

**FILED**  
**02-16-2024**  
**Anna Maria Hodges**  
**Clerk of Circuit Court**  
**2024CV001332**  
**Honorable David**  
**Borowski-12**  
**Branch 12**

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

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**EUGENE FAUST**

13750 West National Ave  
Apartment 4106  
New Berlin, WI 53151,

Plaintiff

Case No.: 24-CV-  
Case Code.:30101  
(Personal Injury, Auto)

**UNITEDHEALTHCARE OF WISCONSIN, INC.**

125 South 84th Street, Suite 400  
Milwaukee, WI 53214,

and

**ABC INSURANCE COMPANIES**

Fictitious names,

Involuntary Plaintiffs

v.

**CITIES AND VILLAGES MUTUAL INSURANCE COMPANY**

9898 W. Blue Mound Road  
Wauwatosa, WI 53226,

**CITY OF WEST ALLIS**

a domestic municipal corporation,  
7525 W Greenfield Avenue  
Room 108 to 110  
West Allis, WI 53214,

**XYZ INSURANCE COMPANIES**

Fictitious names,

Defendants.

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**SUMMONS**

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

You are hereby notified that the plaintiffs 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 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 Clerk of Circuit Court, 901 North 9<sup>th</sup> Street, Room 104, Milwaukee, WI 53233, and to FITZPATRICK, SKEMP & BUTLER, LLC, plaintiff's attorneys whose address is 1123 Riders Club Road, Onalaska, Wisconsin 54650. You may have an attorney help or represent you.

If you do not provide a proper Answer within 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 be enforced by garnishment or seizure of property.

Dated this 16<sup>th</sup> day of February 2024.

**FITZPATRICK, SKEMP & BUTLER, LLC**

Attorneys for Plaintiff

By: /s/ Scott M. Butler

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**COMPLAINT**

Now come the plaintiffs, by their attorneys, FITZPATRICK, SKEMP & BUTLER, LLC, by Attorney Scott M. Butler, and as and for their complaint state as follows:

### **GENERAL ALLEGATIONS**

1. Plaintiff, EUGENE FAUST (hereinafter “EUGENE”), is a married adult individual currently residing at 13750 West National Ave, New Berlin, WI 53151.

2. Involuntary Plaintiff, UNITEDHEALTHCARE OF WISCONSIN, INC. (hereinafter “UHC”), is a domestic health maintenance organization duly licensed and authorized to conduct insurance business in the State of Wisconsin with a principal office at 125 South 84<sup>th</sup> Street, Suite 400, Milwaukee, WI 53214, and registered agent, CT Corporation System, 301 South Bedford, Street, Suite 1, Madison, WI 53703. Upon information and belief, UHC paid health claims on behalf of the Plaintiff, EUGENE, for the medical care and services rendered as a result of the incident that is subject to this case. Pursuant to Wisconsin Statutes, UHC may be entitled to reimbursement for related paid claims if the Plaintiff, EUGENE, recovers through settlement or judgment. Plaintiff asserts no claim against UHC, its agencies, or employees. Plaintiff seeks to extinguish any alleged subrogation claim. In the event UHC fails to answer, Plaintiff asks for a default judgment with prejudice.

3. The Centers for Medicare and Medicaid Services, Medicare, and/or the United States of America paid medical expenses for and on behalf of Plaintiff for and related to the injuries he suffered as a result of the events that are the subject of this action. Upon information and belief, some of said parties claim a right of subrogation for payments made to or on behalf of Plaintiff. However, none of the same are named as parties to this action because none have waived sovereign immunity from suit; said parties are being identified and the reason for their non-joinder stated pursuant to Wis. Stat. § 803.03(4).

4. ABC INSURANCE COMPANIES (hereinafter “ABC”) are fictitious names for corporations named in this litigation as Involuntary Plaintiffs, which are engaged in the business of issuing and writing insurance policies within the State of Wisconsin, whose current identities are uncertain to Plaintiff, which are made a party to this action

as a consequence of making certain medical payments on behalf of Plaintiff. Plaintiff seeks to extinguish any alleged subrogation claim. In the event ABC fails to answer, Plaintiff asks for a default judgment with prejudice.

5. Defendant, CITIES AND VILLAGES MUTUAL INSURANCE COMPANY (hereinafter “CITIES & VILLAGES”), is a domestic insurance company licensed to do business in the State of Wisconsin that is engaged in the business of writing automobile liability insurance with a principal office located at 9898 W Bluemound Road, Milwaukee, WI 53226, and registered agent, Allison Defranze, Cities & Villages Mutual Insurance Company, 9898 W Bluemound Road, Wauwatosa, WI 53226. Upon information and belief, and at all times material hereto, CITIES & VILLAGES insured Defendant, CITY OF WEST ALLIS, and/or the vehicle they were operating at the time of collision described herein under a policy of automobile liability insurance where CITIES & VILLAGES agreed to pay on behalf of its insured all damages for which they might be held liable as a result of the negligent use and operation of certain motor vehicles as more particularly described in the insurance policy. At all times relevant to and under the circumstances described herein, CITY OF WEST ALLIS, was also insured under said policy. CITIES & VILLAGES is by virtue of its contract or contracts of said insurance and the laws of the State of Wisconsin, a proper defendant in this lawsuit, which has a direct interest herein.

6. Upon information and belief, and at all times material hereto, Defendant, CITY OF WEST ALLIS, is a domestic municipal corporation with a principal office located at 7525 W Greenfield Ave, Room 108 to 110, West Allis, WI 53214. Upon information and belief, the CITY OF WEST ALLIS owned the vehicle that MANAVJIT SINGH SETHI was operating on 7/11/2023 and MANAVJIT SINGH SETHI was an employee the CITY OF WEST ALLIS on 7/11/2023.

7. MANAVJIT SINGH SETHI (hereinafter SETHI) is an individual currently residing at 7058 W. Beloit Road, West Allis, WI 53219. At all times material hereto, SETHI was an employee and working for the of CITY OF WEST ALLIS.

8. XYZ INSURANCE COMPANIES (hereinafter “XYZ”), are fictitious names for corporations named in this litigation as Defendants, which are engaged in the business of issuing and writing insurance policies within the State of Wisconsin, whose

current identities are uncertain to Plaintiff, which are made a party to this action as a consequence of providing liability and/or indemnity insurance coverage on behalf of the Defendants.

9. At approximately 8:14 a.m. on 7/11/2023, the Plaintiff, EUGENE, was operating his tricycle going northbound on 124<sup>th</sup> Street in the city of West Allis. At approximately the same time and place, Defendant, CITY OF WEST ALLIS, by their employee, SETHI, was operating a vehicle when CITY OF WEST ALLIS turned left and failed to yield the right of way, striking EUGENE.

10. On or about 8/22/ 2022, a Notice of Circumstances of Claim and Injury pursuant to Wis. Stat. § 893.80(1d)(a) and regarding the claims at issue in this action were received by the by the Clerk of the CITY OF WEST ALLIS. Moreover, CITY OF WEST ALLIS had actual notice and/or knowledge of the events described herein immediately after they occurred. It accordingly and/or otherwise has not been prejudiced by any failures (if any) to comply with the requirements of Wis. Stat. § 893.80(1d)(a) in regards to Plaintiffs' claims.

11. On or about 12/22/2023, an Itemized Claim pursuant to Wis. Stat. § 893.80(1d)(b) and regarding the claims at issue in this action were received by the Clerk of the CITY OF WEST ALLIS and their insurance company CITIES & VILLAGES.

12. The CITY OF WEST ALLIS formally denied EUGENE'S Itemized Claim pursuant to Wis. Stat. § 893.80(1d)(b) on 1/24/2024.

#### **FIRST CAUSE OF ACTION - NEGLIGENCE**

13. Plaintiff realleges and reincorporates Paragraphs 1 through 9 above as though fully set forth herein.

14. At the time and place of the collision alleged herein, the Defendant, CITY OF WEST ALLIS, and SETHI, were negligent in the operation of their motor vehicle with such acts of negligence including, but not limited to: i) failing to exercise proper lookout; ii) failing to exercise proper management and control of the vehicle; iii) failing to operate the vehicle at a reasonable and prudent speed under the circumstances then and there existing; iv) failure to properly manage and control their vehicle; v)

inattentive driving; vi) otherwise failing to obey the laws and rules of the road of the State of Wisconsin.

15. The Defendant's negligence was a proximate cause of the serious personal injuries suffered by the Plaintiff, EUGENE.

16. As a result of the collision of the vehicles described herein and the negligence of the Defendant, CITY OF WEST ALLIS, and SETHI, the Plaintiff, EUGENE, suffered compensable damages including, but not limited to: a) past and future pain, suffering, and disability; b) past and future expenses for medical care and attention, and medication; c) past wage loss; and f) property damage.

17. Upon information and belief, and at all times material hereto, the Defendant, CITIES & VILLAGES, for valuable consideration, issued and delivered to the Defendant, CITY OF WEST ALLIS, a policy of insurance by virtue of the terms of which it agrees to insure, indemnify, and hold harmless the Defendant, CITY OF WEST ALLIS, against any and all claims of damages made against this insured arising out of the ownership, operation, and use of the insured motor vehicle, including the claims of the Plaintiff herein. Said policy of insurance provided that Defendant, CITIES & VILLAGES, reserved unto itself the power to control the defense and settlement of the Plaintiff's claims herein and is therefore a proper party under this action.

18. Upon information and belief, and at all times material hereto, Defendant, XYZ, for valuable consideration, issued and delivered to the Defendant, CITY OF WEST ALLIS, a policy of insurance by virtue of the terms of which it agrees to insure, indemnify, and hold harmless the Defendant, CITY OF WEST ALLIS, against any and all claims of damages made against this insured arising out of the ownership, operation, and use of the insured motor vehicle, including the claims of the Plaintiff herein. Said policy of insurance provided that Defendant, XYZ, reserved unto itself the power to control the defense and settlement of the Plaintiff's claims herein and is therefore a proper party under this action.

**PLAINTIFF'S SECOND CAUSE OF ACTION – STATUTORY INTEREST PER  
WIS. STAT. § 628.46**

As and for the Plaintiff Faust second claim for relief against Defendants, CITIES & VILLAGES, CITY OF WEST ALLIS, and XYZ, the Plaintiffs reallege and reincorporate

paragraphs 1 through 15, inclusive, as if more fully set forth herein.

19. At all times material hereto, the Defendant, CITIES & VILLAGES, was subject to Wis. Stat. § 628.46, the “timely payment of claims” statute. Pursuant to said statute, all insurers, including the Defendant, must pay a claim within thirty (30) days of being furnished written notice of the claim and the amount of the claim. Said statute further provides that even if notice is not furnished as to the entire claim, any partial amount supported by written notice is overdue if not paid within thirty (30) days after such written notice is furnished to the insurer. Said statute also provides that twelve percent (12%) simple interest accrues on any overdue payments.

20. On or about 12/14/23, the Defendant, CITIES & VILLAGES, was furnished with written notice of claim and proof of loss including, amongst other documents, documentation of Plaintiff EUGENE’S past and future health care expenses in the sum of \$291,479.91.

21. It is not fairly debatable that the Defendant, CITIES & VILLAGES, owes said amounts as well as an additional amount for the past pain and future pain, suffering, disability, and loss of enjoyment of life that Plaintiff has experienced and will continue to experience in the future as a consequence of the Plaintiff’s serious and permanent injuries.

22. Despite receiving the aforementioned proof of loss, the Defendant, CITIES & VILLAGES, has not, to date, made any payments to the Plaintiff and, consequently, twelve percent (12%) simple interest has been accruing since 01/13/24, on the amount of the Plaintiff’s claim and proof of loss submitted to the Defendant, CITIES & VILLAGES, and will continue to accrue until such time as payment is made.

WHEREFORE, the Plaintiff demands judgment against the Defendants, CITIES & VILLAGES, CITY OF WEST ALLIS, and/or XYZ, jointly and severally, as follows:

- a) For compensatory damages in an undisclosed sum pursuant to Wisconsin Statutes and Wisconsin Law; and
- b) In the event of settlement or verdict in favor of Plaintiff, for an Order declaring that the claim of the Plaintiff to such settlement or verdict is paramount to any claim or lien and for a judgment extinguishing and dismissing all such claims or liens; and



- c) For all costs, disbursements, attorneys' fees, and all interest due and owing pursuant to Wis. Stat. § 628.46; and
- d) For such other and further relief as the Court deems just and equitable.

Dated this 16<sup>th</sup> day of February 2024.

**FITZPATRICK, SKEMP & BUTLER, LLC**

By: /s/ Scott M. Butler  
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