

SERVICE AND PROCESSING OF CLAIMS

Plaintiff or Claimant: Charles Cleveland SdC
2019 CV 009679

Date: 1-2-20

☐ In-person

☒ Process Server

☐ Claimant

☐ Other _____

☐ By mail

☐ By email

☐ By fax

Received by: a Neff

➤ Hand deliver to: Ann Marie ☒ or Janel ☐

➤ Forwarded to Attorney's Office by Ann Marie or Janel ☒

➤ Response from Attorney's Office ☐

➤ Common Council Agenda: Yes ☐ No ☐

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE

Charles Cleveland et al vs. City of West Allis et al

**Electronic Filing
Notice**

Case No. 2019CV009679

Class Code: Personal Injury/Automobile

FILED

12-23-2019

John Barrett

Clerk of Circuit Court

2019CV009679

Honorable Carl Ashley-33

Branch 33

CITY OF WEST ALLIS
C/O STEVEN A. BRAATZ JR.
7525 W. GREENFIELD AVE.
MILWAUKEE WI 53214

1-2-20 WJ
1:15 PM
Anna Neff

Case number 2019CV009679 was electronically filed with/converted by the Milwaukee County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: 72a83e

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.

Milwaukee County Circuit Court
Date: December 23, 2019

RECEIVED
JAN 02 REC'D
CITY OF WEST ALLIS
CITY CLERK

FILED
12-23-2019
John Barrett
Clerk of Circuit Court
2019CV009679
Honorable Carl Ashley-33
Branch 33

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY

CHARLES CLEVELAND
2231 S. 67th Place, Upper
West Allis, WI 53219

SUMMONS

Plaintiff,

Case No.:

Code No.: Personal Injury-Auto: 30101

and,

WISCONSIN DEPT. OF HEALTH SERVICES
c/o Secretary Designee Andrea Palm,
1 West Wilson Street
Madison, WI 53703

BLUE CROSS BLUE SHIELD OF WISCONSIN
d/b/a ANTHEM BLUE CROSS BLUE SHIELD
c/o CT Corporation System
301 S. Bedford St., Ste. 1
Madison, WI 53703

Involuntary Plaintiffs,

vs.

CITY OF WEST ALLIS
c/o West Allis City Clerk Steven A. Braatz, Jr.
Office of the City Clerk
City Hall, Room 108-110
7525 W. Greenfield Ave.
West Allis, WI 53214

STEVEN M. JANCZAK
10226 W. Steepleview Lane
Franklin, WI 53132

Defendants.

THE STATE OF WISCONSIN

TO EACH PERSON NAMED ABOVE AS A DEFENDANT:

You are hereby notified that the plaintiff named above has 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 N. Ninth Street, Milwaukee, WI 53233, and to Martin Law Office, S.C., plaintiff's attorneys, whose address is 7280 S. 13th St., Ste. 102, Oak Creek, WI 53154. 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: December 17, 2019

MARTIN LAW OFFICE, S.C.
Attorney for Plaintiff(s)

Electronically Signed by Drew J. De Vinney

Drew J. De Vinney
State Bar No. 01088576

ADDRESS
7280 S. 13th St., Ste.102
Oak Creek, WI 53154
414-856-2310 (office)
414-856-2677 (direct fax)
drew@martin-law-office.com

FILED
12-23-2019
John Barrett
Clerk of Circuit Court
2019CV009679
Honorable Carl Ashley-33
Branch 33

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY

CHARLES CLEVELAND
2231 S. 67th Place, Upper
West Allis, WI 53219

COMPLAINT

Plaintiff,

Case No.:

Code No.: Personal Injury-Auto: 30101

and,

WISCONSIN DEPT. OF HEALTH SERVICES
c/o Secretary Designee Andrea Palm,
1 West Wilson Street
Madison, WI 53703

BLUE CROSS BLUE SHIELD OF WISCONSIN
d/b/a ANTHEM BLUE CROSS BLUE SHIELD
c/o CT Corporation System
301 S. Bedford St., Ste. 1
Madison, WI 53703

Involuntary Plaintiffs,

vs.

CITY OF WEST ALLIS
c/o West Allis City Clerk Steven A. Braatz, Jr.
Office of the City Clerk
City Hall, Room 108-110
7525 W. Greenfield Ave.
West Allis, WI 53214

STEVEN M. JANCZAK
10226 W. Steepleview Lane
Franklin, WI 53132

Defendants.

NOW COMES the above-named plaintiff, by his attorneys, Martin Law Office, S.C. and
as for their claim for relief, allege and show to the Court as follows:

PARTIES AND GENERAL ALLEGATIONS

1. At the present time, the plaintiff, Charles Cleveland, is an adult citizen and resident of the State of Wisconsin, residing at 2231 S. 67th Place, Upper, West Allis, WI 53219.

2. That the involuntary plaintiff, Wisconsin Department of Health Services, is a statutorily created health insurance provider, with offices of its Sect. Designee Andrea Palm, located at 1 West Wilson St., Madison, WI 53703; that Wisconsin Department of Health Services has paid health claims on behalf of the plaintiff, Charles Cleveland, for medical care and services rendered as a result of the injuries he sustained as hereinafter set forth; that by reason of any such payments, Wisconsin Department of Health Services is a proper party hereto.

3. That the involuntary plaintiff, Blue Cross Blue Shield of Wisconsin d/b/a Anthem Blue Cross and Blue Shield (hereinafter collectively "Blue Cross"), is an insurance company, licensed to do business in the State of Wisconsin, with offices of its Registered Agent, CT Corporation System, located at 301 S. Bedford St., Ste. 1, Madison, WI 53703; that Blue Cross has paid medical and related expenses on behalf of the plaintiff, Charles Cleveland, as a result of the injuries sustained as hereinafter set forth; that Blue Cross has no legal right to subrogation or reimbursement despite its payments of benefits, but by reason of any such payments, Blue Cross is a proper party under sec. 803.03, Wis. Stat.

4. That the defendant, City of West Allis, at all times material hereto, is a municipal corporation, organized and existing under the laws of the State of Wisconsin, whose principle offices are located at City Hall, Room 108-110, 7525 W. Greenfield Ave., West Allis, WI 53214; that the defendant, City of West Allis, has a legal obligation to indemnify its city employees, including Steven M. Janczak, and to satisfy any judgement entered against them if it is

determined that the defendant city employees, including Steven M. Janczak, were acting within the scope of their employment at all times material hereto.

5. That the defendant, Steven M. Janczak, is an adult citizen and resident of the State of Wisconsin, residing at 10226 W. Steepleview Lane, Franklin, WI 53132; that at the time of the collision that is the subject of this lawsuit, Steven M Janczak was the permissive driver of a motor vehicle owned by the defendant, City of West Allis, that at the time of the collision that is the subject of this lawsuit, Steven M. Janczak was acting within the scope of his employment, agency, or servitude with the defendant, City of West Allis.

6. That on November 20, 2018, at approximately 7:38 am, the plaintiff, Charles Cleveland was operating a 2005 Ford Focus ZX4 eastbound on W. Lincoln Avenue in West Allis, Wisconsin, in the left lane; that at the same time, the defendant, Steven M. Janczak, was operating 2017 Peterbilt 320 garbage truck eastbound on W. Lincoln Avenue; that Mr. Janczak pulled his vehicle to the right side of the roadway and attempted a sudden U-turn in front of Mr. Cleveland's vehicle; that Mr. Cleveland was unable to avoid impact with Mr. Janczak; that Mr. Cleveland's vehicle collided into the side of the garbage truck operated by Mr. Janczak; that Mr. Janczak was negligent in the operation of his vehicle; that Mr. Janczak's negligence was a direct and proximate cause of the collision and herein and the injuries and damages sustained by the plaintiff as hereinafter described.

FIRST CLAIM FOR RELIEF:
NEGLIGENCE AGAINST STEVEN M. JANCZAK

7. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

8. That the defendant, Steven M. Janczak, was negligent in the operation and use of his motor vehicle on November 20, 2018, as alleged, in that Mr. Janczak failed to yield the right,

failed to maintain a proper lookout, and was otherwise negligent; that such negligence was a direct and proximate cause of the collision and herein and the injuries and damages sustained by the plaintiff as hereinafter described.

9. That the negligence of the defendant, Steven M. Janczak, as alleged was a cause of the injuries and damages of the plaintiff, Charles Cleveland, including loss of use of his vehicle, past pain and suffering, past medical expenses, and other compensable injuries and damages, all to his damage in an amount to be determined at a trial of this matter.

SECOND CLAIM FOR RELIEF:
NEGLIGENCE AGAINST CITY OF WEST ALLIS

10. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

11. That upon information and belief, the defendant, City of West Allis, its agents, servants, and/or employees, including Steven M. Janczak, was negligent in the operation of the garbage truck on November 20, 2018.

12. That the negligent operation of the garbage truck by the defendant, City of West Allis, its agents, servants, and/or employees, including Steven M Janczak, as alleged, was a proximate cause of the injuries and damages of the plaintiff, Charles Cleveland, as set forth herein.

13. That the negligence of the defendant, City of West Allis, its agents, servants, and/or employees, including Steven M Janczak, as alleged, was a cause of the injures damages of the plaintiff, Charles Cleveland, including loss of use of his vehicle, past pain, suffering, past medical expenses, and other compensable injuries and damages, all to his damage in an amount to be determined at a trial of this matter.

WHEREFORE, the plaintiff demands judgment as follows:

- a. For compensatory damages on behalf of Charles Cleveland, in an amount to be determined at a trial of this matter.
- b. For all costs, disbursements and actual attorney's fees, and all interest due and owing pursuant to sec. 628.46, Wis. Stat.;
- c. For a dismissal of any and all subrogation or reimbursement claims in this matter; and,
- d. For any other relief the court deems just and equitable.

PLEASE TAKE NOTICE THAT THE PLAINTIFFS DEMAND A TRIAL IN THE ABOVE-ENTITLED ACTION.

Dated: December 17, 2019

MARTIN LAW OFFICE, S.C.
Attorney for Plaintiff(s)

Electronically Signed by Drew J. De Vinney

Drew J. De Vinney
State Bar No. 01088576

ADDRESS
7280 S. 13th St., Ste.102
Oak Creek, WI 53154
414-856-2310 (office)
414-856-2677 (direct fax)
drew@martin-law-office.com

From: [Rebecca Hammock](#)
To: [Janel Lemanske](#); [Kris Palmer](#)
Cc: [Kail Decker](#)
Subject: RE: Claim - Charles Cleveland
Date: Monday, February 10, 2020 12:31:30 PM

This is not a new claim. It is further pleadings in the lawsuit filed under jacket 2020-0013.

Rebecca Hammock

Principal Assistant City Attorney | City Attorney's Office
City of West Allis
7525 W. Greenfield Ave. | West Allis, WI 53214
Dept: 414-302-8450
thatswhywestallis.com

From: Janel Lemanske
Sent: Monday, February 10, 2020 11:58 AM
To: Rebecca Hammock; Kris Palmer
Cc: Kail Decker
Subject: Claim - Charles Cleveland

Hi Rebecca and Kris

There are 2 jackets currently in the system. Should I open another file?
2020-0013 and 2019-0137

Thank you

Janel Lemanske

Administrative Support Specialist | Clerk's Office
City of West Allis
7525 W. Greenfield Ave. | West Allis, WI 53214
Office: 414-302-8203 | Dept: 414-302-8220
thatswhywestallis.com

From: CH-CLERK-CMFP@westalliswi.gov [mailto:CH-CLERK-CMFP@westalliswi.gov]
Sent: Monday, February 10, 2020 11:59 AM
To: Janel Lemanske
Subject: Message from KMBT_C454e

SERVICE AND PROCESSING OF CLAIMS

Plaintiff or Claimant: Charles Cleveland (Mallery + Zimmerman, S.C.)
Milw. Cty Case# 19-CV-9679

Date: 2/10/2020

☐ In-person

☐ Process Server

☐ Claimant

☐ Other _____

☒ By mail

☐ By email

☐ By fax

Received by: J Lemanski

➤ Hand deliver to: Ann Marie ☐ or Janel ☒

➤ Forwarded to Attorney's Office by Ann Marie or Janel ☐

➤ Response from Attorney's Office ☐

➤ Common Council Agenda: Yes ☐ No ☐

Jackets 202-0013 (1/7/2020)
2019-0137 (3/5/19)

MALLERY & ZIMMERMAN, S.C.

A LIMITED LIABILITY SERVICE CORPORATION

WAUSAU OFFICE

JOHN A. CRAVENS
MATTHEW S. MAYER *
MARK A. SAUER
MARY SUE ANDERSON
SHELDON OPPERMANN
STEVEN H. SCHINKER ±
ROBERT W. ZIMMERMAN +, Of Counsel
THOMAS F. MALLERY, of Counsel
TERRENCE J. GARSKE, of Counsel
+ Certified Public Accountant
* Certified in Civil Trial Advocacy by the
National Board of Trial Advocacy
± LL.M. in Environmental Law and also
licensed to practice in Arizona, Colorado and
Florida

500 THIRD STREET, SUITE 800 · PO BOX 479
WAUSAU, WISCONSIN 54402-0479
TELEPHONE – 715.845.8234
FACSIMILE – 715.848.1085
WWW.MALLERYANDZIMMERMAN.COM
MMAYER@MZATTYS.COM

February 1, 2020

RECEIVED

FEB 10 2020

**CITY OF WEST ALLIS
CITY CLERK**

MILWAUKEE OFFICE

RANDALL G. ERKERT
JOHN M. WIRTH
DOUGLAS G. FRENCH
JON S. HERREMAN
MICHAEL J. McDONAGH
JACQUELINE G. HROVAT
ADAM A. BARDOSY
MICHAEL A. MARX
ANDREW H. ROBINSON
K. SCOTT WAGNER
ANDREW FRANK
ANNE M. PLICHTA
SHAUNA D. MANION
MARGARET L. SEIFERT

STEVENS POINT OFFICE
STANTON E. THOMAS

RHINELANDER OFFICE
ANDREW P. SMITH

Jesus G.Q. Garza, Esq.
Wisconsin Department of Health Services
1 West Wilson Street, Room 651
P.O. Box 7850
Madison, WI 53707-7850

**RE: Charles Cleveland, et al. v. City of West Allis, et al.
Milwaukee County Case No. 19-CV-9679**

Dear Attorney Garza:

Please find enclosed the following document in the above-entitled matter which was electronically filed with the Court:

- Answer, Counterclaim and Cross-Claim of Involuntary Plaintiff, Blue Cross Blue Shield of Wisconsin.

Additionally enclosed is an Affidavit of Mailing evidencing service of the same. Thank you.

Sincerely,

MALLERY & ZIMMERMAN, S.C.



MATTHEW S. MAYER

MSM:rrr
Enclosures

cc: City of West Allis
Mr. Steven M. Janczak

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 33

MILWAUKEE COUNTY

CHARLES CLEVELAND,

Plaintiff,

and

**WISCONSIN DEPARTMENT OF
HEALTH SERVICES and BLUE CROSS
BLUE SHIELD OF WISCONSIN,**

Involuntary Plaintiffs,

Case No. 19-CV-9679

Case Code No. 30101

v.

**CITY OF WEST ALLIS and
STEVEN M. JANCZAK,**Defendants.

**ANSWER, COUNTERCLAIM AND CROSS-CLAIM OF INVOLUNTARY
PLAINTIFF, BLUE CROSS BLUE SHIELD OF WISCONSIN**

NOW COMES Involuntary Plaintiff, Blue Cross Blue Shield of Wisconsin, by its attorneys, Mallery & Zimmerman, S.C. by Matthew S. Mayer, and, as and for its answer to Plaintiff's Complaint, and its counterclaim and cross-claim, hereby alleges and shows to the Court as follows:

1. In answering Paragraph 1 of the Complaint, admits the allegations contained therein.
2. In answering Paragraph 2 of the Complaint, is without knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to any payments made to or

on behalf of Plaintiff, as well as any subrogation rights and/or interests; admits the remaining allegations contained therein.

3. In answering Paragraph 3 of the Complaint, admits in part and denies in part. Denies all allegations doubting or denying this answering party's subrogation rights and/or interests and puts Plaintiff to his strictest proof thereon; admits the remaining allegations contained therein.

4. In answering Paragraphs 4 through 6 of the Complaint, admits the allegations contained therein.

5. In answering Paragraph 7 of the Complaint, realleges and incorporates as if fully set forth hereat Paragraphs 1 through the preceding paragraph of this answer.

6. In answering Paragraphs 8 and 9 of the Complaint, admits the allegations contained therein.

7. In answering Paragraph 10 of the Complaint, realleges and incorporates as if fully set forth hereat Paragraphs 1 through the preceding paragraph of this answer.

8. In answering Paragraphs 11 through 13 of the Complaint, admits the allegations contained therein.

COUNTERCLAIM AND CROSS-CLAIM

NOW COMES Involuntary Plaintiff, Blue Cross Blue Shield of Wisconsin, by its attorneys, Mallery & Zimmerman, S.C. by Matthew S. Mayer, and, as and for its cross-claim against Plaintiff, Charles Cleveland, and its counterclaim against Defendants, City of West Allis and Steven M. Janczak, hereby alleges as follows:

1. Realleges and incorporates by reference herein the answer of Involuntary Plaintiff, Blue Cross Blue Shield of Wisconsin.

2. At all times herein, Plaintiff, Charles Cleveland, received state-funded health benefits administered by Blue Cross Blue Shield of Wisconsin pursuant to Wis. Stat. § 49.89(9).

3. At all times herein, Blue Cross Blue Shield of Wisconsin processed claims and administered payment of medical expenses incurred by Plaintiff, Charles Cleveland, as a result of injuries sustained in the accident referenced in the Complaint.

4. Pursuant to Wis. Stat. § 49.89(2), Blue Cross Blue Shield of Wisconsin has a lien equal to the amount of the medical assistance provided, or to be provided, as a result of the injury, sickness or death that gave rise to this claim. The lien is on any payment resulting from a judgment or settlement which may be due Plaintiff, Charles Cleveland, and continues until such time as released and discharged by Blue Cross Blue Shield of Wisconsin.

5. Pursuant to Wis. Stat. § 49.89(3), Blue Cross Blue Shield of Wisconsin makes a claim to recover its lien from any Defendant found liable.

6. Blue Cross Blue Shield of Wisconsin's lien shall be paid from any compensation received as a result of the occurrence of injury, sickness or death, including any med-pay benefits paid directly to Plaintiff, Charles Cleveland, in accordance with Wis. Stat. § 49.89(5).

WHEREFORE, Involuntary Plaintiff, Blue Cross Blue Shield of Wisconsin, demands judgment as follows:

- A. On its subrogation and/or reimbursement interest in the current amount of \$1,047.47, plus any other medical payments made, or to be made, as well as interest;
- B. For the attorneys' fees, costs, and disbursements of this Involuntary Plaintiff; and
- C. For such other and further relief as the Court deems just and equitable.

DATED this 1st day of February 2020.

MALLERY & ZIMMERMAN, S.C.
Attorneys for Involuntary Plaintiff, Blue Cross Blue
Shield of Wisconsin

ADDRESS:

500 Third Street, Suite 800
P.O. Box 479
Wausau, WI 54402-0479
715.845.8234 – telephone
715.848.1085 – facsimile
mmayer@mzattys.com

BY: Electronically Signed by Matthew S. Mayer
MATTHEW S. MAYER
State Bar No. 1001237

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
) ss.
MARATHON COUNTY)

Case No. 19-CV-9679

The undersigned, being first duly sworn on oath, deposes and says that a true copy of the following document(s):


- Answer, Counterclaim and Cross-Claim of Involuntary Plaintiff, Blue Cross Blue Shield of Wisconsin;

was served upon the hereinafter named person as shown below, by enclosing the same in an adequately postpaid envelope which bore the sender's name and return address and which was addressed to such person at his respective post office address and which was mailed on the same date as set forth below when notarized.

Jesus G.Q. Garza, Esq.
Wisconsin Department of Health Services
1 West Wilson Street, Room 651
P.O. Box 7850
Madison, WI 53707-7850

City of West Allis
c/o Mr. Steven A. Braatz Jr.
City Hall, Room 108-110
7525 W. Greenfield Avenue
West Allis, WI 53214

Mr. Steven M. Janczak
10226 West Steepleview Lane
Franklin, WI 53132


RHONDA R. RINDO

Subscribed and sworn to before
me this 4th day of February 2020.

Janice B. Oehler
Janice Oehler
Notary Public, State of Wisconsin
My commission expires 7-22-2022

