

Davis & Gelshenen LLP

ATTORNEYS AT LAW

EXPERIENCED. TRUSTED. RECOMMENDED.

Daniel S. Davis
John J. Gelshenen, Jr.

Of Counsel
Robert B. Corris, S.C.

(affiliated, not a partnership)

CITY OF MILWAUKEE

2004 MAR 23 PM 2:39

RONALD L. EDWARDS
CITY CLERK

www.dgattorneys.com

MILWAUKEE OFFICE
735 N. Water Street
Suite 1440
Milwaukee, WI 53202
P: 414-271-1000
F: 414-272-8050

WHITEWATER OFFICE
239 E. Milwaukee Street
Whitewater, WI 53190
P: 262-473-6000
F: 262-473-8151

Writer's Direct Email:
jgelshenen@dgattorneys.com

CITY OF MILWAUKEE
RECEIVED
2004 MAR 23 PM 4:04
OFFICE OF
CITY ATTORNEY

March 22, 2004

Milwaukee City Clerk
200 E. Wells St. Room 205
Milwaukee, WI 53202

Re: C.I. File No. 04-S-26

Dear Clerk:

This will acknowledge receipt of the City's correspondence dated February 16, 2004.

The City's reliance on an exculpatory clause does not relieve it from negligence. Courts are reluctant to enforce exculpatory contracts - that is, contracts relieving a party from liability for harm caused by that party's own negligence. *Merton v. Nathan*, 108 Wis. 2d 205, 214, 321 N.W. 2d, 173(1982). Courts dislike exculpatory clauses because they see them as encouraging conduct that is below the accepted standard of reasonable care for the activity at issue, *Dobratz v. Thompson*, 161 Wis. 2d 502, 514, 468 N.W. 2d 654 (1991). Policies underlying contract law leave courts to honor private agreements; tort law seeks to impose liability on persons who create unreasonable risk of harm and compensate those person's victims.

The City's reliance on the exculpatory clause here is misplaced. First, the City's agent, CPS, and its parking lot security personnel, failed to adequately supervise and patrol the parking garage in question. On January 11, 2004 three cars were broken-into or vandalized in the City's garage. This is unacceptable. I will provide testimony based upon my conversations with the security personnel who advised me that this particular garage had repeated problems with vandals and criminals destroying/damaging cars. Moreover, parking a vehicle in a garage, for a fee, which is patrolled by security personnel, implies that the City undertook a duty of care to protect people and vehicles. The City breached this duty in this case.

Because the exculpatory clause is not enforceable and the City's agents fell below the standard of care, I expect the City to immediately pay my damages. Otherwise, set this matter

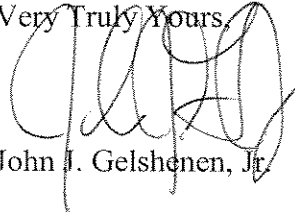
Davis & Gelshenen^{LLP}

March 22, 2004

Page 2

for a hearing and produce the exculpatory clause which the City is relying on and all documentation the City plans on using at the hearing.

Very Truly Yours,



John J. Gelshenen, Jr.

JJG/cad

cc: Grant Langley
Robert M. Overholt

P.S.

If I do not prevail at this "Hearing", I will appeal the decision or file an action in Small Claims Court against the City and/or its agents.

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735 North Water Street, Suite 1440
Milwaukee, Wisconsin 53202
414.271.1000/tel
414.272.8050/fax

January 27, 2004

City of Milwaukee
City Hall
Attn: Clerk Rm. 205
200 E. Wells St.
Milwaukee, WI 53202

CITY OF MILWAUKEE
RECEIVED
04 JAN 29 PM 3:05
OFFICE OF
CITY ATTORNEY

Re: Notice of Claim

Dear Clerk:

Please accept this letter as a Notice of Claim/Circumstances regarding damages sustained to my automobile on January 11, 2004 at a city owned parking garage on Plankinton Street in Milwaukee, Wisconsin.

I am demanding cost of repairs/replacement of my rear driver side window along with contents which were stolen from my vehicle. Ironically, the management company, CPS Parking, had three break-ins on this night. When a city representative contacted me regarding my claim (I believe her name was Ms. McGuire), she advised of numerous break-ins at that garage. This is quite disturbing. Obviously, CPS and or the City fell below the standard of care owed to me when I purchased a ticket to park in your garage. I expect CPS and or the City to pay for my damages which total approximately Three Hundred dollars (\$300.00). A copy of the repair estimate is enclosed herein along with a description of the stolen contents. I expect that the City will pay these damages promptly. If not, I intend to file suit against CPS and or the City. Thank you for your attention to this matter.

Very Truly Yours,


John J. Gelshenen, Jr.

JJG/cad
Enclosures

cc: CPS Parking (with enclosure)

CITY OF MILWAUKEE
RECEIVED
04 JAN 28 PM 3:36
CITY CLERK

received
1/22/04

Daniel S. Davis
John J. Gelshenen, Jr.

Robert B. Corris, S.C. *Of Counsel*
(affiliated, not a partnership)

735 North Water Street, Suite 1440
Milwaukee, Wisconsin 53202
414.271.1000/tel
414.272.8050/fax

January 19, 2004

CPS

Attn: Mark
100 E. Wisconsin Ave Suite 230
Milwaukee, WI 53202

Re: January 11, 2004 Car Damage and Theft

Dear Mark:

Enclosed please find the invoice of Lurie Glass in the amount of Two Hundred dollars and Seventy-Four cents (\$200.74) to replace the rear driver side window of my black 1997 Honda Accord. The car window was smashed while parked in CPS's parking garage on Plankinton Street on or about the night of January 10 or early morning of January 11, 2004. In addition to the window being smashed two MP3 CD player walkmans were stolen from the car.

I reported the afore mentioned to the security officers who were in charge of patrolling and ensuring the protection of the vehicle in CPS's parking ramp. They were obviously negligent when failing to patrol your parking ramp and ensuring that my vehicle would be protected. Because of their negligence, I have sustained out of pocket expenses and damages. Within five days of receipt of this letter I expect CPS to forward a check to me in the amount of Three Hundred dollars (\$300.00). These damages include the invoice herein enclosed and the value of each walkman, approximately Fifty dollars (\$50.00) a piece.

Should you have any questions, please do not hesitate to contact me.

Very Truly Yours,


John J. Gelshenen, Jr.

JJG/cad

LURIE GLASS

Auto • Residential • Commercial
 12000 West Wirth Street
 Milwaukee, Wisconsin 53222
 (414) 536-8000 • 1-800-589-8404

WORK ORDER
50111613
DATE
01-12-04

CASH
 WI

JOHN GELSHENEN
 CORNER OF WATER/MASON ST.
 MILWAUKEE, WI

JOB DATE
01-12-04

GARAGE	CHARGE	IN SHOP	MOBILE	M	T	W	TH	F	S	AM	PM	TIME	HOME PHONE
X	X		X	X									
INST.	CD	ACCOUNT #	POLICY NUMBER		P.O. NUMBER			SALES	WORK ORDER NO.	WORK PHONE			
5653	CASH							10	50111613	414	271	1000	
DATE OF LOSS			CAUSE			AUTHORIZED BY		DEDUCTIBLE	AGENT				
								0.00					
YEAR	MAKE	MODEL		BODY STYLE		V.I.N.		EFFECTIVE DATES					
7	HONDA	ACCORD, L X, DX, EX		4 DOOR SED									

QUANTITY	PART NO.	DESCRIPTION	SUP	LIST	PRICE	TOTAL
1	FD4897@	GTY DOOR GLASS	??	453.40	145.09	145.09
1		LABOR		45.00	45.00	45.00
PLEASE CALL 1/2 HOUR BEFORE ARRIVAL. (LOF-W/C-LYNN-1/12)						
<i>5491-1303-6367-4540</i> <i>m/c 8/05</i>						

PLEASE REMIT TO:
The Lurie Companies
P.O. Box 384
Milwaukee, Wisconsin 53201
Fed. I.D. #39-0440820

DEDUCTIBLE	
SUB TOTAL	190.09
SALES TAX	10.65
TOTAL	200.74

TERMS
 INSURANCE AND RETAIL: NET PAYABLE UPON RECEIPT OF INVOICE.
 WHOLESALE: NET 30 DAYS.

IF PAY FROM INVOICE. PLEASE RETURN INVOICE COPY OR
 VOICE NUMBER WITH REMITTANCE.

[Handwritten Signature]
 CUSTOMER SIGNATURE

ORIGINAL INVOICE

Warranty By The Lurie Companies, Inc.
 By Manufacturer Only.

Motor Vehicle repair trade practices are regulated by Wis. Adm. Code
 Chapter AG132, administered by the Trade Division, Wisconsin Dept.
 of Agriculture, 801 West Badger Road, Madison, WI 53713.

JAN 26 2004



*City owned
Mayers &
Phil - Mayer*

CPS Parking
100 E. Wisconsin Avenue
Suite 230
Milwaukee, WI 53202

Phone: 414 223 4722
Fax: 414 223 4137

January 23, 2004

Mr. John J. Gelshenen, Jr.
Davis & Gelshenen LLP
735 North Water Street, Suite 1440
Milwaukee, Wisconsin 53202

*Tammy →
Phil →*

Dear Mr. Gelshenen:

Thank you for reporting your January 11th vandalism claim. Please review a copy of an Incident Report that we attempted to prepare for you.

In an effort to clarify the correct CPS Parking structure, please identify the appropriate intersection of the parking structure that you parked in. Your letter indicates a parking structure on Plankinton Street (which may be our Grand Avenue Mall structure). Your business address indicates that you may have parked at either our 209 Mason or 720 N. Water structure. Upon receipt of the completed Incident Report, we will forward same to Mark Beutow, Milwaukee Police Department, District 1 Crime Prevention Officer, 749 West State Street, Room 214, Milwaukee, WI 53233.

As indicated on our parking tickets (copy attached) and monthly parking contracts, CPS Parking assumes no responsibility for loss or damage of the vehicle or its contents, however caused. We are returning a copy of your letter and the original of your work order.

We regret any inconvenience this incident may have caused you. If we can be of any further assistance, please give us a call at (414) 223-4722.

Sincerely,

Mark S. Doering
Operations Manager
CPS Parking
Enclosure

INCIDENT REPORT
For Documentation Only

Central Parking System

Central Parking System

City: Milwaukee

Location: _____

Date: 1/10/04

Attn: _____

Accident

Theft

Vandalism

Customers Name: JOHN J. GELSHEMEN, JR.

Address: 735 NORTH WATER STREET, SUITE 1440

City & State: MILWAUKEE, WI ZIP: 53202

Home Phone: _____ Business Phone: 414 271 1000

VEHICLE INFORMATION

Make: HONDA Model: ACCORD Year: 1997

License #: _____ State: _____

Damage: Fresh Old Noticed Previously, if so, by whom: _____

Person who parked the car: _____

Person who returned the car: _____

Scratch

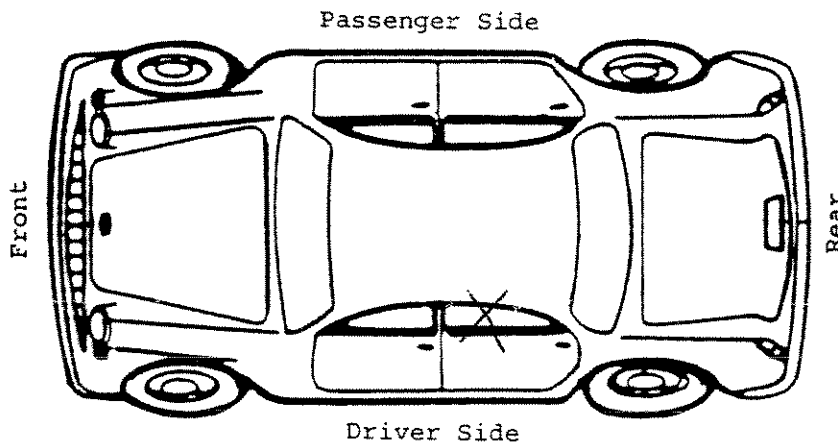
Dent

Acid Leak

Other

Description: _____

Indicate damage with an "X" in the appropriate place on the sketch below:



VANDALISM OR THEFT INFORMATION

Description: John said rear driver's side window broken out + 2 MP3 CD WALKMAN'S
Value estimated by customer: \$ 300.00 STOLEN FROM VEHICLE

The filling out of this report does not in any way admit liability on the part of Central Parking System for the above described accident.

Name of employee filling out report: MARK DOERING (DID NOT SEE VEHICLE)

119-719

720 N. WATER ST.
PARKING STRUCTURE

720 N. Water St.
Milwaukee, WI 53202



PLEASE LOCK YOUR CAR
CARS PARKED AT OWNERS RISK. CPS
PARKING ASSUMES NO RESPONSIBILITY
FOR LOSS OR DAMAGE TO
BILL OR CONTENTS.
8011628 SOUTHLAND PRINTING - SHREVEPORT, LA