

**QUESTION 2 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I
OR IN SOFTEST ANSWER SCREEN 2**

In 1990, Spotless Subdivision, a new development in Muni City, Michigan, opened to the public. Just prior to the homes being occupied, Muni City planted silver maple trees on public easements between the sidewalk and street curb in front of residents' homes. By 1997, Muni City discontinued planting silver maples because the trees' roots began to outgrow the public easements and encroach on the private property of Muni City residents. That same year, Muni City created a cost-sharing plan for sidewalk replacement, which was due to expire in 1999.

John and Joan Mills purchased a home in Muni City in 2005. Shortly thereafter, the roots of the silver maples planted in front of their home invaded and obstructed the sewer pipes, causing raw sewage and water backup in their home. The roots also lifted the concrete sidewalk blocks in front of their home, causing an uneven and dangerous sidewalk and destroying their front lawn and other planted vegetation. The Mills paid \$14,000 to clean and repair the damage.

As the Mills began to address the damage to their home, they discovered that many of the 1,500 residents in their subdivision had similar complaints. Residents disclosed cleaning and repair costs to their homes and landscapes ranging between \$2,000 to \$30,000.

The Mills consulted an attorney, the newly licensed son of their former neighbors, to investigate, and after two years, the attorney concluded that since 1995, approximately 1,000 residents of the subdivision had suffered damaged lawns and sidewalks; approximately 300 of those residents also had sewage and/or water back up into their homes. In addition, a smaller number of residents who experienced sewage backups suffered respiratory illnesses in the months following the backups. The attorney advised the Mills that they had grounds to file a class action lawsuit based on there being a governmental taking. Thus, the Mills filed an action against Muni City in Muni County Circuit Court and moved for certification of a class action. Muni City opposed certification.

Without regard to the viability of the claim, analyze whether the prospective plaintiffs will succeed in being certified as a class.

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