

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

Susan Doxtator, Arlie Doxtator and
Sarah Wunderlich, as Special
Administrators of the Estate of
Jonathon C. Tubby,

Plaintiffs,

Case No. 19-CV-137

vs.

Erik O'Brien, Andrew Smith,
Todd J. Delain, Heidi Michel,
City of Green Bay, Brown County,
Joseph P. Mleziva, Nathan K.
Winisterfer, Thomas Zeigle,
Bradley A. Dernbach and John Does 1-5,

Defendants.

**DEFENDANTS ERIK O'BRIEN, ANDREW SMITH
AND CITY OF GREEN BAY'S CROSS-CLAIM AGAINST
DEFENDANT BROWN COUNTY**

Defendants Erik O'Brien, Andrew Smith and City of Green Bay (collectively "City Defendants"), by their attorneys, Gunta Law Offices, S.C., assert the following Cross-Claim against Defendant Brown County under Rule 13(g) F.R.C.P., herein alleges and shows to the Court as follows:

**CROSS-CLAIM AGAINST BROWN COUNTY FOR
INDEMNIFICATION AND CONTRIBUTION**

1. Realleges and incorporates by reference herein the answer of City Defendants to Plaintiffs' Amended Complaint. (Dkt. #35)
2. That on October 19, 2018, Green Bay Police Department initiated a traffic stop of a vehicle driven by Mr. Tubby, which led to the arrest of Mr. Tubby. After Mr. Tubby was arrested, Defendant O'Brien transported Mr. Tubby to the Brown County Jail.

3. That Green Bay Police Department maintained jurisdictional control of Mr. Tubby from the time of the initial arrest up until the City Officers entered the sally port of the Brown County Jail.
4. Upon information and knowledge, the Brown County Sheriffs Office maintains jurisdictional command and control over the Brown County Jail, including the parking lot, and sally port.
5. Upon information and knowledge, the Green Bay Police Officers had devised a plan for extracting Mr. Tubby from the Green Bay Police squad car inside the Brown County Jail sally port.
6. Upon information and knowledge, on October 19, 2018, prior to the shooting incident, Defendant Brown County Sheriff's Office Lieutenant Thomas Ziegler rejected the plan devised by the Green Bay Police Officers, asserted the County's jurisdiction over the sally port of the Brown County Jail, took command and control over the Tubby incident and devised and ordered a plan for extracting Mr. Tubby from the back of the Green Bay Police Officer's squad car.
7. At all relevant times, while in the Brown County Jail sally port on October 19, 2018, Green Bay Police Officer O'Brien was assisting and under the jurisdiction, direction, supervision and control of Lt. Ziegler and the Brown County Sheriff's Department, and as such is deemed by law under Wis. Stat. § 66.0313 to be an employee of Brown County for the purposes of Wis. Stat. § 895.46.
8. Once Lt. Ziegler took jurisdictional control, supervision and command of Officer O'Brien inside of the sally port; Brown County became responsible for any findings of liability relating to a failure of Green Bay Police Chief Andrew Smith to supervise Officer O'Brien inside of the Brown County Jail sally port.

9. As a result of the Brown Countys' jurisdictional control, Defendants Erik O'Brien and Andrew Smith are entitled to indemnification under Wis. Stat. § 895.46, and contribution, according to law, from Defendant, Brown County.
10. In addition, if Plaintiffs obtain a judgment against any of the City of Green Bay Defendants, Brown County is legally required to indemnify the City of Green Bay under Wis. Stats. § 895.46 and will be responsible for all attorney fees and costs incurred in the defense of the City of Green Bay Defendants from the point in time where Brown County Sheriff Officer Lt. Zeigle took command of the incident involving Mr. Tubby, until after the scene was cleared.

WHEREFORE, these Cross-Claiming City Defendants demand judgment against the Defendant, Brown County, for contribution and indemnification.

Dated at Wauwatosa, Wisconsin, this 26th day of March, 2019.

GUNTA LAW OFFICES, S.C.
Attorneys for Defendants Erik O'Brien,
Andrew Smith and City of Green Bay

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