

June 26, 2002

The Honorable Common Council
of the City of Milwaukee
Room 205, City Hall
Milwaukee, WI 53202

Dear Council Members:

Re: Settlement of the Lawsuit Entitled
Jose Aponte, v. City of Milwaukee and Pamela Heidemann
Case No. 00-C-0992; City Attorney No. 00-C-157

Enclosed please find a proposed resolution. We ask that it be introduced and referred to the Committee on Judiciary and Legislation, with the following recommendation:

Plaintiff, Jose Aponte, brought suit against the City of Milwaukee, Detective Pamela Heidemann and former Detective Michael Grogan, relative to his stop and search, which occurred on or about April 11, 1998. In short, on that date, the detectives were on routine patrol on the near south side, where gang-related activity, including shootings, had been reported. While on patrol, Detectives Heidemann and Grogan received a dispatch, which indicated that shots were fired nearby. They observed a vehicle, in which they ultimately determined that Mr. Aponte was a passenger, come from the direction where the shots were fired, turn suddenly into an alley, and then decrease significantly in speed. This appeared to be a "ducking" maneuver, which aroused their suspicions. The detectives stopped the vehicle, and conducted a pat-down search of its occupants. They interviewed the subjects, to further their investigation regarding the shots-fired report. They ultimately released the vehicle's occupants from the scene.

This lawsuit stems specifically from those police actions related to Mr. Aponte. He alleged that the officers unlawfully stopped him. Furthermore, he alleged that Detective

Heidemann used excessive force, while conducting his pat-down search, as she apparently herniated the site of his urostomy bag, which he wore beneath his clothing. Detective Heidemann admitted that she conducted a pat-down search of Mr. Aponte, as she would of any other similar suspect. While she conducted her search, she touched a hard, metallic object. She tugged on the object, to determine what it was, and to make sure it was not a weapon. As she performed this action, Mr. Aponte winced, and said that he had a "bag." Detective Heidemann immediately let go of the object, but it appears that her tug dislodged and/or herniated the site of the urostomy bag opening.

We brought a motion for summary judgment, seeking to have all claims against all defendants dismissed. The court ultimately dismissed former Detective Grogan, as he has since left the Milwaukee Police Department, and the plaintiffs never obtained proper service on him. Furthermore, the court dismissed the unlawful stop and search claims, as Judge Reynolds determined that it was proper for the detectives, in the circumstances described above, to stop the vehicle, search its occupants, and further investigate whether or not its occupants were involved with the shots-fired report. However, the court determined that there were questions of fact, relative to the reasonableness of Officer Heidemann's use of force, and thus determined that it could not decide that issue on a legal motion. Rather, the excessive-force issue would be presented to a jury for resolution.

In the interim, Judge Reynolds passed away, and the case was reassigned to Judge Adelman. Judge Adelman contacted the parties, and requested that the parties consider settlement of the matter.

A settlement offer of \$6,000 was made to the plaintiff. Quite simply, the cost of repairing Mr. Aponte's herniated urostomy site would be approximately \$14,000. Thus, a good faith offer was made, to simply contribute to the cost of repairing the damage accidentally caused by the officer.

In addition to attempting to resolve this matter, as a good-faith response to Judge Adelman's request, we also note that the outcome of a jury trial is always uncertain. Therefore, this office determined that it is in the best interests of the City of Milwaukee to enter into the above-described settlement agreement. The amount of \$6,000 includes all claims and damages, as well as any costs and attorney fees associated with this litigation. We have enclosed the appropriate resolution for your convenience.

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Very truly yours,

GRANT F. LANGLEY
City Attorney

SUSAN E. LAPPEN
Assistant City Attorney

GFL:SEL:kef
Enclosures
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