

VI

5.5

R. C. No. 320 - 20 - 21. By FINANCE AND PERSONNEL COMMITTEE. April 19, 2021.

Your Committee to whom was referred R. O. No. 46-20-21 by City Clerk submitting a Summons and Complaint in the matter of Audrey Brubaker and the Estate of Roman Martin v. City of Sheboygan; recommends referring to the Finance and Personnel Committee of the 2021-2022 Council.

FAP 21-22

*Audrey Brubaker* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk  
Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

II

3.4

R. O. No. 46 - 20 - 21. By CITY CLERK. August 3, 2020.

Submitting a Summons and Complaint in the matter of Audrey Brubaker and the Estate of Roman Martin v. City of Sheboygan.

FAP

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CITY CLERK

**STATE OF WISCONSIN                      CIRCUIT COURT                      SHEBOYGAN**

Audrey Brubaker et al vs. City of Sheboygan et al

**Electronic Filing  
Notice**

Case No. 2020CV000253  
Class Code: Wrongful Death

FILED  
07-17-2020  
Sheboygan County  
Clerk of Circuit Court  
2020CV000253  
Honorable Kent Hoffmann  
Branch 2

JUL 21 '20 AM 8:11

CITY OF SHEBOYGAN  
828 CENTER AVENUE  
SHEBOYGAN WI 53081

7/21/20 Process Server  
Date: 7/21/20 Time: 8:10 AM  
☐ Personal ☐ Substitute  
☐ Posted ☐ Corporate

Case number 2020CV000253 was electronically filed with/converted by the Sheboygan 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: 3eefc2**

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 920-459-3068.

Sheboygan County Circuit Court  
Date: July 17, 2020

FILED  
07-17-2020  
Sheboygan County  
Clerk of Circuit Court  
2020CV000253  
Honorable Kent Hoffmann  
Branch 2

STATE OF WISCONSIN      CIRCUIT COURT      SHEBOYGAN COUNTY

AUDREY BRUBAKER  
1603 N. 7th Street  
Sheboygan, Wisconsin 53081

ESTATE OF ROMAN MARTIN  
By next of kin, Audrey Brubaker  
1603 N. 7th Street  
Sheboygan, Wisconsin 53081

Plaintiffs,

Case No.: 30105  
Case Code: 30101

v.

CITY OF SHEBOYGAN  
828 Center Avenue  
Sheboygan, Wisconsin 53081

ABC INSURANCE COMPANY

Defendants.

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**SUMMONS**

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THE STATE OF WISCONSIN

To each person named above as a Defendants:

You are hereby notified that the above-named Plaintiff 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 Sheboygan County Clerk of Circuit Court, Courthouse - 1st Floor, 615 North 6th Street, Sheboygan, WI 53081, and to Axley Brynelson LLP,

2 East Mifflin Street, Suite 200, Madison, Wisconsin 53703, Plaintiff's attorneys. You may have an attorney help or represent you. If you require the assistance of auxiliary aids or services because of a disability, call 920-459-3068 and ask for the court ADA Coordinator.

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 at Madison, Wisconsin this 17<sup>th</sup> day of July, 2020.

AXLEY BRYNELSON, LLP

Electronically signed by Heath P. Straka

Heath P. Straka, State Bar No. 1031351

J. Michael Riley, State Bar No. 1013649

Attorneys for Plaintiff

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FILED  
07-17-2020  
Sheboygan County  
Clerk of Circuit Court  
2020CV000253  
Honorable Kent Hoffmann  
Branch 2

STATE OF WISCONSIN      CIRCUIT COURT      SHEBOYGAN COUNTY

AUDREY BRUBAKER  
1603 N. 7th Street  
Sheboygan, Wisconsin 53081

ESTATE OF ROMAN MARTIN  
By next of kin, Audrey Brubaker  
1603 N. 7th Street  
Sheboygan, Wisconsin 53081

Plaintiffs,

Case No.: 30105  
Case Code: 30101

v.

CITY OF SHEBOYGAN  
828 Center Avenue  
Sheboygan, Wisconsin 53081

ABC INSURANCE COMPANY

Defendants.

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**COMPLAINT**

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Plaintiff, Audrey Brubaker, by her attorneys, Axley Brynson, LLP, by Heath P. Straka, state the following as her Complaint against the above Defendants:

1. Plaintiff, Audrey Brubaker, is and was at all relevant times, an adult resident of the State of Wisconsin, who resides at 1603 N. 7<sup>th</sup> Street, Sheboygan, Wisconsin 53081.

2. Plaintiff Estate of Roman Martin, by his next of kin and biological mother, Audrey Brubaker, is a proper party hereto and brings claims for Roman Martin's (deceased) funeral and burial expenses, fear of death and conscious pain and suffering as described herein.

3. Defendant City of Sheboygan is a municipality, governmental subdivision with a principal office address of 828 Center Avenue, Sheboygan, Wisconsin 53081. At all material times, the City of Sheboygan employed Christopher A. Dekker. At all material times, Mr. Dekker

was acting within the scope of his employment with the City of Sheboygan as it relates to the accident which is the subject of this Complaint.

4. ABC Insurance Company is the fictitious name for the insurance company that issued a policy of insurance to the City of Sheboygan; that said policy of insurance provided liability insurance coverage to the City of Sheboygan for the acts and omissions of its employees when acting within the scope of their employment. On information and belief, such policy of insurance was in full force and effect at all times material hereto.

5. Roman Martin was tragically killed when he was run over by a garbage truck on October 9, 2019 in the City of Sheboygan. The incident occurred at the intersection of 14th Street and Center Avenue.

6. On information and belief, at all material times, the garbage truck was owned by the City of Sheboygan and operated by one of its employees, Christopher A. Dekker.

7. On information and belief, the cause of death of Roman Martin was open head trauma and multiple blunt force trauma caused by the crash that is the subject of this Complaint.

8. On information and belief, Roman Martin was traveling northbound on the east sidewalk of 14th Street in the City of Sheboygan, when the City of Sheboygan garbage truck also traveling northbound on 14th Street, turned right on Center Avenue striking Roman Martin while he was operating his bicycle. Roman Martin was struck by the garbage truck while in the east side crosswalk.

9. As a result of the aforesaid incident, Roman Martin suffered the fear of death, conscious pain and suffering and fatal injuries to his head and body.

10. As a result of the aforesaid incident, Claimant, Audrey M. Brubaker, has suffered the loss of society and companionship of her son, Roman Martin.

11. At all material times, on information and belief, Roman Martin was in plain sight and visible to motorists including the driver of the City of Sheboygan garbage truck.

12. Plaintiffs served a Notice of Claim and Claim on the City of Sheboygan pursuant to Ch. 893, Wis. Stats. which claim was denied by Defendant.

**CAUSE OF ACTION AGAINST**  
**DEFENDANT CITY OF SHEBOYGAN AND ABC INSURANCE**

As and for a cause of action against Defendant City of Sheboygan and ABC Insurance, Plaintiffs re-allege and incorporate by reference herein paragraphs (1-12) inclusive and further state as follows:

13. Defendant City of Sheboygan, by and through the actions and inactions of its employee, Christopher A. Dekker, and pursuant to the doctrine of *respondeat superior*, was negligent by failing to keep a proper lookout and was otherwise negligent in the operation of the garbage truck described herein.

14. As a direct and proximate cause of City of Sheboygan's aforesaid negligence, Plaintiffs suffered the injuries and damages as described above.

15. As a direct and proximate result of the City of Sheboygan's aforesaid negligence and Plaintiffs' damages, the City of Sheboygan is directly liable to Plaintiffs in an amount to be determined at trial.

16. As a direct and proximate result of the City of Sheboygan's aforesaid negligence and Plaintiffs' damages, ABC Insurance is directly liable to Plaintiffs in an amount to be determined at trial.

WHEREFORE, Plaintiff prays for judgment against the Defendants, in an amount to be determined at trial, together with the costs and disbursements incurred herein; as well as a



declaration of what rights, if any, that the above involuntary plaintiff and subrogated defendant have as relates to their subrogation interest.

PLAINTIFFS HEREBY DEMAND A TRIAL BY A JURY OF SIX PERSONS.

Dated at Madison, Wisconsin this 17<sup>th</sup> day of July, 2020.

AXLEY BRYNELSON LLP

Electronically signed by Heath P. Straka

Heath P. Straka, State Bar No. 1031351

J. Michael Riley, State Bar No. 1013649

Attorneys for Plaintiff

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