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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK**

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

v.

HATHITRUST, ET AL.,

Defendants.

Case No. 11 Civ. 6351 (HB)

**DECLARATION OF FAITH C. HENSRUD IN SUPPORT OF
 DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Faith C. Hensrud, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Provost and Vice Chancellor for Academic Affairs at the University of Wisconsin Superior, in Superior, Wisconsin. I submit this declaration in support of the defendant libraries' motion for summary judgment. Unless otherwise noted, I make this declaration based upon my own personal knowledge.

2. The University of Wisconsin Superior (“UW Superior”) is part of the University of Wisconsin System. The University of Wisconsin System is comprised of 26 separate campuses, with one or more libraries located on each campus.

3. As Provost and Vice Chancellor for Academic Affairs, my responsibilities include oversight of the academic mission of UW Superior, as well as serving as the Chief Operating Officer of UW Superior. In my role as Provost, various faculty report to me, including the Director of UW Superior’s campus library, known as the Jim Dan Hill Library (the “JDH Library”).

4. The JDH Library’s general collection contains approximately 200,000 volumes. I have been advised by the JDH Library’s Director that this includes approximately 149,000 books and 1,038 periodical titles (all of the periodicals include multiple volumes). As of June 19, 2012, this entire collection, plus an undetermined number of other works, were housed in the basement of the JDH Library on the UW-Superior Campus.

5. As Provost of UW Superior, I am acutely aware of the fragility of the books in our collection. Books naturally deteriorate over time or are vulnerable to sudden loss as a result of fire, theft, vandalism and flood.

6. In yet another reminder of the threats faced by libraries, the JDH Library very recently suffered a significant loss – one that we are still attempting to quantify – as a result of flooding.

7. Just last week, on June 19 and 20, Superior, Wisconsin experienced extraordinarily heavy rains. According to published reports, the Duluth-Superior area received over nine inches of rain in less than 24 hours. Attached as **Exhibit A** is a true and correct copy

of a National Weather Service webpage reporting 8.15 inches of rain in Superior alone over this time period.

8. The heavy rains led to severe flooding throughout Superior and surrounding areas. The Governor of Wisconsin declared a state of emergency in the region. Attached as **Exhibit B** is a true and correct copy of a representative news article reporting this announcement.

9. UW Superior experienced flooding in sixteen separate buildings on its campus, and the total damage to UW Superior's campus is estimated to exceed \$15 million.

10. This flooding took out electrical power and was so severe that building transformers and even emergency backup generators were rendered inoperable. We were unable to operate sump pumps in any of these buildings.

11. Many of UW Superior's buildings suffered some degree of water damage, but the JDH Library was hit particularly hard. More than **eight feet** of water flooded the lower level of the library, in which the library's general collection is stored.

12. Each and every work in the JDH Library's entire general collection – approximately 200,000 volumes of books and periodicals – was affected by the flood waters or moisture from the flood. The floodwaters reached as high as the sixth shelf of each seven-shelf bookcase. Attached as **Exhibits C through E** are true and correct copies of representative news articles reporting on the flooding

13. Below are some representative photographs of the damage to the works in the JDH Library:







14. To deal with the flooding, UW-Superior retained a disaster recovery firm, BMS Cat, that specializes in water damage restoration due to floods, hurricanes and other disasters, with a particular focus on document recovery (*see* <http://www.bmscat.com>). They acted quickly

to stabilize the JDH Library collections on the first and second floors through the use of portable generators, dehumidification units, and air conditioners. They then began to pump the floodwater from the library and work to save as many books as possible. Removing the library's floodwater took over four days with pumps operating constantly and at full speed.

15. We are in the process of removing all books and other materials from the basement level of the library. With the assistance of the disaster recovery team, we have the ability to freeze and then freeze-dry a portion of the books that were not too damaged to be restored. Below is an image of just some of the works that have been boxed for shipping to the freeze-drying facility in Fort Worth, Texas, and which have already been frozen and are currently maintained in cold-storage facility in Superior, Wisconsin:



16. Many works have been damaged so severely that they cannot be saved through the freeze-drying process. The number of such works increases each day as we remove more of the flooded collection from the JDH Library.

17. It is currently unclear as to whether the damaged books can be preserved, and what condition they will be in even if they can be saved. Estimates as to the percentage of books that are damaged change every day as more books are removed from the Library. As of June 28, a very rough estimate is that at least 25-30% of the books in the collection, and approximately 70% of the periodicals, are unrecoverable, and this number is only likely to increase as we continue to assess the damage.

18. I have been advised by the Director of the JDH Library that the flooded collection included books on Native American and Wisconsin history and, although we do not yet know for certain, some of these may have been unique to UW Superior and not owned by other University of Wisconsin libraries. It is also possible that some percentage of the JDH Library's out-of-print works may also have been lost, but we have not yet been able to confirm this.


19. The inventory of total damage will not be complete for some time, until we can understand for certain what is recoverable and what has been permanently destroyed. For those works that cannot be preserved (and, as necessary, adequately restored), the JDH Library may have lost its print copy forever.

20. As I sign this declaration, the JDH Library building remains temporarily closed, and the fate of the flooded books remains uncertain. We have shipped 10 boxes of books to the freeze-drying facility in Texas as a "test pallet," which is expected to return to the UW Superior campus in approximately three weeks. At that time we will examine the books to determine the effectiveness of the restoration process, and determine whether or not to send the remainder of the frozen books to Texas for the same process.

21. This incident underscores the value of the steps libraries take to preserve books including, most notably, the extraordinarily valuable steps taken by the HathiTrust project to protect against the type of loss we suffered last week.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: June 28, 2012



Faith C. Hensrud

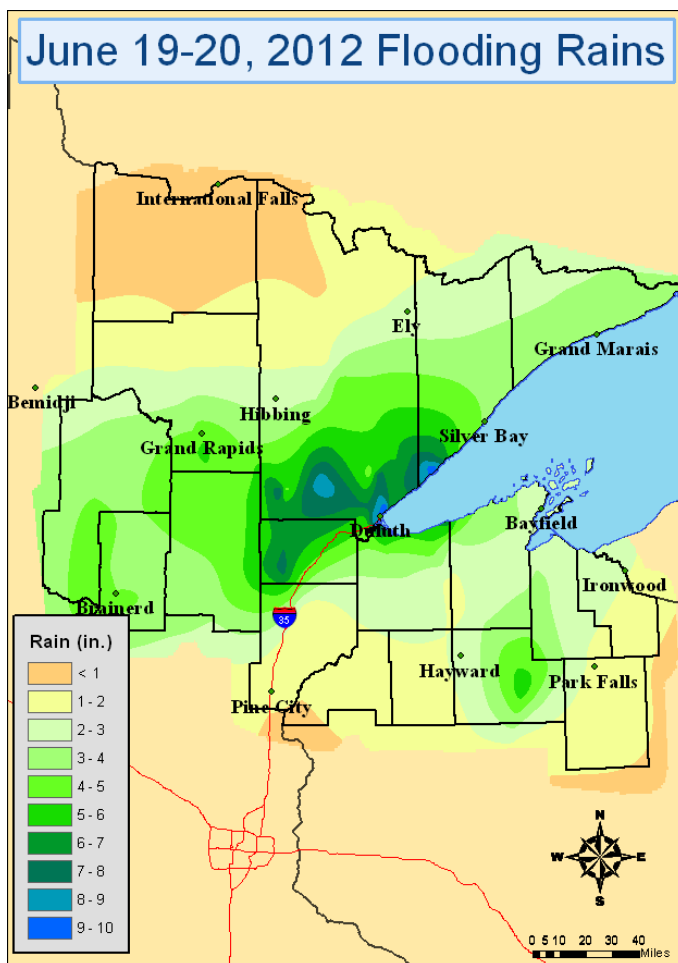
EXHIBIT A

National Weather Service Weather Forecast Office
Duluth, MN

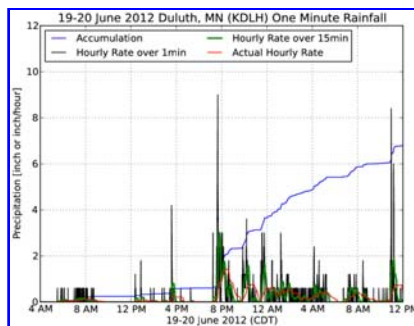


Navigation
[Home](#) [Flood Products](#) [Photos](#) [Rain Reports](#)

This map is a graphical representation of the precipitation reports that we received from off duty weather service employees, cooperative observers, and trained spotters. Both the map and the table of values below are preliminary values as of 3:30 pm Friday afternoon, and will be updated as needed.



The following graphic was created by Daryl Herzmann at Iowa State University/Iowa Environmental Mesonet.



Rain (in)	Location	ST	County
10.10	4 NE Duluth	MN	St. Louis
9.93	Two Harbors	MN	Lake
9.49	5 NE Duluth	MN	St. Louis
9.00	2 SW Duluth	MN	St. Louis
8.87	Alborn	MN	St. Louis
8.52	2 WSW Duluth	MN	St. Louis
8.15	Superior	WI	Douglas
7.95	5 NW Two Harbors	MN	Lake
7.84	1 SE Floodwood	MN	St. Louis
7.58	Kettle River	MN	Carlton
7.41	4 E Island Lake	MN	St. Louis
7.31	Hermantown	MN	St. Louis
7.24	Duluth International Airport	MN	St. Louis
6.11	3 E Wright	MN	Carlton
6.00	9 WSW Port Wing	WI	Douglas
5.95	14 SSW Brimson	MN	St. Louis
5.75	Winter	WI	Sawyer
5.30	6 S Grand Rapids	MN	Itasca
5.15	Castle Danger	MN	Lake
5.05	Proctor	MN	St. Louis
5.03	5 S Pequot Lakes	MN	Crow Wing
4.82	5 NW Two Harbors	MN	Lake
4.78	Grand Rapids	MN	Itasca
4.70	7 SE Grand Rapids	MN	Itasca
4.68	Brainerd	MN	Crow Wing
4.68	3 E Floodwood	MN	St. Louis

National Weather Service
 Duluth, MN Weather Forecast Office
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 Duluth, MN 55811-1442
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 Page last modified: June 26th 2012 12:20 PM

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EXHIBIT B

Northland's NewsCenter: News, Weather, Sports | NBC, CBS, MyNetworkTV, and The CW for Duluth MN / Superior WI

[Print this article](#)

Gov. Walker Declares State Emergency in Northwest Wisconsin

Originally printed at <http://www.northlandsnewscenter.com/news/nw-wisconsin/Walker-Duffy-Kick-Off-Visit-to-Superior-160378945.html>

By KBJR News 1
June 26, 2012

Superior, WI (Northlands NewsCenter)

-- Wisconsin Governor Scott Governor Walker has declared an emergency for most areas in Northwest Wisconsin. This includes the City of Superior, Douglas, Bayfield, and Ashland Counties.

Walker and U-S Congressman Sean Duffy were led by representatives from northwest Wisconsin through saw of the hardest hit homes, soaked and wrecked in last week's flood.

The governor saw only a fraction of the devastation but says it was enough to move him to declare a state of emergency.

Some basements in Superior saw feet of flood water after creeks, rivers, and streams overflowed their banks following Wednesday's torrential rains.

Tuesday, City and County officials outlined the extent of damages, and ultimately, what they believe they need from the federal government. They said they hoped to get federal assistance for the extensive damage suffered in the area, and they were hoping for help from the leaders.

"Seeing it is devastating. Most of the things in their basement are totally destroyed and a good chunk of their living room and add-on among others were destroyed. That's a huge disaster no matter what the declaration," said Wisconsin Governor Scott Walker Tuesday in Superior, after seeing the damage.

"It's catastrophic for all the families in the community that are experiencing water damage. You have memorabilia lost, plus this massive financial loss," said Wisconsin Congressman Sean Duffy.

Despite the extent of damage Governor Walker says federal funding is not a sure thing.

"There is a distinction at the federal level in terms of a presidential declaration, we don't appear to have that level in Wisconsin that they do in Minnesota with Duluth's," said Walker.

Wisconsin residents can improve the odds however, by documenting every inch of damage.

"There is an analysis that's done in regard to the dollar amount and the number of homes and they can commute whether the state or the feds can come in and help," said Duffy shortly after touring a flood damaged home.

"Pass that information on because the more the cities, the counties, and the state get that information, the more options we'll have available to us," said Walker to a group at the Salvation Army in Superior.

With some 540 basements sustaining significant damage every dollar will help.

"I encourage everyone that has experienced damage in this storm to make sure that officials know about that damage can be commuted in regard to FEMA," said Congressman Duffy.

Lawmakers are working with city and county officials in an attempt to get every possible type of disaster assistance. Both the Superior and Douglas County's website's have forms to document flooding damage.

People are also strongly encourages to take pictures to go with the documentation.

Zach Vavricka

[Bio](#) - [Facebook](#) - [Twitter](#) - [E-Mail](#)

EXHIBIT C

wdio.com

Superior WI
WDIO.com



UWS Flood Damage Estimated at \$15 Million | News

Title (Max 100 Charaters)

UWS Flood Damage Estimated at \$15 Million

Submitted by [Jon Ellis \(/profile/46665/jon-ellis\)](#), *WDIO Assistant News Director*

Friday, June 22nd, 2012, 9:21pm

Topics: [News \(/news/news\)](#), [Schools \(/news/schools\)](#), [Weather \(/news/weather\)](#)

Topics: [News \(/news/news\)](#), [Schools \(/news/schools\)](#), [Weather \(/news/weather\)](#)

Top Superior Stories

Health



[\(/news/health/51025-walker-wis-wont-act-health-care-ruling\)](#)

[Walker: Wis. Won't Act on Health Care Ruling \(/news/health/51025-walker-wis-wont-act-health-care-ruling\)](#)

People



[\(/news/people/51023-new-vice-president-student-affairs-northland-college\)](#)

[New Vice President of Student Affairs at ... \(/news/people/51023-new-vice-president-student-affairs-northland-college\)](#)

News



[\(/news/nev](#)

[-uws-flood-damage-estimated-15-million UWS Flood Damage Estimated Million \(/news/news/50956-uws-flood-c-estimated-15-million\)](#)

Upcoming Events near Superior

[\(/h/events?ct=d&evid=249560879\)](#)

[Ladies of the Canyon: Songs of Joni Mitchell, Carole King,](#)



Floodwaters rose eight feet in the basement of UW-Superior's Jim Dan Hill Library, destroying thousands of books. (Photo supplied by UWS)

Officials say the UWS campus was the hardest hit flooding area in Douglas County.

The University estimates damage at \$15 million campus-wide, \$3 to 5 million at the University Library alone. Other buildings there was severe infrastructure damage, especially to the heating system.

"It was like watching a river coming in and you knew that there was nothing you could do," said Chancellor R.

Most of the buildings are now open but the basements are closed off. The university says they plan to repair



Photos supplied by Sen. Bob Jauch



Mama Cass... ([/h/events?](/h/events?ct=d&evid=249511206)

[ct=d&evid=249511206](/h/events?ct=d&evid=249511206))

Jun 29, 7:30PM

Lake Superior Big Top Chautauqua

(</h/events?ct=d&vid=244579343>)

EXHIBIT D

Northland's NewsCenter: News, Weather, Sports | NBC, CBS, MyNetworkTV, and The CW for Duluth MN / Superior WI

[Print this article](#)

\$15 Million in Flood Damages at UWS

Originally printed at <http://www.northlandsnewscenter.com/news/local/15-million-in-Flood-Damages-at-UWS-160266365.html>

By KBJR News 1
June 25, 2012

Superior, WI (Northland's NewsCenter) --- Officials at the University of Wisconsin-Superior say the damage estimates from last weeks storms may top \$15,000,000. campus wide.

University employees and contractors continue to clean and repair campus buildings damaged by flooding. The Jim Dan Hill Library, Old Main and the heating plant sustained the worst damage, according to Chancellor Renee Wachter.

Some administrative and faculty offices have been moved to temporary locations. Anyone needing to reach campus administrators or faculty is encouraged to check the University website and use e-mial when possible.

Al Miller, the UWS media relations spokesperson, said most university buildings suffered some sort of water damage, mostly from water accumulating on lower levels.

BMS Cat, a catastrophe recovery company out of Illinios, has been working since Thursday to recover as many damaged books and documents as possible in the Library.

Wachter says campus officials are still assessing what must be done and prioritizing tasks, but hope to have repairs completed before fall semester begins.

In an e-mial sent to students today, Wachter said the residence halls are operational with summer camps underway and students living in the halls, and The Yellowjacket Union and Marcovich Wellness Center are both open for business.

Summer classes are running as scheduled

EXHIBIT E

Superior TELEGRAM

Published June 27, 2012, 07:00 AM

UWS recovers slowly from flooding

On the University of Wisconsin-Superior campus, books damaged by flooding at the Jim Dan Hill Library will get a cool make

By: **Superior Telegram**, Superior Telegram

On the University of Wisconsin-Superior campus, books damaged by flooding at the Jim Dan Hill Library w

They will be freeze-dried in freezer trucks and come back as good as new, according to UWS spokeswom

Early estimates indicate that about 75 percent of the collection — 150,000 books and an unknown number drying process. The company contracted for the procedure is on retainer with the Library of Congress, Willi

The collection of books cannot be moved to a different section of the library. Due to the structure of the buil but the basement, Williams said.

Barstow Hall is up and running, although it is currently using a generator to deliver electricity. A new transfc back to that over the weekend, Williams said.

Old Main has been reopened but there is no access to the flood-damaged basement. Passers-by can expe out of Old Main and the library over the next few days, Williams said.

The UWS power plant remains shut down. The full extent of damage to the building is not known. The heat campus buildings. Flood water is still being cleaned out from the power plant, Williams said. But the bigges possible damage to the pipes that run from the plant to other campus buildings.

The current shut-down is not affecting the campus because hot water is being provided by backup boilers,

Tags: [news](#), [uws](#), [education](#)