In a response dated April 19, 1999, St. Paul's stated that it supported a delay in the addition of traffic signals to the intersection and the implementation of other safety changes. Instead, St. Paul's requested the City to help orchestrate a plan in which the Grant Street school would be eliminated and the Lincoln Avenue school would be expanded. There was no indication of how long said expansion would take, if approved by the City and supported by the residential neighbors. No implementation of safety measures were suggested by St. Paul's during the proposed expansion process. Upon information and belief, the local residents were opposed to St. Paul's proposal. The issue became political. St. Paul's commenced a lawsuit against the City of West Allis to compel the City to issue a special use permit allowing them to expand at the Lincoln Avenue site. A primary emphasis in the suit was that the school crossing at 79th and Lincoln was dangerous. St. Paul's chose to pursue a goal which was in the interim period contrary to the safety of its children.

23. Because of the above conduct, Amanda Kendziora suffers from medically refractory posttraumatic secondary generalized frontal lobe epilepsy which causes her to suffer petit and grand mal seizures. She does and will continue to suffer from brain damage caused by the accident. She has pain and suffering, past and future. Her injuries have severely limited her capacity and ability to learn. Her future earning capacity has been compromised. The plaintiffs have incurred significant medical bills and will continue to do so in the future. Further, the above accident has caused Chris Kendziora, Amanda's father, to suffer the loss of society and companionship of his daughter as well as his other children, Ashley and Shawn.

24. The siblings of Amanda Kendziora, Shawn and Ashley, witnessed the accident in which their sister was thrown between ten and twenty feet by the defendant's car. Both children were within ten feet of Amanda when she was hit. Both children have suffered emotional distress and other damages because of the accident.

25. The plaintiffs reallege all of the above paragraphs and incorporate them into all the subsequent claims for relief as if fully stated therein. That all the claims for relief are realleged and incorporated into every other claim for relief as if fully stated therein.

FIRST CAUSE OF ACTION AGAINST ST. PAUL'S
Negligence

26. St. Paul's was negligent in failing to insist upon or to provide a reasonably safe means for the children to cross the intersection. Said negligence was a direct and proximate cause of the plaintiffs' damages as hereinbefore plead.

SECOND CAUSE OF ACTION AGAINST ST. PAUL'S
Negligent Failure to Train, Supervise and in Hiring

27. St. Paul's was negligent in failing to train or to have its employee, Kim Kendziora, trained on the appropriate procedure for walking children across a busy, school crossing and intersection. In addition, St. Paul's was negligent in failing to supervise its employee, Kim Kendziora, to determine whether proper crossing procedures were being followed. St. Paul's was negligent in hiring a mother who was obliged to bring two infants with her, and knowingly charging her with the safety of children crossing at a dangerous crosswalk. Said failures were a cause-in-fact of Kim Kendziora's negligence. Kim Kendziora's negligence was a direct and proximate cause of the plaintiffs' damages as hereinbefore plead.

THIRD CAUSE OF ACTION AGAINST ST. PAUL'S
Vicarious Liability

28. That the defendant, Kim Kendziora, was negligent in failing to properly assist or help the children across the intersection. Said negligence was a substantial cause of the damages hereinbefore plead. That at all times relevant herein,

Kim Kendziora was an employee of St. Paul's. St. Paul's is liable for the negligence of Kim Kendziora under the principle of Respondeat Superior.

FOURTH CAUSE OF ACTION AGAINST ST. PAUL'S
Negligent Conduct and Intentional Conduct

29. That the defendant, St. Paul's, knew that the intersection in issue was inherently unsafe. St. Paul's was warned on several occasions that cars did not stop for the children crossing the street. They were aware that there had been several previous accidents in and about the intersection. Finally, St. Paul's was aware of several changes which could be made which would improve the safety of the intersection. St. Paul's made a conscious decision on at least two occasions to compromise the safety of its students in order to garner support for its plan to expand the school. It was St. Paul's plan, procedure and policy which placed the children in the inherently dangerous situation. Further, in spite of the information in the traffic report they ordered, St. Paul's chose not to change their procedures for dropping off children prior to school hours until a year after the accident herein.

30. St. Paul's chose to disregard the information that they had ordered and received about the dangerous intersection. St. Paul's chose not to implement safety measures or change its procedures to ensure the safety of the children. St. Paul's knew or was practically certain that their conduct could lead to a

child being injured in said intersection. St. Paul's intentionally disregarded the rights of its children and adults to use a school crossing they knew could have been made more safe. Conversely, St. Paul's espoused the dangerous aspects of the intersection in public forums, including a court proceeding for their own purposes and in disregard for the present safety of their children. They perpetrated, accommodated and cultured a dangerous condition with known inherent danger to life and limb in order to use it to foster and promote their goals even beyond the date of the accident herein. That said conduct was a direct and proximate cause of the damages alleged herein.

FIRST CASE OF ACTION AGAINST KIM KENDZIORA
Negligence

31. That the defendant, Kim Kendziora, was negligent in the manner in which she supervised the children in her care as they crossed the intersection. Said negligence was a direct and proximate cause of the plaintiffs' damages as hereinbefore plead.

32. That the defendant, Kim Kendziora was negligent in failing to protect and supervise her daughter, Amanda Kendziora, one of the children in her care. Said negligence was a direct and proximate cause of the plaintiffs' damages as hereinbefore plead.

FIRST CAUSE OF ACTION AGAINST THE CITY OF WEST ALLIS
Negligence

33. That the defendant, the City of West Allis, was

negligent in failing to provide a safe intersection. That the negligence of the City was a direct and proximate cause of the plaintiffs' damages as hereinbefore plead.

SECOND CAUSE OF ACTION AGAINST THE CITY OF WEST ALLIS
Negligent Failure to Train and Supervise

34. That the City of West Allis failed to train its employee, Annabelle Heis, on the proper conduct and procedures of a crossing guard. That the City failed to supervise its employee to determine if proper crossing procedures were being followed. On the day of the accident, Ms. Heis was negligent in that she failed to use reasonable care in her crossing procedure. Ms. Heis's negligence was a direct and proximate cause of the plaintiffs' damages as hereinbefore plead. The City's failure to train and supervise was a cause-in-fact of the negligent conduct of Ms. Heis.

THIRD CAUSE OF ACTION AGAINST THE CITY OF WEST ALLIS
Vicarious Liability

35. That the crossing guard, Annabelle Heis, was negligent in the manner in which she performed her duties. Said negligence was a direct and proximate cause of the plaintiffs' damages. At all times relevant herein, Annabelle Heis, was an employee of the City of West Allis. West Allis is liable for her negligent acts under the theory of Respondeat Superior.

FIRST CAUSE OF ACTION AGAINST JUDY WHITEHAUS
Negligence

36. That the defendant, Judy Whitehaus, was causally

negligent in failing to maintain a proper lookout for pedestrians lawfully upon the highway and in respect to other acts of negligence.

37. That the above negligence was a direct and proximate cause of the plaintiffs' damages as hereinbefore plead.

FIRST CAUSE OF ACTION: CHRIS KENDZIORA
Loss of Society and Companionship

38. That at all times relevant herein, Chris Kendziora was the father of Amanda, Ashley and Shawn Kendziora. That as a direct and proximate result of the defendants' conduct, Chris Kendziora has lost the society and companionship of his children. That as the father, he is responsible for the medical bills of Amanda and his other children and seeks reimbursement of past and future bills.

FIRST CAUSE OF ACTION: SHAWN AND ASHLEY KENDZIORA
Emotional Distress and Loss of Society and Companionship

39. That the plaintiffs, Shawn and Ashley Kendziora, witnessed their sister's accident. That both children were within ten feet of Amanda Kendziora when she was struck by the defendant's car and sent flying over ten feet. As a result of the accident and the ensuing injuries suffered by Amanda, both children suffer significant emotional distress. Further, they have lost in part the past and future society and companionship on their sister, Amanda and of each other. The conduct of the defendants is a direct and proximate cause of the emotional

distress and loss of society and companionship of Amanda and each other, suffered by Shawn and Ashley Kendziora.

CLAIMS AGAINST EMCASCO INSURANCE COMPANY (EMC)

40. That in addition to the liability coverage provided by EMC to Kim Kendziora under a homeowners policy, they also provided other coverage and benefits therein to Amanda Kendziora, Shawn Kendziora and Ashley Kendziora. In addition, EMC provided additional coverage and benefits to said plaintiffs pursuant to several automobile insurance policies owned by the Kendzioras. Said policies and coverages have application herein to the claims of said plaintiffs.

SUBROGATED INTEREST

41. That WPS has paid medical bills on behalf of Amanda Kendziora and claims a subrogated interest thereof.

42. That Community Health Plan of Wisconsin, a HMO, will and shall be paying medical bills on behalf of Amanda Kendziora and probably will claim a subrogated interest.

WHEREFORE, the plaintiffs demand judgment against the defendant herein as follows:

- a. For compensatory, consequential and incidental damages;
- b. For punitive damages, against St. Paul's Lutheran Church, West Allis, Wisconsin;
- c. For statutory costs, disbursements, interest and attorney fees of this action; and
- d. For such other and further relief the court deems just and/or equitable.

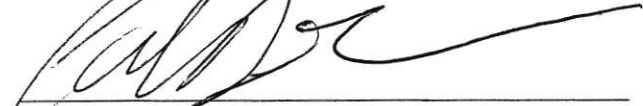
THE PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY.

Dated this 10 day of APRIL, 2000.

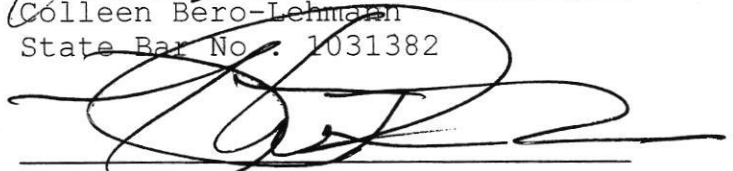
KMIEC LAW OFFICES



Marjan R. Kmiec, Guardian ad Litem
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State Bar No.: 1031382



Steven G. Kmiec
State Bar No.: 01019277

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CITY OF WEST ALLIS

WISCONSIN



City Clerk/Treasurer

JERRY A. WHITE, CMFA

April 18, 2000

Attorney Marjan R. Kmiec
Kmiec Law Offices
3741 W. National Ave.
Milwaukee, WI 53215

Dear Mr. Kmiec:

This acknowledges receipt of your Summons and Complaint in the matter of Amanda Kendziora, et. al. v. City of West Allis, et. al., Case No. 00-CV-001333, Case Code 30101 & 30107.

The original document will be submitted to and formally accepted by the Common Council at its meeting of May 2, 2000.

It is not anticipated that a decision regarding this matter will be made on this date. Generally, all communications are directed to the City Attorney's office for investigation. Common Council action regarding your communication will not be taken until the City Attorney's investigation is completed. Any questions you may have regarding this matter should be directed to their attention.

Sincerely,

Jerry A. White
City Clerk/Treasurer

/hc

cc: City Attorney