

Exhibit A

Rec'd 9-15-14
2:23 p.m. West Co.
Shirley

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Westmoreland

County

For Prothonotary Use Only:

Docket No:

4251 of 2014

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

CITY OF GREENSBURG

Lead Defendant's Name:

EDWARD WISNESKI

Are money damages requested? ☒ Yes ☐ No

Dollar Amount Requested: ☐ within arbitration limits
(check one) ☒ outside arbitration limits

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Bernard T. McArdle

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☒ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute:
Discrimination
☐ Employment Dispute: Other

☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

- ☐ Zoning Board
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other:

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA
CIVIL

WESTMORELAND COUNTY CIVIL COVER SHEET

CITY OF GREENSBURG

Judge: *McCormick*
Case No. *4251 of 2014*

Plaintiff(s)

Counsel: Bernard T. McArdle

vs.

Representing: Plaintiff

EDWARD WISNESKI and
ROBERT M. OWSIANY

Pa. I.D. No. : 33209

Firm: Stewart, McArdle, Sorice, Whalen, et al.

Address: 229 South Maple Avenue
Greensburg, PA 15601-3242

Defendant(s)

Phone No. (724) 838-1016, ext. 10

PLEASE ANSWER THE FOLLOWING:

- | | | | |
|----|--|------------------------------|--|
| 1. | Is the Amount In Controversy Less Than \$30,000? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. | Does This Case Involve Discovery of Electronically Stored Information? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. | Does This Case Involve a Construction Project? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

ENTRY OF APPEARANCE

TO THE PROTHONOTARY: Please enter my appearance on behalf of the Plaintiff/Petitioner/Appellant. Papers may be served at the address set forth above.

Signature: *Bernard T. McArdle* Date: *8/29/14*

Original – Prothonotary

Copies - Judge and Opposing Counsel

Revised 5/26/2010

CERTIFIED TRUE COPY OF ORIGINAL

Bernard T. McAule

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION

CITY OF GREENSBURG,
a municipal corporation,
Plaintiff,

vs.

EDWARD WISNESKI, an individual and
ROBERT M. OWSIANY, an individual,
Defendants.

No. 4251 of 2014

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service
Westmoreland Bar Association
P.O. Box 565
Greensburg, PA 15601
724-834-8490
<http://lrs.westbar.org>

| |
|-----------------------------------|
| FILED IN Prothonotary's Office |
| AUG 29 2014 |
| By: <u>Cu</u> |
| CLERK |

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION

CITY OF GREENSBURG,
a municipal corporation,
Plaintiff,

vs.

EDWARD WISNESKI, an individual and
ROBERT M. OWSIANY, an individual,
Defendants.

No. 4251 of 2014

COMPLAINT

AND NOW, comes the Plaintiff, the City of Greensburg, by and through its counsel,
Bernard T McArdle, to file the within Complaint and avers the following in support thereof, to wit:

1. The Plaintiff is the City of Greensburg, a Pennsylvania municipal corporation ("City") having an address at 416 S. Main Street, Greensburg, Pennsylvania.
2. The Defendant, Edward Wisneski ("Wisneski"), is an adult individual residing in Greensburg, Pennsylvania.
3. The Defendant, Robert M. Owsiany ("Owsiany"), is an adult individual and licensed attorney having an office address at 535 Smithfield Street, Pittsburgh, PA 15222.
4. Venue in lies in Westmoreland County, Pennsylvania, since Wisneski resides in Westmoreland County and the underlying factual events occurred in Westmoreland County.

CRIMINAL ARREST AND CONVICTION

5. On July 4, 2010, Wisneski was driving a motor vehicle in the City of Greensburg and was stopped by Greensburg Police Officer Shawn Denning ("Denning").

6. Denning observed Wisneski's automobile swerving into another lane of travel and almost hit another vehicle.

7. Denning made a traffic stop to determine if Wisneski was operating the vehicle under the influence of alcohol or drugs.

8. Denning approached the vehicle and directed Wisneski to shut off the engine to his vehicle, which Wisneski did.

9. Denning smelled a strong odor of alcohol coming from the vehicle and Wisneski slurred his speech when answering Denning's questions. Wisneski fumbled with his wallet when providing Denning with his driver's license.

10. Denning directed Wisneski to get out of his vehicle and advised him that he was going to conduct some field sobriety tests. Wisneski replied "this is going to be a long ride."

11. Wisneski then reached toward the ignition area in an attempt to start his car.

12. Denning then reached into the vehicle with his left hand to try to remove the keys and Wisneski grabbed Denning's left arm and pulled him towards the window while simultaneously trying to start the car.

13. Denning was afraid Wisneski would start the car and drag him down the road and in an attempt to free himself from Wisneski's grasp, Denning struck Wisneski with his right hand in a closed fist on the left side of Wisneski's face. Wisneski released Denning and started the car.

14. Officer Denning was assisted at the scene by Greensburg Police Officer Regina DePellegrin ("DePellegrin").

15. DePellegrin saw Denning reach into the car and get pulled in by Wisneski.

16. DePellegrin observed that Wisneski had the car running and had one hand on the

steering wheel and the other hand was reaching for the gear shift when DePellegrin used her TASER on Wisneski in drive stun mode in an attempt to prevent Wisneski from driving away.

17. Despoite being stunned by the TASER, Wisneski was able to put his vehicle in gear and fled from the scene.

18. Officers Denning and DePellegrin pursued Wisneski who was subsequently stopped and apprehended on Locust Valley Road in Hempfield Township, approximately 2 ½ miles from the site of the initial stop.

19. Wisneski was apprehended, handcuffed, and taken to the Greensburg Police Station where he was released 3 ½ to 4 hours later.

20. Wisneski was charged with criminal charges of driving under the influence, escape, fleeing or attempting to elude an officer, recklessly endangering another person and resisting arrest.

21. Wisneski defended these criminal charges at a jury trial in the Court of Common Pleas of Westmoreland County.

22. Wisneski defended the charges by claiming he fled from the police because he had been subject to excessive force at the initial traffic stop and he feared further police brutality.

23. On September 29, 2011, Wisneski was convicted on all charges.

24. Wisneski was subsequently sentenced to prison for 21 to 42 months of incarceration.

25. Wisneski appealed his conviction to the Superior Court of Pennsylvania which affirmed the conviction without opinion.

26. Wisneski petitioned the Pennsylvania Supreme Court for allowance of appeal. The

petition was denied.

FEDERAL LAWSUIT

27. On June 25, 2012, Wisneski filed a lawsuit in the United States District Court for the Western District of Pennsylvania at No. 12-864 alleging the City and its police officers violated his constitutional rights during his arrest on July 4, 2010.

28. Wisneski claimed he was punched, TASERed, and forcibly dragged from his vehicle which was excessive under the circumstances and that he was denied necessary medical care while in police custody.

29. Wisneski alleged that he sustained multiple scrapes, abrasions, contusions, bruises, and bleeding to his face and nose as a result of excessive and brutal treatment by the police.

30. Wisneski was represented by Owsiany throughout the lawsuit.

31. Both Wisneski and the City conducted extensive discovery with depositions and interrogatories.

32. The City filed a motion for summary judgment which Wisneski and Owsiany opposed.

33. By Memorandum Opinion and Order dated April 30, 2014, the court granted the City's motion for summary judgment and awarded judgment in favor of the City and its officers and against Wisneski and directed that the case be closed. Copies of the court's Memorandum Opinions and Order are attached as Exhibits 1 and 2.

34. The court found Wisneski's claim that he fled the scene of the initial traffic stop because he was the innocent victim of police brutality was unequivocally rejected by the jury in his criminal trial. (Exhibit 1, p. 26-27).

35. The court found Wisneski's claim of excessive force used during the initial traffic stop was barred by the Supreme Court decision of Heck v. Humphrey, 512 U.S. 477 (1994). (Exhibit 1, p. 27).

36. The court found Wisneski's claim of excessive force used at the second stop on Locust Valley Road where DePellegrin used a stun gun and he was forcibly removed from his vehicle was meritless because "No reasonable jury could conclude that either action, based upon the evidence of record, was objectively unreasonable," (Exhibit 1, p. 31), and "No reasonable jury could find, based upon this record, that the officers' actions were objectively unreasonable." (Exhibit 1, p. 37).

37. The court found Wisneski's claim that he was denied necessary medical care could not survive summary judgment because it was not pled, and even assuming it had been pled, Wisneski failed to produce sufficient evidence to support it. (Exhibit 1, p. 40).

38. The federal lawsuit terminated in favor of the City and its officers and against Wisneski.

39. No appeal was filed from the court's decision of April 30, 2014, and the time for filing an appeal has expired.

COUNT I - ABUSE OF PROCESS

40. The allegations in paragraphs 1 through 39 are incorporated herein as fully as if set forth at length.

41. The federal lawsuit was frivolous and meritless under both the facts and the law.

42. The federal lawsuit was terminated in favor of the City and its officers despite the

court construing the underlying facts in favor of Wisneski.

43. Wisneski and Owsiany abused the legal process by filing and pursuing the federal lawsuit when they knew or should have known:

- (a) That they could not prevail on the facts or the law;
- (b) That the claims were barred by Wisneski's conviction on all of the underlying criminal charges;
- (c) That the claims were barred by the Heck decision;
- (d) That the claims were groundless under existing or developing law;
- (e) That no reasonable jury could conclude that excessive force was used in the arrest and apprehension of Wisneski;
- (f) That no reasonable jury could conclude that necessary medical care was withheld from Wisneski;
- (g) That no reasonable jury could conclude that his constitutional rights were violated;
- (h) That no probable cause existed in bringing the federal lawsuit; and
- (i) That no reasonable jury could find in Wisneski's favor or award him damages.

44. The federal lawsuit was brought and pursued as a tactical weapon to coerce a settlement and not for the legitimate object of achieving a favorable verdict.

45. The federal lawsuit was a form of litigation extortion and was brought and pursued for the improper purpose of intimidating the City through litigation in the hope that the City would agree to pay a settlement ransom to avoid the expense, embarrassment and inconvenience of defending the frivolous claims.

46. The federal lawsuit was brought and pursued to accomplish a purpose for which the process was not designed, specifically, to coerce payment of money when their action had no lawful merit.

47. As a direct and proximate result of being wrongly sued in the federal lawsuit the City suffered harm by incurring attorney's fees and costs in defending the frivolous lawsuit in the amount of \$51,459.05.

48. In commencing and pursuing the federal lawsuit against the City, Wisneski and Owsiany acted maliciously, in bad faith, and with improper motive and reckless indifference to the interests of the City so as to warrant an award of punitive damages.

WHEREFORE, the City demands judgment in its favor and against the Defendants in an amount in excess of \$30,000.00.

COUNT II – MALICIOUS USE OF PROCESS/WRONGFUL
USE OF CIVIL PROCEEDINGS

49. The allegations in paragraphs 1 through 48 are incorporated herein as fully as if set forth at length.

50. Wisneski and Owsiany instituted and pursued the federal lawsuit with malicious motive and without probable cause.

51. The City is entitled to recovered damages under 42 Pa.C.S.A. § 8351.

WHEREFORE, the City demands judgment in its favor and against the Defendants in an amount in excess of \$30,000.00.

COUNT III – CIVIL CONSPIRACY

52. The allegations in paragraphs 1 through 51 are incorporated herein as fully as if set forth at length.

53. In commencing and pursuing the federal lawsuit Wisneski and Owsiany jointly combined or agreed to use the lawsuit for the malicious and wrongful purposes stated above.

54. In commencing and pursuing the federal lawsuit Wisneski and Owsiany jointly combined or agreed to maliciously and wrongly use the lawsuit to intimidate the City and to cause the injuries and damages stated above.

55. The federal lawsuit filed by Wisneski and Owsiany constitutes an overt act on their part to maliciously and wrongly cause the City the injuries and damages stated above.

56. In commencing and prosecuting the federal lawsuit Wisneski and Owsiany acted intentionally and without legal justification for the unlawful purpose of injuring the City as aforesaid.

57. In commencing and pursuing the federal lawsuit, Wisneski and Owsiany acted maliciously, in bad faith, and with improper motive and with reckless indifference to the interest of the City so as to award of punitive damages.

WHEREFORE, the City demands judgment in its favor and against the Defendants in an amount in excess of \$30,000.00.

Stewart, McArdle, Sorice, Whalen,
Farrell, Finoli & Cavanaugh, LLC

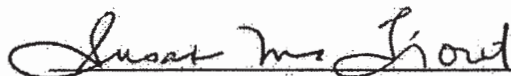
By Bernard T. McArdle
Bernard T. McArdle
Attorney for the City of Greensburg

229 South Maple Avenue
Greensburg, PA 15601-3242
(724) 838-1016, ext. 10
I. D. No. 33209

VERIFICATION

I verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

Date July 10, 2014



Susan M. Trout, City Administrator