



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM



Date: May 12, 2021

To: Honorable Mayor and City Council Members

From: Lori Grigg Bluhm, City Attorney

Subject: Jeffrey Martin v. Troy et. al

Attached please find a lawsuit filed against the City of Troy and the Road Commission of Oakland County. This case was filed in the Oakland County Circuit Court, and assigned to Judge Yasmine Poles.

According to the complaint, Mr. Martin was a pedestrian travelling on Coolidge Highway on September 14, 2020. He alleges that he stepped into a pothole on the roadway, injuring his right foot. In addition to the alleged physical injury, he also claims that he suffers mental, and emotional damages, as well as financial damages for medical expenses and lost wages. The complaint asserts a state statutory claim of failing to maintain the roadway in reasonable repair; a public nuisance claim; and a negligence claim. He argues that governmental immunity is not applicable, and he seeks damages in excess of \$25,000.

The proposed resolution authorizes the City Attorney's Office to represent the City's interests. Please let us know if you have any questions or concerns.

THURSWELL LAW

1000 TOWN CENTER • SUITE 500
SOUTHFIELD, MICHIGAN 48075

21 MAY 11 PM 2:45

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HARRY L. THURSWELL
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GERALD E. THURSWELL*
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LINDSEY F. THURSWELL LEHR ***
OF COUNSEL

May 6, 2021

*CO, IL, NY & D.C.
**AZ & IL
***FL & IL
****IL
*****PA, WI, TX, AR, TN, MS



VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

City of Troy
500 W. Big Beaver Road
Troy, MI 48084

21 MAY 12 AM 8:46

Re: *Jeffery M. Martin vs. City of Troy, et al*
Case No.: 21-187739-NO; Hon. Yasmine I. Poles
Incident of 09/14/2020
Our File No.: 223643

Dear Sir/Madam:

Enclosed you will find the following in connection with the above-referenced matter:

- Summons
- Complaint
- Demand for Jury Trial

Thank you for your attention in this regard.

Very truly yours,

THE THURSWELL LAW FIRM, P.L.L.C.

CARY M. MAKROUER
For the Firm

CMM:ccb
Encls.

STATE OF MICHIGAN		SUMMONS	CASE NO.
6TH	JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE		2021-187739-NO 21- -NO
			JUDGE YASMINE I. POLES

Court address

1200 N. Telegraph Road, Department 404, Pontiac, MI 48341-0404

Court telephone no.
248-858-0344Plaintiff's name(s), address(es), and telephone no(s).
JEFFERY M. MARTIN,

Defendant's name(s), address(es), and telephone no(s).

CITY OF TROY
500 W. Big Beaver Road
Troy, MI 48084

v

Plaintiff's attorney, bar no., address, and telephone no.

CARY M. MAKROUER, P-26831
MELISSA D. BOATNER, P-81802
THURSWELL LAW
1000 Town Center, Suite 500
Southfield, MI 48075-1221; 248-354-2222 (FAX-2323)This case has been designated as an eFiling case, for more information please visit www.oakgov.com/efiling.

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ☐ this court, ☐ _____ Court, where

it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS**NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 5/3/2021	Expiration date* AUG 02 2021	Court clerk Lisa Brown
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

This case has been designated as an eFiling case, for more information please visit www.oakgov.com/efiling.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JEFFERY M. MARTIN,

Plaintiff,

vs.

2021-187739-NO

Case No.: 21- -NO
HON. JUDGE YASMINE I. POLES

CITY OF TROY AND OAKLAND
COUNTY ROAD COMMISSION,

Defendants.

CARY M. MAKROUER (P26831)
MELISSA D. BOATNER (P81802)
THE THURSWELL LAW FIRM, P.L.L.C.
Attorneys for Plaintiff
1000 Town Center, Suite 500
Southfield, MI 48075-1221
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cmakrouer@thurswell.com
mboatner@thurswell.com

*There is no other pending or resolved civil action arising
out of the transaction or occurrence alleged in the Complaint.*

COMPLAINT

NOW COMES Plaintiff, by and through his attorneys, THE THURSWELL LAW FIRM, P.L.L.C., and complaining against the above-named Defendants, state unto this Honorable Court as follows:

COUNT I – COMMON ALLEGATIONS

1. Plaintiff is a resident of the County of Oakland, State of Michigan.
2. Defendant, CITY OF TROY, is a municipal corporation, which regularly and systematically conducts business in the County of Oakland, State of Michigan, located at 500 W. Big Beaver Road, Troy, Michigan 48084.

3. Defendant, OAKLAND COUNTY ROAD COMMISSION, is a municipal corporation, which regularly and systematically conducts business in the County of Oakland, State of Michigan, located at 31001 Lahser Road, Beverly Hills, Michigan 48025.
4. On or about September 14, 2020, Plaintiff, JEFFERY M. MARTIN, was severely injured, due to the negligence and statutory violations of Defendants, while walking across the median on Coolidge Road, near the intersection of Maple Road.
5. On said date and at said location, Plaintiff stepped into a pot hole causing him to sustain serious physical, mental and emotional injuries, including, but not limited to injuries to his right foot.
6. At all times relevant, Plaintiff acted in a reasonable and prudent manner.
7. Governmental immunity does not apply, at all times mentioned herein, Defendants had a statutory duty and responsibility, pursuant to MCL 691.1402 and/or MCL 691.1402a, to maintain the road and/or sidewalk in reasonable repair so that it was reasonably safe and convenient for public travel.
8. Defendants breached said statutory duties and other duties owed to Plaintiff and the general public.
9. As a direct and proximate result of Defendants' breach of duties and statutory violations, Plaintiff sustained injuries and damages.
10. Defendants' acts and omissions complained of herein constitute negligence per se.
11. Defendants' acts and omissions complained of herein constitute nuisance per se.
12. Plaintiff served timely notice of said occurrence in compliance with MCL 691.1404.

13. All of the injuries and damages complained of herein were directly and proximately caused by Defendants' breach of duties and statutory violations and were incurred without comparative negligence or assumption of the risk on the part of Plaintiff.
14. The amount in controversy herein exceeds the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

COUNT II-STATUTORY VIOLATIONS
MCL 691.1402 AND/OR MCL 691.1402a

15. Plaintiff realleges and incorporates by reference herein all of the preceding paragraphs as though fully set forth herein.
16. Pursuant to MCL 691.1402 and/or MCL 691.1402a, Defendants had a duty to maintain the road and/or sidewalk in reasonable repair so that it was reasonably safe and convenient for public travel.
17. Defendants knew, or should have known, that the subject road and/or sidewalk had a defective and dangerous condition, was in disrepair and not reasonably safe and fit for travel.
18. Defendants had actual and/or constructive knowledge of the dangerous/defective road and/or sidewalk prior to the occurrence complained of herein and failed to remedy the condition within a reasonable time.
19. Defendants breached said statutory duties in at least one of the following ways:
 - a. Failing to periodically inspect roadways under its jurisdiction to discover possible dangers, defects, deterioration or damage;
 - b. Failing to promptly and correctly repair, resurface, reconstruct, and otherwise correct, repair, and maintain imperfections or other hazardous conditions that it knows or should have known exist on sidewalks under its jurisdiction it knows or should have known exist on roadways;
 - c. Failing to take all reasonable precautions to protect pedestrians who use roads and/or sidewalks under its jurisdiction from dangers that are foreseeable and

that would render any road and/or sidewalk unsafe or not reasonably fit for public travel; and

d. Others to be discovered.

20. As a direct and proximate result of Defendants' breach of duties and statutory violations, Plaintiff sustained injuries including, but not limited to:

- a. Severe bodily injuries, which were painful, disabling and necessitated medical care;
- b. Shock and emotional damage;
- c. Possible aggravation of pre-existing conditions and/or reactivation of dormant conditions;
- d. Inability to attend to his usual affairs; render services as formerly;
- e. Hampering of the Plaintiff's enjoyment of the normal pursuit of life as before;
- f. Injuries which are permanent to the degree that Plaintiff suffered a loss in ability to earn money as before, and will have impaired earning capacity in the future, continued pain and suffering, as well as permanency, all as a result of the negligence as hereinbefore alleged; and
- g. Others to be determined as discovery reveals.

21. As a direct and proximate result of Defendants' breach of duties and statutory violations, Plaintiff has been compelled to expend and become obligated for large sums of money for medical care and treatment, medicines, nursing services, physical therapy, and other types of medically related attention and may continue to incur the same in the future. Plaintiff has lost wages and will continue to lose such wages in the future. Plaintiff continues to suffer physical pain and discomfort from this incident. Plaintiff also suffered emotional and mental injuries as a result of this incident.

22. The amount in controversy herein exceeds the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

COUNT III – PUBLIC NUISANCE

23. Plaintiff realleges and incorporates by reference herein all of the preceding paragraphs as though fully set forth herein.

24. Defendants created an unsafe and hazardous condition on a public road and/or sidewalk.

25. That the said activities and/or condition(s) complained of herein constituted an unreasonable interference with a right common to all members of the general public.

26. That the said activities and/or condition(s) were harmful to the public health, created interference in the use of a way of travel, and otherwise interfered with those who came into contact with it in the exercise of a public right.

27. That the said activities and/or condition(s) constituted an impending danger to the public welfare.

28. That harm to the public is presumed to flow from the violation of a law enacted to preserve the public health, safety and welfare.

29. That Defendants owned and/or controlled the land and/or premises from which this nuisance arose.

30. That as a direct and proximate result of this nuisance, Plaintiff sustained injuries and damages as previously alleged herein.

31. The amount in controversy herein exceeds the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

COUNT IV - NEGLIGENCE

32. Plaintiff realleges and incorporates by reference herein all of the preceding paragraphs as though more fully set forth herein.

33. On said date and at said location, a hazardous and dangerous condition existed on the premises described herein that created an unsafe and dangerous condition for Defendants' invitee, Plaintiff, and others who encountered said premises.

34. On or about said date, Defendants owed duties to Plaintiff, and the general public, to maintain the premises described herein in reasonable repair so that it was reasonably safe and convenient for public travel in accordance with the common law, Michigan law and local ordinances, but breached and or violated said duties in at least one or more of the following particulars:

- a. After knowing of the dangerous and hazardous conditions existing on Defendants' premises, failed to correct same and/or warn of the dangerous conditions;
- b. Failed to make reasonable and proper inspections for dangerous and/or hazardous conditions existing on Defendants' premises;
- c. Failed to repair and/or correct and/or warn of any hazardous and/or dangerous conditions, of which Defendants, their agents, servants and/or employees had knowledge, or should have had knowledge, by a reasonable and proper inspection;
- d. Failed to instruct all of its agents, servants and/or employees on the proper care and maintenance of its premises, and/or in the reporting of dangerous and/or hazardous conditions on Defendants' premises;
- e. Failed to provide rules, procedures and/or provide for periodic safety inspections for the discovery and/or correction of dangerous and hazardous conditions on Defendants' premises;
- f. Failed to provide a safe and suitable place for those who encountered Defendants' premises to walk in safety;

THE THURSWELL LAW FIRM, P.L.L.C.
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- g. Failed to construct Defendants' premises in a manner suitable and safe under the circumstances;
- h. Failed to obtain and provide the adequate and proper maintenance and inspection of Defendants' premises, so that same would be in a reasonably safe condition for Defendant's invitees and all others who encountered Defendants' premises;
- i. Failed to obtain and provide for the adequate and proper maintenance and inspection of Defendants' premises so that conditions upon the land would be readily apparent to invitees upon casual inspection and would be readily apparent to all others who encountered Defendants' premises;
- j. Failed to observe all the duties of care imposed upon Defendants by the statutes of the State of Michigan, Ordinances of the City in which Defendants' premises are located and the common law in such case made and provided; and
- k. Others to be determined as discovery reveals.

35. On or about said date, Defendants were in possession and control of said premises.

36. As a direct and proximate result of Defendants' breach of duties, Plaintiff sustained injuries and damages as previously alleged herein.

37. The amount in controversy herein exceeds the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court award damages in his favor and against Defendants in whatever amount Plaintiff is found to be entitled, together with interest, costs and attorney fees.

THE THURSWELL LAW FIRM, P.L.L.C.
BY: /s/ *Cary M. Makrouer*
CARY M. MAKROUER (P-26831)
MELISSA D. BOATNER (P-81802)
Attorneys for Plaintiff
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DATED: May 3, 2021

This case has been designated as an eFiling case, for more information please visit
www.oakgov.com/efiling.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JEFFERY M. MARTIN,

Plaintiff,

vs.

2021-187739-NO

Case No.: 21- -NO
HON. JUDGE YASMINE I. POLES

CITY OF TROY AND OAKLAND
COUNTY ROAD COMMISSION,

Defendants.

CARY M. MAKROUER (P26831)
MELISSA D. BOATNER (P81802)
THE THURSWELL LAW FIRM, P.L.L.C.
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DEMAND FOR JURY TRIAL

Plaintiff, by and through his attorneys, THE THURSWELL LAW FIRM, P.L.L.C.,
hereby formally demands a trial by jury of the within cause.

THE THURSWELL LAW FIRM, P.L.L.C.

BY: */s/ Cary M. Makrouer*
CARY M. MAKROUER (P-26831)
MELISSA D. BOATNER (P-81802)
Attorneys for Plaintiff
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248-354-2222
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DATED: May 3, 2021

THURSWELL
L A W

1000 TOWN CENTER, SUITE 500
SOUTHFIELD, MICHIGAN
48075-1221

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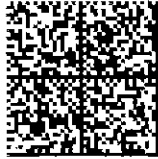


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RETURN RECEIPT (ELECTRONIC)

City of Troy
500 W. Big Beaver Road
Troy, MI 48084

*New York - Atty
Law Offices - Atty*



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