

CIVIL ACTION COVER SHEETTrial Court of Massachusetts
SUPERIOR COURT DEPARTMENT
County: HAMPDEN

Docket Number:

14 465

PLAINTIFF(S)

MARILYN GARCIA

DEFENDANT(S)

CITY OF HOLYOKE AND WILLIAM P. MORAN

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE

Eric D. Applebaum, Esq.
FEIN, EMOND & APPLEBAUM, P.C.
52 Mulberry Street
Springfield, MA 01105
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Board of Bar Overseers Number 560298

HAMPDEN COUNTY
SUPERIOR COURTFILED
JUN 10 2014

CLERK OF COURTS

Origin code and track designation

Place an x in one box only:

- | | | |
|--|--|-----|
| <input checked="" type="checkbox"/> 1. F01 Original Complaint | <input type="checkbox"/> 4. F04 District Court Appeal c. 231, s. 97 & 104 (After trial) | (X) |
| <input type="checkbox"/> 2. F02 Removal to Sup. Ct. C. 231, s. 104 (Before trial) | <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/ Order (Mass. R. Civ. P. 60) | (X) |
| <input type="checkbox"/> 3. F03 Retransfer to Sup. Ct. C. 231, s. 102C | <input type="checkbox"/> 6. E10 Summary Process Appeal | (X) |

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

| CODE NO. | TYPE OF ACTION (specify) | TRACK | IS THIS A JURY CASE? |
|------------|--|-------|----------------------|
| <u>E03</u> | <u>Claims Against Commonwealth or Municipality</u> | (A) | () Yes (X) No |

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS**(Attach additional sheets as necessary)**

- A. Documented medical expenses to date:
- | | | |
|---|-----------------|--------------------|
| 1. Total hospital expenses..... | \$ | 913.23 |
| 2. Total Doctor expenses..... | \$ | 1,900.00 |
| 3. Total chiropractic expenses..... | \$ | |
| 4. Total physical therapy expenses..... | \$ | 2,317.00 |
| 5. Total other expenses..... | \$ | 2,537.00 |
| | Subtotal | \$ 7,667.23 |
- B. Documented lost wages and compensation to date..... \$
- C. Documented property damages to date..... \$ 0.00
- D. Reasonable anticipated future medical and hospital expenses..... \$ 0.00
- E. Reasonable anticipated lost wages..... \$
- F. Other documented items of damages (describe): Pain and Suffering, See G \$ 250,000.00
- G. Brief description of plaintiff's injury, including nature and extent of injury (describe):

BURNS TO TORSO, IMPACT INJURY TO LEFT KNEE, INJURY TO LUMBAR SPINE WITH RADIATING SYMPTOMS OF PAIN, NUMBNESS AND/OR DYSFUNCTION IN HER LOWER EXTREMITIES.

\$

TOTAL \$**257,667.23****CONTRACT CLAIMS****(Attach additional sheets as necessary)**

Provide a detailed description of claim(s):

TOTAL \$

2

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

SUPERIOR COURT DEPARTMENT
Civil Action No. **14 465**

MARILYN GARCIA,
Plaintiff

vs.

CITY OF HOLYOKE and
WILLIAM P. MORAN,
Defendant

COMPLAINT

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JUN 10 2014

[Signature]
CLERK OF COURTS

PARTIES

1. The plaintiff, Marilyn Garcia, is a natural person who resides at [REDACTED], Agawam, Hampden County, Massachusetts.
2. The defendant, the City of Holyoke, is a municipal corporation, duly established under the laws of the Commonwealth, is located in Hampden County, and is a "public employer" within the meaning of M.G.L., c.258, Sec. 4.
3. The defendant, William P. Moran, is a natural person who was last known to reside at [REDACTED], Holyoke, Hampden County, Massachusetts.

COMPLIANCE WITH STATUTORY REQUIREMENTS

4. The plaintiff, pursuant to M.G.L. c.258, Sec. 4, has presented her claims, in writing, to The Honorable Alex Morse, Mayor of the City of Holyoke, by means of a certified letter return receipt requested dated May 23, 2013. Copy of said letter with return receipt is attached hereto as Exhibit A.
5. Said letter of notice, sent to the The Honorable Alex Morse, Mayor of the City of Holyoke, by plaintiff's attorney on May 21, 2013 complied with all statutory requirements set forth in M.G.L. c.258, Sec. 4.

FACTUAL ALLEGATIONS

6. On or about June 15, 2011, at approximately 12:28 p.m., the plaintiff, Marilyn Garcia was the driver of a 2006 Nissan, Massachusetts Registration No. [REDACTED], which was traveling on Homestead Avenue at or near the intersection with Pynchon Road, in Holyoke, Massachusetts.

No. of Pths. 1
Fee Paid - \$ 240
Surcharge Paid - \$ 13
Security Fee - Paid - \$ 20
Received by [Signature]
Cash ☒ Check ☐
Cash ☒ Check ☐
Cash ☒ Check ☐

7. On or about the aforementioned date and time, a fire truck, while entering Homestead Avenue from the City of Holyoke Fire Station Number 6, located at 640 Homestead Avenue in Holyoke, caused the plaintiff, Marilyn Garcia to be involved in a motor vehicle accident, in turn, causing her to sustain serious personal injuries.
8. On or about the aforementioned date and time, the fire truck was negligently and wrongfully dispatched by then Holyoke Fire Chief, Thomas P. Moran, for an emergency that did not exist.
9. On or about the aforementioned date and time, Thomas P. Moran, was the Holyoke Fire Chief, or Acting Fire Chief, employed by the City of Holyoke.

COUNT I: NEGLIGENCE
LIABILITY OF THE CITY OF HOLYOKE PURSUANT TO M.G.L. c 258 § 2

10. The plaintiff repeats and realleges paragraphs one through nine of this Complaint and incorporates them by reference herein.
11. At said date, time, and place, William P. Moran, negligently and wrongfully dispatched a fire truck for an emergency that did not exist.
12. At all relevant times, The City of Holyoke is/was a "public employer" as defined in M.G.L. c. 258 § 1 and referenced in M.G.L. c. 258 § 2.
13. At all relevant times, William P. Moran is/was a "public employee" as defined in M.G.L. c. 258 § 1 and referenced in M.G.L. c. 258 § 2.
14. At all relevant times, William P. Moran was acting within the scope of his employment by and for City of Holyoke.
15. As a direct and proximate result of the said negligence of William P. Moran for which the defendant is responsible pursuant to M.G.L. c. 258 § 2, the plaintiff, was involved in a motor vehicle accident, and suffered and continues to suffer great pain of body and anguish of mind, substantial expenses for medical care and attention, a diminution in her capacity to earn, and disabilities from her normal daily activities.

COUNT II: NEGLIGENCE
LIABILITY OF THE CITY OF HOLYOKE, FAILURE TO ALLOW SAFE
EGRESS OF FIRE DEPARTMENT VEHICLE

16. The plaintiff repeats and realleges paragraphs one through fifteen of this Complaint and incorporates them by reference herein.
17. The defendant, City of Holyoke, had a duty to allow safe egress of fire department vehicles from the station located at 640 Homestead Avenue in Holyoke.
18. On the aforementioned date and time the defendant, City of Holyoke, breached its duty of

care when it was negligent in not allowing safe egress of fire department vehicles from the station located at 640 Homestead Avenue, Holyoke, Massachusetts. The defendant, City of Holyoke was negligent in failing to provide adequate warning to motorists on Homestead Avenue, including the plaintiff, and the other motorists involved in the accident of June 15, 2011, that Fire Department vehicles may be entering the roadway. It is alleged that said failure to provide for safe egress and/or failure to provide adequate warning to motorists, was a direct and proximate cause of the automobile accident that occurred on June 15, 2011.

19. As a direct and proximate result of the negligence of the defendant, City of Holyoke, the plaintiff, Marilyn Garcia, was involved in a motor vehicle accident and , was caused to suffer physical injury and severe pain of body and anguish of mind; incur substantial expenses for medical care and attention; lose her ability to perform normal daily activities and suffer a diminution of her capacity to earn.

COUNT III: NEGLIGENCE

LIABILITY OF THE CITY OF HOLYOKE, FAILURE TO MAINTAIN AND/OR ENFORCE ADEQUATE AND APPROPRIATE RULES AND /OR PROCEDURES FOR THE CONDUCT OF FIRE DEPARTMENT PERSONNEL REGARDING OPERATION OF FIRE DEPARTMENT VEHICLES WHEN EXITING FIRE STATIONS

20. The plaintiff repeats and realleges paragraphs one through nineteen of this Complaint and incorporates them by reference herein.
21. The defendant, City of Holyoke, had a duty to allow safe egress of fire department vehicles from the station located at 640 Homestead Avenue in Holyoke.
22. On the aforementioned date and time the defendant, City of Holyoke, breached its duty of care when it was negligent in failing to promulgate, maintain and/or enforce adequate and appropriate rules and/or procedures for the conduct of Fire Department personnel regarding the operation of Fire Department vehicles, when exiting fire stations, and that said failure to promulgate, maintain and /or enforce said rules or and/or procedures caused motorists on Homestead Avenue on June 15, 2011 to be forced to make abrupt stopping maneuvers, and that such failure to promulgate, maintain and/or enforce said rules and/or procedures was a direct and proximate cause of the said accident.
23. As a direct and proximate result of the negligence of the defendant, City of Holyoke, the plaintiff, Marilyn Garcia, was involved in a motor vehicle accident and was caused to suffer physical injury and severe pain of body and anguish of mind; incur substantial expenses for medical care and attention; lose her ability to perform normal daily activities and suffer a diminution of her capacity to earn.

COUNT IV

LIABILITY OF THE CITY OF HOLYOKE, FAILURE TO PROPERLY TRAIN AND/OR SUPERVISE HOLYOKE FIRE DEPARTMENT PERSONNEL

24. The plaintiff repeats and realleges paragraphs one through twenty-three of this Complaint and incorporates them by reference herein.

25. The defendant, City of Holyoke, had a duty to properly train and /or supervise Holyoke Fire Department Personnel in the safe and reasonable operation of Fire Department vehicles.
26. On the aforementioned date and time the defendant, City of Holyoke, breached its duty of care when it was negligent in failing to train and /or supervise Holyoke Fire Department Personnel in the safe and reasonable operation of Fire Department vehicles, in that the fire department vehicle entered Homestead Avenue in such a manner as to force the motorists, including the plaintiff, to make abrupt stopping maneuvers which directly and proximately caused said accident.
27. As a direct and proximate result of the negligence of the defendant, City of Holyoke, the plaintiff, Marilyn Garcia, was involved in a motor vehicle accident and was caused to suffer physical injury and severe pain of body and anguish of mind; incur substantial expenses for medical care and attention; lose her ability to perform normal daily activities and suffer a diminution of her capacity to earn.

COUNT V

LIABILITY OF THE CITY OF HOLYOKE, NEGLIGENCE IN THE SELECTION OF WILLIAM P. MORAN AS FIRE CHIEF AND/OR ACTING FIRE CHIEF

28. The plaintiff repeats and realleges paragraphs one through twenty-seven of this Complaint and incorporates them by reference herein.
29. The defendant, City of Holyoke, had a duty to select a fit Fire Chief and/or Acting Fire Chief.
30. On the aforementioned date and time the defendant, City of Holyoke, breached its duty when it knew, or should have known, that William P Moran was unfit, by reason of his background, disposition, training, skill, knowledge, history of conduct, personality, support within the ranks of the Fire Department, reputation with fellow Fire Department personnel, and/or his inability to properly maintain discipline and order, and that William P. Moran's said unfitness to serve as Fire Chief and/or Acting Fire Chief, is the direct and proximate cause of the accident.
31. As a direct and proximate result of the negligence of the defendant, City of Holyoke, the plaintiff, Marilyn Garcia, was involved in a motor vehicle accident and was caused to suffer physical injury and severe pain of body and anguish of mind; incur substantial expenses for medical care and attention; lose her ability to perform normal daily activities and suffer a diminution of her capacity to earn.

COUNT VI

LIABILITY OF THE CITY OF HOLYOKE, NEGLIGENCE IN FAILING TO PROMULGATE, MAINTAIN AND/OR ENFORCE PROPER RULES AND/OR PROCEDURES FOR THE CONDUCT OF FIRE DEPARTMENT PERSONNEL WHILE ON DUTY

32. The plaintiff repeats and realleges paragraphs one through thirty-one of this Complaint and incorporates them by reference herein.

33. The defendant, City of Holyoke, had a duty to properly train and /or supervise Holyoke Fire Department Personnel in the safe and reasonable operation of Fire Department vehicles.
34. On the aforementioned date and time the defendant, City of Holyoke, breached its duty of care
35. As a direct and proximate result of the negligence of the defendant, City of Holyoke, the plaintiff, Marilyn Garcia, was involved in a motor vehicle accident and was caused to suffer physical injury and severe pain of body and anguish of mind; incur substantial expenses for medical care and attention; lose her ability to perform normal daily activities and suffer a diminution of her capacity to earn.

COUNT VII

LIABILITY OF THE CITY OF HOLYOKE, NEGLIGENCE IN FAILING TO PROMULGATE, MAINTAIN AND/OR ENFORCE RULES WITH RESPECT TO FIRE DEPARTMENT PERSONNEL REMAINING AT THEIR POST WITHIN FIRE STATIONS

36. The plaintiff repeats and realleges paragraphs one through thirty-five of this Complaint and incorporates them by reference herein.
37. The defendant, City of Holyoke, had a duty to properly train and /or supervise Holyoke Fire Department Personnel in the safe and reasonable operation of Fire Department vehicles.
38. On the aforementioned date and time the defendant, City of Holyoke, breached its duty of care when it was negligent in failing to promulgate, maintain and/or enforce proper rules and/or procedures for the conduct of Fire Department personnel while on duty. It is alleged that the primary reason defendant, William P. Moran felt compelled to call in the false alarm on June 15, 2011 is that Fire Department personnel were failing to remain at fire stations, including Fire Station Number 6, and the false alarm was perceived to be necessary to cause said Fire Department personnel to return to their assigned station and/or stations.
39. As a direct and proximate result of the negligence of the defendant, City of Holyoke, the plaintiff, Marilyn Garcia, was involved in a motor vehicle accident and was caused to suffer physical injury and severe pain of body and anguish of mind; incur substantial expenses for medical care and attention; lose her ability to perform normal daily activities and suffer a diminution of her capacity to earn.

COUNT VIII: NEGLIGENCE OF THE DEFENDANT, WILLIAM P. MORAN

40. The plaintiff, repeats and realleges paragraphs one through thirty-nine of her Complaint and incorporates them by reference herein.
41. The defendant, William P. Moran, had a duty to perform his duties as Holyoke Fire Chief and/or Acting Fire Chief in a professional, fit and reasonably safe manner.

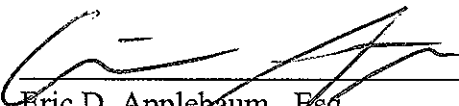
42. On the aforementioned date and time the defendant, William P. Moran, breached his duty of care when he so negligently and wrongfully dispatched a fire truck for an emergency that did not exist. The defendant, William P. Moran knew, or should have known, that there was no fire, nor other emergency, which warranted a fire truck to be sent out from Fire Station Number 6 at 640 Homestead Avenue in Holyoke. The defendant, William P. Moran, should have known, that a fire truck entering traffic and proceeding on a street increases the likelihood of motor vehicle accidents.
43. As a direct and proximate result of the negligence of the defendant, William P. Moran, the plaintiff, Marilyn Garcia, was involved in a motor vehicle accident and was caused to suffer physical injury and severe pain of body and anguish of mind; incur substantial expenses for medical care and attention; lose her ability to perform normal daily activities and suffer a diminution of her capacity to earn.

Wherefore, pursuant to Count I through Count VII, the Plaintiff's Complaint, the Plaintiff hereby demands judgment against the Defendant, City of Holyoke, in an amount which will adequately compensate her for her serious injuries, great pain of body and anguish of mind, significant expenses for medical care and attention, lost wages, the diminution of her capacity to earn and disability from her normal daily activities, plus costs, interest, attorney's fees and any such other relief as this court deems just and proper.

Wherefore, pursuant to Count VIII, the Plaintiff's Complaint, the Plaintiff hereby demands judgment against the Defendant, William P. Moran, in an amount which will adequately compensate her for her serious injuries, great pain of body and anguish of mind, significant expenses for medical care and attention, lost wages, the diminution of her capacity to earn and disability from her normal daily activities, plus costs, interest, attorney's fees and any such other relief as this court deems just and proper.

THE PLAINTIFF,
By Her Attorneys
FEIN, EMOND & APPLEBAUM, P.C.

Dated: June 10, 2014


Eric D. Applebaum., Esq.
52 Mulberry Street
Springfield, MA 01105
Tel:(413) 781-5400
Fax:(413) 739-0801
BBO#: 540690

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of various methods."

Signature of Attorney of Record

DATE:

June 10, 2014

A.O.S.C. 2003

TurboLaw (800) 518-8726 – c.g.f.

CIVIL ACTION COVER SHEET INSTRUCTIONS

SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

| CONTRACT | | | REAL PROPERTY | | | MISCELLANEOUS | | |
|----------|---|-----|--------------------|---|-----|---------------|--|-----|
| A01 | Services, Labor and Materials | (F) | C01 | Land Taking (eminent domain) | (F) | E02 | Appeal from Administrative Agency, G.L.c.30A | (X) |
| A02 | Goods Sold and Delivered | (F) | C02 | Zoning Appeal, G.L.c.40A | (F) | E03 | Claims against Commonwealth or Municipality | (A) |
| A03 | Commercial Paper | (F) | C03 | Dispute Concerning Title | (F) | E05 | Confirmation of Arbitration Awards | (X) |
| A08 | Sale or Lease of Real Estate | (F) | C04 | Foreclosure of Mortgage | (X) | E07 | G.L.c. 112, s.12S (Mary Moe) | (X) |
| A12 | Construction Dispute | (A) | C05 | Condominium lien & charges | (X) | E08 | Appointment of Receiver | (X) |
| A99 | Other (Specify) | (F) | C99 | Other (Specify) | (X) | E09 | General Contractor bond, G.L.c.149, ss.29, 29A | (A) |
| E03 | Claims against Commonwealth or Municipality | (A) | E03 | Claims against Commonwealth or Municipality | (A) | | | |
| *TORT | | | EQUITABLE REMEDIES | | | | | |
| B03 | Motor Vehicle Negligence- Personal Injury/Property Damage | (F) | D01 | Specific performance of contract | (A) | E11 | Workers' Compensation | (X) |
| B04 | Other Negligence- Personal Injury/Property Damage | (F) | D02 | Reach and Apply | (F) | E12 | G.L.c. 123A, s.12 (SDP Commitment) | (X) |
| B05 | Products Liability | (A) | D06 | Contribution or Indemnification | (F) | E14 | G.L.c.123A, s.9 (SDP Petition) | (X) |
| B06 | Malpractice-Medical | (A) | D07 | Imposition of Trust | (A) | E15 | Abuse Petition, G.L.c.209A | (X) |
| B07 | Malpractice-Other (Specify) | (A) | D08 | Minority Stockholder's Suit | (A) | E16 | Auto Surcharge Appeal | (X) |
| B08 | Wrongful death, G.L.c.229, s.2A | (A) | D10 | Accounting | (A) | E17 | Civil Rights Act, G.L.c.12, s.11H | (A) |
| B15 | Defamation (Libel-Slander) | (A) | D12 | Dissolution of Partnership | (F) | E18 | Foreign Discovery Proceeding | (X) |
| B19 | Asbestos | (A) | | | | E19 | Sex Offender Registry, G.L.c. 178M, s.6 | (X) |
| B20 | Personal Injury-Slip & Fall | (F) | D13 | Declaratory Judgment, G.L.c. 231A | (A) | E25 | Plural Registry (Asbestos cases) | |
| B21 | Environmental | (A) | D99 | Other (Specify) | (F) | E95 | **Forfeiture, G.L.c.94C, s.47 | (F) |
| B22 | Employment Discrimination | (F) | | | | E96 | Prisoner Cases | (F) |
| B99 | Other (Specify) | (F) | | | | E97 | Prisoner Habeas Corpus | (X) |
| E03 | Claims against Commonwealth or Municipality | (A) | | | | E99 | Other (Specify) | (X) |

* Claims against the Commonwealth or a municipality are type E03, Average Track, cases.

** Claims filed by the Commonwealth pursuant to G.L. c. 94C, s. 47 Forfeiture cases are type E95, Fast track.

TRANSFER YOUR SELECTION TO THE FACE SHEET.

EXAMPLE:

| CODE NO. | TYPE OF ACTION (SPECIFY) | TRACK | IS THIS A JURY CASE? |
|----------|--|-------|---|
| B03 | Motor Vehicle Negligence-Personal Injury | (F) | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

SUPERIOR COURT RULE 29

DUTY OF THE PLAINTIFF. The plaintiff or his/her counsel shall set forth, on the face sheet (or attach additional sheets as necessary), a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served on the defendant together with the complaint. If a statement of money damages, where appropriate is not filed, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(C).

DUTY OF THE DEFENDANT. Should the defendant believe the statement of damages filed by the plaintiff in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages which may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.