

FILED
06-13-2022
George L. Christenson
Clerk of Circuit Court
2022CV003736
Honorable Carl Ashley-33
Branch 33

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
CIVIL DIVISION

ARTHUR WARD
2635 North 36th Street
Milwaukee, WI 53210,

Plaintiff,

STATE OF WISCONSIN DEPARTMENT
OF HEALTH SERVICES
c/o Office of Legal Counsel
One West Wilson Street, Room 651
Madison, WI 53703,

INDEPENDENT CARE HEALTH PLAN
c/o Liz Bartlett, Registered Agent
1555 N. Rivercenter Dr., Ste. 206
Milwaukee, WI 53212,

Involuntary Plaintiff,

v.

CITY OF MILWAUKEE
c/o Jim Owczarski, City Clerk
200 E. Wells Street
Room 205
Milwaukee, WI 53202,

ABC DEFENDANTS, the fictitious name for
unknown corporations or entities,

DEF INSURANCE COS., the fictitious name for
unknown insurance companies,

Defendants.

Case No.:

COMPLAINT

Personal Injury - Other: 30107

NOW COMES the above-named plaintiff, Arthur Ward, by his attorneys GINGRAS, THOMSEN & WACHS, LLP, and as and for his claims for relief, alleges and shows to the Court as follows:

PARTIES

1. That at the present time, the plaintiff, Arthur Ward, is an adult citizen and resident of the State of Wisconsin who resides at 2635 North 36th Street, Milwaukee, WI 53210.

2. That at the present time, the involuntary plaintiff, State of Wisconsin Department of Health Services, (hereinafter “Medicaid”), is a governmental agency responsible for administering the State of Wisconsin Medical Assistance Program with offices located at One West Wilson Street, Madison, WI 53703; that Medicaid has paid medical and related bills on behalf of the plaintiff, Arthur Ward, as a result of injuries he sustained in the incident that is the subject of this lawsuit; that Medicaid has no legal right to subrogation or reimbursement despite its payment of benefits, but by reason of such payments, Medicaid is a proper party herein pursuant to sec. 803.03, Wis. Stat.

3. That at the present time, the involuntary plaintiff, Independent Care Health Plan, is a Wisconsin insurance corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin, with offices of its Registered Agent, Liz Bartlett, located at 1555 N. Rivercenter Dr. Ste 206, Milwaukee, WI 53212; that Independent Care Health Plan has paid medical and related bills on behalf of the plaintiff, Arthur Ward, as a result of injuries he sustained in the incident that is the subject of this lawsuit; that Independent Care Health Plan has no legal right to subrogation or reimbursement despite its payment of benefits, but by reason of such payments, Independent Care Health Plan is a proper party herein pursuant to sec. 803.03, Wis. Stat.

4. That at the present time, the defendant, City of Milwaukee, is a municipal government

located within the State of Wisconsin with a principal place of business in the City of Milwaukee, with its primary address as 200 E. Wells Street, Milwaukee, WI 53202. The City of Milwaukee was the employer of the individual(s), who was/were acting in the scope of their employment at the time the hazardous condition which is the subject of this lawsuit was created; that pursuant to Wis. Stat. §895.46(1)(a), the City of Milwaukee is required to pay or indemnify all judgments, including compensatory and punitive damages, attorney's fees and costs that may be awarded against its officials, employees and agents.

5. That at the present time, the defendant, ABC Defendants, are the fictitious name for unknown corporations or entities, duly organized and existing under and by virtue of the laws of the State of Wisconsin or any other state; that on further information and belief, at all times relevant, ABC Defendants was the owner and/or property manager of a place of employment and/or public building and was responsible, legally and contractually, for maintaining and adequately marking the sidewalk where utility work was being done in the vicinity of 3717 W. Meinecke Avenue in Milwaukee, Wisconsin where the incident that is the subject of this lawsuit occurred.

6. That at the present time, the defendant, DEF Insurance Cos., are the fictitious name for unknown insurance companies, the identity and location of which are unknown, that engaged in the business of writing and selling liability insurance; that upon information and belief, prior to the date of this incident, July 11, 2019, DEF Insurance Cos. issued a policy or policies of insurance to the defendant, ABC Defendants, its agents, servants and/or employees, for claims such as those hereafter set forth, and which policy or policies of insurance were in full force and effect at the time of the incident described below; that in said contract(s) of insurance, DEF Insurance Cos. reserved the right to settle or adjust any claims arising thereunder and to defend any lawsuits instituted by virtue of any such claims and has a direct interest in this litigation; that DEF Insurance Cos. is a proper defendant

herein and is directly liable to the plaintiff for all of the plaintiff's injuries and damages as set forth herein.

7. Pursuant to sec. 893.80, Wis. Stat., the City of Milwaukee was served with a Notice of Injury and Claim and Itemized Statement of Relief on November 8, 2019.

GENERAL ALLEGATIONS

8. That on July 11, 2019, the plaintiff, Arthur Ward, who is legally blind and walks with a blind cane, was walking near Butterfly Park in the vicinity of 3717 W. Meinecke Avenue in the City of Milwaukee, County of Milwaukee, Wisconsin. Utility work was being done in the area and there was a large hole where a portion of sidewalk was removed. There were no warnings in place nor any protective measures taken to warn of the hazard presented by the unmarked hole. Mr. Ward stepped into the hole, causing him to fall and sustain injuries as hereinafter set forth.



9. After Mr. Ward was injured, warning cones and caution tape were placed around the hole.



10. As a direct and proximate result of the described incident and the negligence of the defendants, City of Milwaukee and/or ABC Defendants, through their respective agents, servants and/or employees, as hereinafter alleged, the plaintiff, Arthur Ward, sustained injuries and damages including past and future pain, suffering, disability and loss of enjoyment of life; past and future medical expenses; and other compensable injuries and damages, all to his damage in an amount to be determined at a trial of this matter.

FIRST CLAIM FOR RELIEF – COMMON LAW NEGLIGENCE

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

12. That the defendants, City of Milwaukee and/or ABC Defendants, through their respective agents, servants and/or employees, were negligent in that they, among other things, failed to properly inspect and/or maintain the construction area, including failing to adequately mark the large hole or provide meaningful and reasonable warnings or barricades around the hole in which the plaintiff, Arthur Ward, stepped and fell; failed to exercise ordinary care for the safety of the plaintiff, created a foreseeable risk of harm to the plaintiff, failed to exercise the same degree of care and skill as are provided by business owners, property managers and contractors of reasonable prudence, skill, and judgment in similar circumstances, and were otherwise negligent.

SECOND CLAIM FOR RELIEF - SAFE PLACE

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

14. That all times material to, the plaintiff, Arthur Ward, was a frequenter entitled to be on the premises where this incident occurred.

15. That the premises where Arthur Ward was injured was a place of employment within the meaning of sec. 101.11, Wis. Stat., and that the defendants, City of Milwaukee and/or ABC Defendants, had a duty pursuant to statute to furnish and use safety devices and safeguards; to adopt and use methods and processes reasonably adequate to render the premises as safe and as free from danger as its nature reasonably permitted; to maintain said premises so as to render them safe; and do every other thing reasonably necessary to protect the life, health, safety and welfare of frequenters on the premises, including the plaintiff, Arthur Ward.

16. That the defendants, City of Milwaukee and/or ABC Defendants, negligently failed to make said premises as safe as its nature reasonably permitted as required by sec. 101.11, Wis. Stat., and was/were otherwise negligent.

17. That the defendants', City of Milwaukee and/or ABC Defendants, through their respective agents, servants and/or employees, as alleged, negligence was a cause of the injuries and damages sustained by the plaintiff.

WHEREFORE, the plaintiff demands judgment jointly and severally against the defendants as follows:

- a. For compensatory damages on behalf of Arthur Ward, 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 declaration that Medicaid has no legal right to subrogation or reimbursement;

d. For a declaration that Independent Care Health Plan has no legal right to subrogation or reimbursement;

e. For a dismissal of any and all subrogation or reimbursement claims in this matter;

f. For such other and further relief as the Court deems just and equitable.

PLEASE TAKE NOTICE THAT THE PLAINTIFF DEMANDS A TRIAL IN THE ABOVE-ENTITLED ACTION.

Dated at Milwaukee, Wisconsin this 13th day of June, 2022.

GINGRAS, THOMSEN & WACHS, LLP
Attorneys for Plaintiff

By: Electronically signed by Attorney Mark L. Thomsen
Mark L. Thomsen
State Bar No. 01018839
Melissa J. Prost
State Bar No. 1098840

P.O. ADDRESS:

219 N. Milwaukee Street
Suite 520
Milwaukee, WI 53202
Telephone: (414) 935-5482
Facsimile: (414) 763-6413
Email: mthomsen@gtwlawyers.com
mprost@gtwlawyers.com