

Randall K. Rathbun #09765  
 DEPEW GILLEN RATHBUN & MCINTEER LC  
 8301 E. 21<sup>st</sup> Street N., Suite 450  
 Wichita, KS 67206-2936  
 Tel: (316) 262-4000  
 Email: [randy@depewgillen.com](mailto:randy@depewgillen.com)

## IN THE UNITED STATES DISTRICT COURT DISTRICT OF KANSAS

MARY J. O'BRIEN	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
THE UNITED STATES OF AMERICA	)	
	)	
Defendant.	)	
	)	

### COMPLAINT

COMES NOW the plaintiff and for her cause of action against the defendant alleges and states as follows:

1. The plaintiff is a resident of rural Derby, Kansas. She is the title owner of a residence and 2.5 acres of real estate with the following legal description:

**Parcel 1: A tract in the Southeast Quarter of Section 22, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, described as beginning at the Southeast corner of said Southeast Quarter, thence North 325 feet, thence West 275 feet, thence South 325 feet, thence thence. East 275 feet to the point of beginning.**

**Parcel 2: The South 85 feet of the North 275 feet of the South 600 feet of the East 275 feet of Government Lot 4 in the Southeast Quarter of Section 22, Township 28 South, Range 1 East of the 6th Principal Meridian, Sedgwick County, Kansas.**

The street address for the property is 3116 E. 55<sup>th</sup> Street, Derby, KS.

2. The home was built in 1982 and was purchased by the plaintiff on January 12, 2007.

3. The source of water for the residence is a well located on the property which reaches into the regional aquifer. It is the only source of water for the premises.

4. The defendant United States of America through the United States Department of the Air Force operates McConnell Air Force base approximately 1.5 miles from Ms. O'Brien's property.

5. This action is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2771 *et. seq.* The plaintiff's Form 95 claim was filed pursuant to the Act on or about March 8, 2021. The defendant acknowledged the claim on March 16, 2021 and denied the claim on September 21, 2021.

#### *Factual Background*

6. McConnell's history began in October 1924, when the city of Wichita hosted more than 100,000 people for the National Air Congress. The event was used by city planners to raise funds for a proposed Wichita Municipal Airport. The event was a success and ground-breaking ceremonies for the airport were held on 28 June 1929.

7. In August 1941, the Kansas National Guard 127th Observation Squadron was activated as the first military unit assigned to the Wichita airport. A lease between the federal government and the city was concluded in March, 1942, and the AAF Materiel Center, Midwestern Procurement District (Materiel Command) was established at Wichita Army Airfield.

8. By the summer of 1950, Boeing was ready to turn out the first production models of the B-47, and the United States Air Force sought to make Wichita Airport a permanent military installation. Public hearings began to consider locating an Air Force base near the Wichita Boeing facilities, and the city of Wichita was awarded \$9.4 million to build a new airfield for its own use. On May 31, 1951, the USAF took title to Wichita Municipal Airport. The Federal Government took over the property by federal court action during the first half of 1952, thus becoming the owner and no longer a lessee.

*Operations at McConnell Air Force Base*

9. Operations at the McConnell AFB also included fire fighting training. Aerosol fire fighting foam was used at eight different training areas on the base. Two different compounds make up the foam: per- and polyfluoroalkyl substances (PFAS), including perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA).

10. The EPA has developed lifetime health advisory levels for PFOS and PFOA in drinking water. The lifetime health advisories provide federal, state, and local drinking water system operators information about contaminants that can cause human health effects to system users if they are ingested above a specified level for a long period of time. The plaintiff's groundwater is contaminated at twice the advisory level.

11. The plaintiff had no idea that her groundwater had been contaminated with these compounds until she was notified by the United States Department of the Air Force in September 2020. The Air Force has refused to disclose to the plaintiff how long it has known that her groundwater is contaminated. It admits, however, that it is the likely source of her groundwater contamination.

12. Since the defendant contaminated the plaintiff's water, the defendant provides the plaintiff with seven three gallon jugs of water per month from Culligan Water. It is fully aware, however, that the plaintiff continues to use the contaminated water from her well for household purposes including showering.

13. The defendant is also fully aware that a developer next door to her property has authorized connection to city water. It refuses to allow this connection because it doesn't want to have to pay for an alternative water source.

14. The contaminated groundwater ruined the plaintiff's property value. It has caused great annoyance, inconvenience and loss of peace of mind to the plaintiff.

WHEREFORE the plaintiff respectfully prays for a judgment in the amount of \$350,000, plus her costs and any further relief this Court would deem just or equitable.

Respectfully submitted,

DEPEW GILLEN RATHBUN & MCINTEER LC

s/Randall K. Rathbun

Randall K. Rathbun #09765  
8301 E. 21<sup>st</sup> Street N., Suite 450  
Wichita, KS 67206-2936  
Tel: (316) 262-4000  
Fax: (316) 265-3819  
Email: randy@depewgillen.com  
*Attorneys for Plaintiff*

### **DESIGNATION OF PLACE OF TRIAL**

COMES NOW the plaintiff and designates Wichita, Kansas, as the place of the trial of this action.

Respectfully submitted,

DEPEW GILLEN RATHBUN & MCINTEER LC

/s/Randall K. Rathbun  
Randall K. Rathbun #09765  
*Attorneys for Plaintiff*

**REQUEST FOR JURY TRIAL**

COMES NOW the plaintiff and respectfully requests a trial by jury with regard to the above-captioned action.

Respectfully submitted,

DEPEW GILLEN RATHBUN & MCINTEER LC

/s/Randall K. Rathbun  
Randall K. Rathbun #09765  
*Attorneys for Plaintiff*