



**OFFICE OF CORPORATION COUNSEL**

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*Client-Driven. Community-Focused.*

MARGARET C. DAUN  
Corporation Counsel

PAUL D. KUGLITSCH  
ANNE B. KEARNEY  
Deputy Corporation Counsel

ALAN M. POLAN  
KATHRYN M. WEST  
DALE R. NIKOLAY  
SCOTT F. BROWN  
TEDIA K. GAMIÑO  
DAVID N. FARWELL  
LISA M. PROCACCIO  
NELSON W. PHILLIPS III  
MELINDA S. LAWRENCE  
JUDD H. TABACK  
Assistant Corporation Counsel

TO: Marcellia Nicholson, Chairwoman,  
Milwaukee County Board of Supervisors

FROM: Margaret Daun, Corporation Counsel *MD*  
Anne Berleman Kearney, Deputy Corporation Counsel

DATED: June 17, 2020

RE: *Lloyd Johnson v. Milwaukee County,*  
Case No. 18-CV-1322

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We request that this matter be referred to the Committee on Judiciary, Safety, and General Services for approval of a request for settlement authority in the above matter. Authority is requested to serve a statutory offer of judgment in the amount of **\$50,001.00**.

This lawsuit arises out of a serious injury that occurred to Lloyd Johnson while he was a patient at Milwaukee County’s Behavioral Health Division (“BHD”) in 2012. While that injury was self-inflicted, it is alleged that personnel at BHD were responsible for the injury. That is because, according to the complaint, the means for that injury to occur, surgical scissors used by Mr. Johnson to sever his penis, were available to him allegedly because of the negligence of health care personnel at BHD and the County.

The County contends that Mr. Johnson’s claims are subject to the \$50,000 statutory cap for recovery found in Wis. Stat. § 893.80(3), which applies to recovery of “any damages, injuries or death in any action founded on tort” against a governmental entity or against officers or employees of a governmental entity who have acted in the course of their employment. Plaintiff disagrees.

Claims such as Mr. Johnson’s are excluded from the County’s insurance policy with Wisconsin County Mutual Insurance Corporation (“WCMIC”). Therefore, the County has entered into an agreement to receive representation from Hansen Reynolds in this case and, in particular, an attorney who represented the County in the prior federal suit filed in this matter, Case No. 14-cv-1408 (E.D. Wisconsin). The attorney’s fees representing the County in this case are being paid from the litigation reserve.

This request is different from the usual settlement approval request. In this case, there is no verbal or proposed settlement agreement with plaintiff. Instead, the County’s counsel are requesting authorization to serve plaintiff’s counsel with a formal Offer of Judgment under Wis. Stat. §

807.01(1). Consistent with this offer of judgment statutory provision, the County offers plaintiff the payment of a sum certain. Once served, plaintiff can accept that payment and thereby agree to dismiss the case in return for that payment. If this were to occur, no further action by the Committee or the County Board would be required to complete the settlement. If plaintiff were to decline to accept the payment of the sum certain and did not ultimately recover more than that sum, the plaintiff would not be entitled to costs; rather, the County may be entitled to payment by plaintiff of the statutory costs incurred by the County after non-acceptance of the offer. If plaintiff were to decline to accept that sum certain and recovered an amount equal to or more than the sum offered, the County would be required to pay the award and interest as outlined in Wis. Stat. § 807.01(4).

With this offer of judgment, the County will offer Mr. Johnson, who was injured at BHD, the statutory cap, which is the maximum that the County contends that he is owed, and provide a hedge against costs assessed should he pursue the case further and not receive more than the \$50,000 in recovery permitted by the statutory cap.

cc: MaryJo Meyers  
Kelly Bablitch  
Shakita LaGrant  
John Schneider  
Mike Lappen  
Janelle Jensen