

SERVICE AND PROCESSING OF CLAIMS

Plaintiff or Claimant: Amelia Lozano 2018CV002723

Date: 4-10-18

In-person

Process Server

Claimant

Other \_\_\_\_\_

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Amelia Lozano vs. City of West Allis et al

**Electronic Filing  
Notice**Case No. 2018CV002723  
Class Code: Other-Personal InjuryFILED  
03-29-2018  
John Barrett  
Clerk of Circuit Court  
2018CV002723  
Honorable William S.  
Pocan-26  
Branch 26CITY OF WEST ALLIS  
7525 WEST GREENFIELD AVENUE  
WEST ALLIS WI 53214

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CITY OF WEST ALLIS  
CITY CLERK

Case number 2018CV002723 was electronically filed with/converted by the Milwaukee County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

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Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 414-278-4120.

**BY THE COURT:**

Electronically signed by John Barrett  
Clerk of Circuit Court

03-29-2018  
Date

FILED  
03-29-2018  
John Barrett  
Clerk of Circuit Court  
2018CV002723  
Honorable William S.  
Pocan-26  
Branch 26

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

**AMELIA LOZANO**  
616 South Grandview Boulevard  
Waukesha, Wisconsin 53188,

**MOLINA HEALTHCARE OF WISCONSIN**  
Reg. Agent: Corporation Service Company  
8040 Excelsior Drive #400  
Madison, Wisconsin 53717,

**DEAN HEALTH PLAN, INC.**  
Reg. Agent: CT Corporation System  
301 South Bedford Street #1  
Madison, Wisconsin 53703,

Plaintiffs,

vs.

Case No:  
Code No: 30107

**CITY OF WEST ALLIS,**  
West Allis City Hall  
7525 West Greenfield Avenue  
West Allis, Wisconsin 53214,

*1-10-18  
1855  
[Signature]*

**WISCONSIN ELECTRIC POWER COMPANY**  
Reg. Agent: Corporate Creations Network, Inc.  
4650 West Spencer Street  
Appleton, Wisconsin 54914-9106,

Defendants.

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## S U M M O N S

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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, Wisconsin 53233, and to Kmiec Law Offices, S.C., plaintiff(s) attorneys, whose address is: Kmiec Law Offices, S.C., 3741 West National Avenue, Milwaukee, Wisconsin 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 29th day of March, 2018.

KMIEC LAW OFFICES, S.C.

By:



Steven G. Kmiec

State Bar: 01019277

**P.O. ADDRESS:**

**KMIEC LAW OFFICES, S.C.**

**3741 West National Avenue**

**Milwaukee, Wisconsin 53215**

**Phone: 414-649-9790//262-650-6800**

**Fax: 414-649-9794**

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

**AMELIA LOZANO**  
616 South Grandview Boulevard  
Waukesha, Wisconsin 53188,

**MOLINA HEALTHCARE OF WISCONSIN**  
Reg. Agent: Corporation Service Company  
8040 Excelsior Drive #400  
Madison, Wisconsin 53717,

**DEAN HEALTH PLAN, INC.**  
Reg. Agent: CT Corporation System  
301 South Bedford Street #1  
Madison, Wisconsin 53703,

Plaintiffs,

vs.

Case No:  
Code No: 30107

**CITY OF WEST ALLIS,**  
West Allis City Hall  
7525 West Greenfield Avenue  
West Allis, Wisconsin 53214,

**WISCONSIN ELECTRIC POWER COMPANY**  
Reg. Agent: Corporate Creations Network, Inc.  
4650 West Spencer Street  
Appleton, Wisconsin 54914-9106,

Defendants.

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**COMPLAINT**

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The plaintiff, Amelia Lozano, by and through her attorneys, Kmiec Law Offices, S.C., alleges and shows to the court as follows:

**PARTIES**

1. That the plaintiff, Amelia Lozano, is an adult resident of the State of

Wisconsin and resides at the address provided in the caption.

2. The plaintiff, Molina HealthCare of Wisconsin (hereinafter “Molina”), 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. Molina’s agent for service is First Recovery Group. That if said plaintiff fails to take the action directed under § 803.03(2)(b), Wis. Stats., they have waived their interest and default judgment should be granted against them. The registered agent for service is provided in the caption.

3. The plaintiff, Dean Health Plan, Inc. (hereinafter “Dean”), 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. That if said plaintiff fails to take the action directed under § 803.03(2)(b), Wis. Stats., they have waived their interest and default judgment should be granted against them. The registered agent for service is provided in the caption.

4. That the defendant, City of West Allis, is an incorporated city within the boundaries of Milwaukee County, Wisconsin. The registered agent for service is as provided in the caption.

5. That the defendant, Wisconsin Electric Power Company (hereinafter “WE Energies”), upon information and belief, is a domestic business, doing business in the

State of Wisconsin, with a registered agent as indicated in the caption and with a principal place of business located at the address as provided in the caption.

### FACTS

6. That on April 7, 2015, Ms. Lozano exited a Milwaukee County transit bus at the bus stop located on the south-west corner of Lincoln Avenue and 64<sup>th</sup> Street in the City of West Allis, WI. As she walked westbound on the public sidewalk running parallel to Lincoln Avenue, she tripped on a severed metal pipe, post or anchor which was sticking out of the sidewalk about two inches.

7. Before the fall, West Allis City workers had been working in the area of the severed post as evident from paint markings on the sidewalk. In addition to the severed post, there was another pipe which extended above the sidewalk creating a second tripping hazard in the immediate vicinity of the severed metal pipe. The second pipe had been marked with spray paint by City employees prior to the fall.

8. Based upon information and belief, the severed pipe, post and/or anchor had at one time serviced a WE Energies service box which was previously removed by the defendants. During the removal the service box, the metal tripping hazard was not removed.

9. That as a result of the above accident, the plaintiff, suffered permanent physical injury, past and future medical expenses, past and future loss of wages and earning capacity, and past and future pain, suffering, and disability.

10. That the plaintiff realleges all of the above paragraphs and incorporates



each paragraph 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 specifically stated therein.

**FIRST CLAIM FOR RELIEF AGAINST THE CITY OF WEST ALLIS**  
**Negligence and Negligence Per Se**

11. That the defendant, City of West Allis, has a duty to exercise ordinary care to construct, maintain, and repair its sidewalks so that they will be reasonably safe for public travel. In addition to said duty, the City of West Allis has adopted codes and statutes into their own codes requiring that its sidewalks be compliant with the American with Disability Act requirements such that sidewalks be maintained without tripping defects.

12. That the defendant, City of West Allis, through its Department of Public Works and its Department of Engineers developed specifications with which such sidewalks are to be maintained. That the condition of the sidewalk, based upon information and belief, violated the mandates of such engineering standards.

13. That said defendant, its employees, agents and representatives were aware, or at the very least, had constructive knowledge of the tripping hazard in issue and the unsafe nature of the immediate surrounding area as it existed for a lengthy period of time. That said defendant had the exclusive and immediate right to inspect the sidewalk for safety and to remove the tripping hazards from the public sidewalk.

14. That the City of West Allis, its employees, agents and/or representative were negligent in failing to inspect, maintain and/or repair the city sidewalk in a

reasonably safe condition. That the defendant, City of West Allis, and through the principle of respondeat superior, was negligent for its own negligence and the negligence of its employees, agents and representative for failing to follow the aforesaid statutes, ordinances, codes, engineering principles and general negligence standards.

15. That the above negligence was the material, direct and proximate cause of the damages suffered by the plaintiff as hereinbefore alleged. In addition to the defendant having actual notice of the circumstances of the claim, the plaintiff has complied with the notice statute under Wis. Stat. § 893.80.

**FIRST CLAIM FOR RELIEF AGAINST WE ENERGIES**  
**Negligence and Negligence Per Se**

16. That the defendant, WE Energies was and is responsible for installation and removal of power and gas lines and pipes as well as anchors used for installation of their equipment which extend through and under city sidewalks. That the City of West Allis has developed codes requiring that all such work shall be performed promptly and that the work shall be done in a good and workman like manner and that upon completion, the restoration of the sidewalk shall be restored to its original condition for which WE Energies is responsible.

17. That the defendant, WE Energies was negligent in its performance of its duties pertaining to installation and/or removal of service box and its anchors or pipes which were related to the service box. That WE Energies knew or should have known that the failure to remove the anchors and pipes related to the service box

below the surface of the sidewalk would cause an unreasonable risk of harm to users of the sidewalk.

18. That WE Energies substantially controlled the actions of its employees, agents and/or representatives and is vicariously liable for the negligence committed by its employees while acting within the scope of their employment, under the doctrine of respondeat superior and/or other theories of vicariously liable.

19. That the defendant, WE Energies, its employees, agents and/or representatives acts of negligence were a direct, proximate and material cause of the plaintiff's damages as previously discussed.

**WHEREFORE**, the plaintiff demands judgment as follows:

- a. For compensatory, consequential and incidental damages;
- b. For statutory costs, disbursements, interest and attorney fees of this action; and,
- c. For such other and further relief which the court deems just and/or equitable.

**THE PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.**

Dated this 29<sup>th</sup> day of March, 2018.

KMIEC LAW OFFICES

By:



Steven G. Kmiec  
State Bar: 01019277

**P.O. ADDRESS:**

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