

MARYANN SUMI
CIRCUIT COURT, BR. 2

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STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

ESTATE OF BRITTANY ZIMMERMANN
By its Special Administrator,
KEVIN ZIMMERMANN
709 E. Becker Rd.
Marshfield, WI 54449,

2009 JAN 13 PM 1:44

DANE CO. CIRCUIT COURT

JEAN ZIMMERMANN
709 E. Becker Rd.
Marshfield, WI 54449

KEVIN ZIMMERMANN
709 E. Becker Rd.
Marshfield, WI 54449,

JORDAN GONNERING
S625 Karau Ave.
Marshfield, WI 54449,

Plaintiffs,

Case No:
Case Code: 30105

09070165

vs.

DANE COUNTY
c/o Robert Ohlsen, Dane County Clerk
210 Martin Luther King Jr. Blvd., #112
Madison, WI 53703,

KATHLEEN FALK,
Individually and as Dane County
Executive
210 Martin Luther King Jr. Blvd., #421
Madison, WI 53703,

RITA GAHAGAN
Madison, Wisconsin,

and

"XYZ" Insurance Company
Address Unknown,

Defendants.

SUMMONS

THE STATE OF WISCONSIN to each Defendant named above:

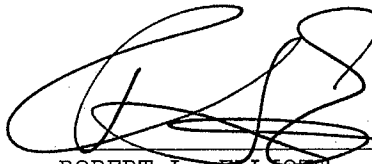
You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirement of the statutes. The Answer must be sent or delivered to the Clerk of Court, Dane County Courthouse, whose address is 215 S. Hamilton Street, Madison, WI 53703, and to ROBERT L. ELLIOTT, Attorney at Law, the Zimmermann Plaintiffs' attorney, whose address is 633 West Wisconsin Avenue, Suite 1001, Milwaukee, WI 53203, or KARL A. MEYER, JR., Attorney at Law, 205 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper Answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

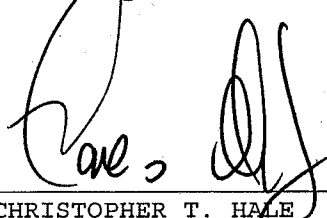
Dated this 6th day of January, 2009.

ROBERT L. ELLIOTT
Attorney for Plaintiffs, Estate of
Brittany Zimmermann, Jean
Zimmermann, and Kevin Zimmermann


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Gonnering


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ESTATE OF BRITTANY ZIMMERMANN
By its Special Administrator,
KEVIN ZIMMERMANN
709 E. Becker Rd.
Marshfield, WI 54449,

JEAN ZIMMERMANN
709 E. Becker Rd.
Marshfield, WI 54449

KEVIN ZIMMERMANN
709 E. Becker Rd.
Marshfield, WI 54449,

JORDAN GONNERING
S625 Karau Ave.
Marshfield, WI 54449,

Plaintiffs,

vs.

DANE COUNTY
c/o Robert Ohlsen, Dane County Clerk
210 Martin Luther King Jr. Blvd., #112
Madison, WI 53703,

KATHLEEN FALK,
Individually and as Dane County
Executive
210 Martin Luther King Jr. Blvd., #421
Madison, WI 53703,

RITA GAHAGAN
Madison, Wisconsin,

and

"XYZ" Insurance Company
Address Unknown,

Defendants.

Case No: **09CV0165**
Case Code: 30105

COMPLAINT

Plaintiffs plead:

1. At all times material hereto Kevin and Jean Zimmermann were adult individuals residing at 709 E. Becker Rd., Marshfield, WI 54449, and are the natural parents of Brittany Zimmermann.

2. At all times material hereto Brittany Zimmermann was a student attending the University of Wisconsin at Madison and was a tenant living at the rental property located at 517 W, Doty Street, Madison, WI.

3. Kevin Zimmermann is the Special Administrator of the Estate of Brittany Zimmermann, Wood County Circuit Court, Probate Division, Case No. 08-PR-155: "Estate of Brittany Zimmermann".

4. At all times material to Jordan Gonnering was an adult resident of the State of Wisconsin with a permanent mailing address of S265 Karau Avenue, Marshfield, WI 54449.

5. Upon information and belief, Dane County is a municipal entity, a County in the State of Wisconsin, with its principal place of business located in Madison, Wisconsin, c/o Robert Ohlsen, Dane County Clerk, 210 Martin Luther King Jr. Blvd., #112, Madison, WI 53703.

6. Upon information and belief, at all times material hereto Kathleen Falk was the County Executive of Dane County and, as such, is the chief executive officer of Dane County charged with overseeing and supervising the operations of each entity which comprises Dane County. Upon information and belief, she is a resident of Dane County.

7. Upon information and belief, at all times material hereto Rita Gahagan was an employee of Dane County and an employee of its 911 Call Center unit as an operator. Upon information and belief, she is a resident of Dane County.

8. Upon information and belief, "XYZ" Insurance Company is a liability insurance company with a principle place of business located in

Madison, Wisconsin. Upon information and belief, prior to April 2, 2008, "XYZ" Insurance Company issued its policy of liability insurance to Dane County indemnifying it and all of its employees, servants, agents, and officers for the conduct alleged herein. Such policy was in full force and effect at all times material hereto and by reason of such policy and the laws of the State of Wisconsin "XYZ" Insurance Company is a proper party Defendant hereto. "XYZ" is a fictional name used until such time as the identity of this insurance company is obtained. When it is obtained, the actual name of this insurance company will be substituted.

9. Upon information and belief, prior to April 2, 2008 Dane County assumed the duty to protect the citizens of Dane County, including the citizens of Madison, Wisconsin, and to provide for them immediate emergency protective services through its 911 Call Center in response to calls placed to the 911 Call Center.

10. Upon information and belief, on or about March 29, 2004 Dane County received a report from MTG Management Consultants concerning the Dane County 911 Call Center entitled: "DANE COUNTY 9-1-1 PUBLIC SAFETY COMMUNICATIONS CENTER STRATEGIC PLAN" dated March 29, 2004.

11. Such report identified a number of deficiencies and problems with the Dane County 911 Call Center including, but not limited to, outdated equipment, understaffing, inadequate training, inadequate supervision, and, among others, lack of equipment and computer programs necessary to identify the location of cell phone calls made to the Dane County 911 Call Center.

12. After receipt of such report, Dane County failed to address and correct any of these deficiencies listed in such report. Such failure to address and correct those deficiencies was done by Dane County deliberately and/or negligently on the part of Dane County.

13. Upon information and belief, Kathleen Falk, as the County Executive of Dane County, deliberately saw to it that Dane County did not correct these deficiencies listed in such report and denied funding to the 911 Call Center to correct such deficiencies.

14. Upon information and belief, such conduct on the part of Kathleen Falk was done within the scope of her authority and position as County Executive of Dane County, or, alternatively, upon information and belief, such conduct on the part of Kathleen Falk was done, without intending harm to any party, outside of the scope of her authority and position as County Executive of Dane County.

15. Subsequent to the receipt of such report, Dane County and Kathleen Falk, individually and in her position as County Executive of Dane County, failed to provide proper supervision, proper training, proper cell phone GPS equipment including, but not limited to, computer programs, to provide the proper 911 Call facilities available to Dane County in order to discharge its duty to Dane County citizens to provide emergency response services to 911 calls made to the Dane County 911 Call Center.

16. Upon information and belief, Dane County and Kathleen Falk, individually and as the Dane County Executive failed to establish proper policies between Dane County and the City of Madison Police Department concerning dispatch of police officers by the 911 Call Center in response to 911 calls received from cell phone callers.

17. On April 2, 2008 Brittany Zimmermann, then a resident of 517 W. Doty Street, Madison, Wisconsin, placed an urgent call using her cell phone to the Dane County 911 Call Center.

18. Such call was received at the 911 Call Center by Rita Gahagan in her capacity as a Dane County 911 Call Center operator.

19. Such call by Brittany Zimmermann was made while she was being attacked by an intruder in her residence.

20. Such call by Brittany Zimmermann contained obvious sounds which should have alerted any listener that Brittany Zimmermann was in distress and in need of immediate emergency response services.

21. Such call was negligently mis-handled by Rita Gahagan.

22. Rita Gahagan hung up on Brittany Zimmermann and did not call or otherwise dispatch emergency personnel to aid Brittany Zimmermann.

23. Such conduct on the part of Rita Gahagan was negligence or, alternatively, upon information and belief, such conduct on the part of Rita Gahagan was done, without intending harm to any party, outside of the scope of her authority and position as a Dane County 911 Call Center operator.

24. Such conduct on the part of Rita Gahagan was contrary to the published rules and procedures of the Dane County 911 Call Center.

25. Some time after Rita Gahagan hung up on Brittany Zimmermann's 911 call, Brittany Zimmermann was murdered by the intruder in her residence.

26. Upon information and belief, subsequent to the murder of Brittany Zimmermann on April 2, 2008, Defendants Dane County and Kathleen Falk negligently or intentionally caused further damages and emotional distress to Plaintiffs Kevin and Jean Zimmermann by:

- a. Publicly denying that there was a 911 call made by Brittany Zimmermann to the Dane County 911 Call Center prior to her death, when the Defendants knew as of 7:30 p.m. on April 2, 2008 that Brittany Zimmermann had made such a call;
- b. When the Dane County 911 Call Center finally did admit that such a call was received by the 911 Call Center, Dane County stated publicly that "nothing was heard" on the call

and, consistent with the policies and procedures of the Dane County 911 Call Center, the call was terminated by Rita Gahagan, at a time when the Dane County and the 911 Call Center knew that Rita Gahagan had not properly followed the published rules and procedures of the 911 Call Center in handling Brittany Zimmermann's 911 call, and that there were clear, audible sounds of distress on the phone call from Brittany Zimmermann which should have alerted Rita Gahagan that Brittany Zimmermann was in distress and in need of the immediate dispatch of police;

- c. Upon information and belief, on or about December 3, 2008 Dane County changed its prior position of protecting the Plaintiffs from further violation of their Constitutional Rights under Article 1, Section 9m of the Wisconsin Constitution by refusing to publish and otherwise disclose and distribute the tape of Brittany Zimmermann's 911 call, and advised the Dane County Circuit Court, in Dane County Circuit Court Case No. 08-CV-2161: "Milwaukee Journal Sentinel, et al v. Dane County, et al", that it was prepared to have such tape distributed to the media and made public;
- d. Upon information and belief, such change in Dane County's position was made by Dane County knowing that such release of the tape would imperil the police investigation of the murder of Brittany Zimmermann;
- e. Upon information and belief, such change in Dane County position was made by Dane County knowing that it exposed

Plaintiffs to further media scrutiny and emotional distress concerning the murder and death of Brittany Zimmermann;

- f. Upon information and belief, such change in Dane County's position was made by Dane County knowing that such position would cause Plaintiffs to incur attorney's fees and expenses to participate in the objections filed by the State of Wisconsin and the City of Madison, as well as the Dane County District Attorney's office to the release of such tape in Dane County Circuit Court Case No. 08-CV-2161: "Milwaukee Journal Sentinel, et al v. Dane County, et al".

27. Upon information and belief, such conduct by Dane County and Kathleen Falk has caused the Plaintiffs to incur attorneys fees and costs by compelling them and their legal counsel to participate in Dane County Circuit Court Case No. 08-CV-2161 to prevent the release of the tape of Brittany Zimmermann's 911 call and created a cause of action for negligence on behalf of such Plaintiffs against Dane County and Kathleen Falk which, after the procedures of Section 893.80 of the Wisconsin Statutes are completed, will be added to this Complaint.

28. Upon information and belief, such conduct on the part of each of the Defendants alleged to have been done within the scope of that Defendant's authority and position, was done in a failed attempt in the performance of ministerial duties imposed by law, and to respond to a known and compelling dangers that give rise to ministerial duties on the part of public officers or employees.

FIRST CAUSE OF ACTION - ESTATE OF BRITTANY ZIMMERMANN, JEAN ZIMMERMANN, KEVIN ZIMMERMANN - FIRST ACTS OF NEGLIGENCE

29. The allegations, statements and denials set forth above are restated and incorporated by reference herein.

30. Upon information and belief, such conduct on the part of Kathleen Falk, in her capacity as County Executive of Dane County, was negligence and a material factor in causing the death of Brittany Zimmermann and the emotional distress suffered by Brittany Zimmermann upon being hung up on by Rita Gahagan.

31. Upon information and belief, alternatively, such conduct on the part of Kathleen Falk was done, without intending harm to Brittany Zimmermann or anyone else, outside of the scope of her employment and authority as County Executive for Dane County and caused the death of Brittany Zimmermann and the emotional distress suffered by Brittany Zimmermann upon being hung up on by Rita Gahagan.

32. Upon information and belief, such conduct on the part of Rita Gahagan, in her capacity as an operator of the 911 Call Center, was negligence and was a material factor in causing the death of Brittany Zimmermann and the emotional distress suffered by Brittany Zimmermann upon being hung up on by Rita Gahagan.

33. Upon information and belief, such conduct on the part of Dane County, through its agents, servants, employees and officers, constitutes negligence on the part of Dane County and was a material factor in causing the death of Brittany Zimmermann and the emotional distress suffered by Brittany Zimmermann upon being hung up on by Rita Gahagan.

34. Subsequently, Dane County, through its County Executive, Kathleen Falk apologized to the Plaintiffs for the errors and admitted negligence of Dane County related to the handling of Brittany Zimmermann's 911 call by the Dane County 911 Call Center, as more particularly stated in Exhibit 1, attached hereto and incorporated by reference herein.

35. Upon information and belief, a Notice of Injury and Notice of Claim for Damages for such injuries to Brittany Zimmermann and for the death of Brittany Zimmermann was served on Dane County on or about June 19, 2008, a copy of which is attached hereto as Exhibit 2 and incorporated by reference herein, to which no response has been received from Dane County. This satisfies the requirements of §893.80.

SECOND CAUSE OF ACTION - ALL PLAINTIFFS - DECLARATORY JUDGMENT

36. The allegations, statements and denials set forth above are restated and incorporated by reference herein as though more fully set forth.

37. Upon information and belief, it is anticipated by the Plaintiffs that the Defendants may assert the \$50,000 monetary limitation set forth in Section 893.80(3) to some or all of the Plaintiffs causes of action against Dane County and its employees, servants, agents and officers.

38. It is the Plaintiffs belief that the \$50,000 monetary limitation set forth in Section 893.80(3) violates the Equal Protection Clause of the Wisconsin Constitution by treating differently municipal tort victims who suffer more than \$50,000 in injuries as a result of conduct by a municipality, from those who suffer less than \$50,000 in injuries.

39. The Plaintiffs are, therefore, "interested" as that term is used in Section 806.04(2) of the Wisconsin Statutes and are entitled to a Declaratory Judgment by this Court declaring the \$50,000 monetary limitations set forth in Section 893.80(3) as unconstitutional and therefore void and inapplicable to any of the Plaintiffs' claims set forth herein.

**THIRD CAUSE OF ACTION - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(AS TO JORDAN GONNERING ALONE)**

40. The allegations, statements, and denials set forth above are restated and incorporated by reference herein.

41. At all times material to this action, Brittany Zimmermann and Jordan Gonnering were engaged to be married and shared a household together at 517 W. Doty St, Madison, Wisconsin.

42. Brittany Zimmermann and Jordan Gonnering shared great love and affection for one another having first met as children as their parents were friends and their fathers' co-workers in Marshfield, Wisconsin.

43. The relationship between Brittany Zimmermann and Jordan Gonnering was a relationship of great love and affection and akin to the relationship of husband and wife, as they planned and carried out making a life together through their education, work and social endeavors.

44. On April 2, 2008, Brittany Zimmermann was assaulted and murdered by an unknown intruder in the apartment she shared with Jordan Gonnering.

45. Upon information and belief, Brittany Zimmermann was able to contact the 911 Call Center prior and/or during the assault, yet the call was negligently handled in violation of Call Center Policy resulting in a failure to dispatch police in response to Brittany Zimmerman's call for help.

46. Upon information and belief, the unknown intruder had sufficient time to complete his crime against Brittany Zimmermann due to the failure of the defendants, Dane County, Kathleen Falk, and Rita Gahagan, to properly handle and manage calls coming into the 911 Call Center. ~~It was the negligence of the defendants, Dane County, Kathleen Falk, and Rita Gahagan, that led to the death of Brittany Zimmermann.~~

47. Shortly after the murder of Brittany Zimmermann, Jordan Gonnering returned to their shared apartment and came upon Brittany Zimmermann.

48. When Jordan Gonnering discovered Brittany Zimmermann, he suffered natural shock, grief, and severe emotional injuries.

49. The actions of Dane County, Kathleen Falk, and Rita Gahagan led to the severe emotional injuries suffered by Jordan Gonnering.

50. The conduct of Dane County, Kathleen Falk, and Rita Gahagan was a cause in fact of Jordan Gonnering's injury.

51. On or about July 29, 2008, a Notice of Injury and Notice of Claim for Damages for injuries to Jordan Gonnering was served on Dane County, a copy of which is attached hereto as Exhibit 3. Dane County has not responded to Jordan Gonnering's Notice of Injury and Notice of Claim for Damages and thus the requirement of \$893.80 are satisfied.

WHEREFORE, Plaintiffs, Estate of Brittany Zimmermann, Jean Zimmermann and Kevin Zimmermann demand judgment, individually, against each of the Defendants, jointly and severally such as:

- a. Under their First Cause of Action for their compensatory damages, together with taxable costs and disbursements;
- b. Under their Second Cause of Action for Declaratory Judgment by this Court declaring the \$50,000 monetary limitations set forth in Section 893.80(3) as unconstitutional and therefore void and inapplicable to any of the Plaintiffs' claims set forth herein, together with Plaintiffs' compensatory damages, together with taxable costs and disbursements;
- c. For such other and further relief as the Court deems just and equitable.

Plaintiff, Jordan Gonnering demands judgment, individually, against each of the Defendants, jointly and severally such as:

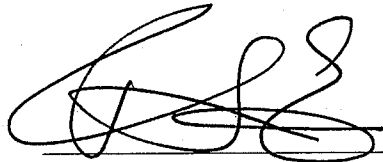
- a. Under his First Cause of Action for compensatory damages, together with taxable costs and disbursements;

b. For such other and further relief as the Court deems just and equitable.

Plaintiffs demand a trial of all fact issues by a jury.

Dated this 6th day of January, 2009.

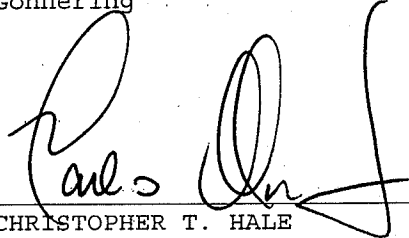
ROBERT L. ELLIOTT
Attorney for Plaintiffs, Estate of
Brittany Zimmermann, Jean
Zimmermann, and Kevin Zimmermann



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CHRISTOPHER T. HALE
KARL A. MEYER, JR.
Attorneys for Plaintiff, Jordan
Gonnering



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SBN: 1013862
KARL A. MEYER, JR.
SBN: 1023838

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205 E. Wisconsin Ave., Ste 300
Milwaukee, WI 53202
(414) 278-7000

COPY

NOTICE OF INJURY
AND
NOTICE OF CLAIM FOR DAMAGES

TO: Chairman of the Dane County Board/County Executive
Dane County
City-County Building, Room 421
210 Martin Luther King Jr. Blvd.
Madison, WI 53703-3345

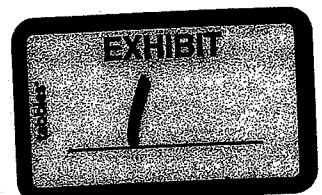
CLAIMANTS: Estate of Brittany Zimmermann
By Kevin Zimmermann
Special Administrator of the
Estate of Brittany Zimmermann
709 E. Becker Rd.
Marshfield, WI 54449

Kevin Zimmermann
709 E. Becker Rd.
Marshfield, WI 54449

Jean Zimmermann
709 E. Becker Rd.
Marshfield, WI 54449

PLEASE TAKE NOTICE that:

1. At all times material hereto Kevin and Jean Zimmermann were adult individuals residing at 709 E. Becker Rd., Marshfield, WI 54449, and are the natural parents of Brittany Zimmermann.
2. At all times material hereto Brittany Zimmermann was a student attending the University of Wisconsin at Madison and was a tenant living at the rental property located at 517 W, Doty Street, Madison, WI. At all times material hereto she was a resident of the home of her parents, 709 E. Becker Rd., Marshfield, WI 54449.
3. Kevin Zimmermann is the Special Administrator of the Estate of Brittany Zimmermann, Wood County Circuit Court, Probate Division, Case No. 08-PR-155: "Estate of Brittany Zimmermann".
4. Defendant, Dane County is a municipality in the Western District of Wisconsin.



5. Upon information and belief, at all times material hereto, Dane County was responsible for the supervision, training, funding and staffing of its employees, including, but not limited to, its agency known as the "9-1-1 Communications Center" and its employees, including, specifically, Rita Gahagan, a Dane County employee and a dispatcher in the Dane County 9-1-1 Communications Center.
6. Upon information and belief, Rita Gahagan is an adult individual residing in the Western District of Wisconsin and at all times material hereto was an employee of Dane County, specifically, as a dispatcher for the Dane County 9-1-1 Communications Center.
7. Upon information and belief, Defendants Dane County and Rita Gahagan at all times material hereto acted under color, authority and pretense of the laws, statutes, regulations, customs and/or usages of the State of Wisconsin, Dane County and under the authority of their official capacities.
8. Upon information and belief, each and every act or omission of Dane County and Rita Gahagan as alleged in this Complaint was done by them in the execution and implementation of an official policy, practice and/or custom of Dane County and the Dane County 9-1-1 Communications Center.
9. On and for some time prior to April 2, 2008 Brittany Zimmermann was a tenant of one of the rental units owned and operated by Wisconsin Management Co., Inc. at 517 W. Doty Street, Madison, Wisconsin.
10. Upon information and belief, the property known at 517 W. Doty Street, Madison, WI was known to law enforcement agencies and Dane County as located in a part of the City of Madison known to be frequented by vagrants, panhandlers and criminals who preyed upon, harassed, and sought to victimize residents in that area.

11. Upon information and belief, on April 2, 2008, while Brittany Zimmermann was in her rental unit at 517 W. Doty Street, an intruder gained entry to the premises of 517 W. Doty Street and entrance to the premises rented by Wisconsin Management Co., Inc. to Brittany Zimmermann and assaulted and ultimately murdered her.
12. Upon information and belief, in 2004 Dane County received a 145 page Strategic Plan from MTG Management Consultants of Seattle advising Dane County that it had serious deficiencies with its 9-1-1 Communications Center which must be corrected including, but not limited to, increasing the staff of the 9-1-1 Communications Center, changing the procedures of the 9-1-1 Communications Center, having stronger supervision and oversight over the 9-1-1 Communications Center and having the 9-1-1 Communications Center operated independent from the supervision and the funding of the Dane County Board.
13. Upon information and belief, since 2004, Dane County has not followed the warnings and recommendations of the Strategic Plan it received from MTG Management Consultants of Seattle and has not further studied or properly supervised the operations of its 9-1-1 Communications Center, nor has Dane County employed the software it purchased and possesses which would allow it to study the effectiveness and efficiency of its 9-1-1 call system.
14. Upon information and belief, since 2004, Dane County has negligently failed to properly fund the 9-1-1 Communications Center, has failed to has failed to review and create sufficient mandatory, non-discretionary rules and regulations which must be followed by its 9-1-1 operators, has negligently failed to properly supervise the employees, including the operators of the 9-1-1 Communications Center, to make certain that they follow the mandatory, non-

discretionary rules it did create, has negligently failed to properly staff the 9-1-1 Communications Center, has failed to properly train the employees of its 9-1-1 Communications Center, and has negligently failed to properly respond to the Complaints of its employees of lack of training, staffing, funding or supervision.

15. Upon information and belief, on and before April 2, 2008 the Dane County 9-1-1 Communications Center was able to receive a 9-1-1 call from a cell phone and identify the callers name, cell phone telephone number and location.

16. Upon information and belief, in conjunction with the City of Madison Police Department, the Dane County 9-1-1 Communications Center did create some mandatory, non-discretionary rules and regulations that much be followed by all 9-1-1 operators which required:

17. If an operator receives a 9-1-1 call and does not hear anyone on the line, the operator is required to not hang up, to keep the line open and to dispatch appropriate police resources to the location of the call;

a. Any 9-1-1 call received from a cell phone which is disconnected before completed or which cannot be understood by the 9-1-1 operator must be called back by the 9-1-1 operator and, if the dispatcher has reason to believe police services are needed, the dispatcher must dispatch appropriate police resources to the scene; and

b. If the operator calls back to a disconnected 9-1-1 call and cannot get an answer, the operator is required to dispatch police resources to the location of the call.

c. Upon information and belief, during the course of being assaulted, Brittany Zimmermann placed a 9-1-1 call to the Dane

County 9-1-1 Communications Center, a call which was handled by Rita Gahagan.

18. Upon information and belief, this call from Brittany Zimmermann to the 9-1-1 Communications Center lasted approximately 90 seconds.
19. Upon information and belief, using the equipment of the 9-1-1 Communications Center Rita Gahagan was able to identify Brittany Zimmermann's name, her cell phone telephone number and her location at 517 W. Doty Street.
20. Upon information and belief, Brittany Zimmermann's location at 517 W. Doty Street was approximately 4-5 blocks from a City of Madison Police Station.
21. Upon information and belief, Brittany Zimmermann's location at 517 W. Doty Street was widely known in the Madison community and among law enforcement and Dane County and its agencies including, but not limited to the Dane County 9-1-1 Communications Center to be a location frequented by vagrants, panhandlers, drug users and criminals.
22. Upon information and belief, the location of Brittany Zimmermann at 517 W. Doty Street was known to Dane County, the Dane County 9-1-1 Communications Center and Rita Gahagan as a location in the City of Madison which generates a high number of serious, legitimate calls to the Dane County 9-1-1 Communications Center which require a dispatch of appropriate police resources to the scene of the calls.
23. Upon information and belief, during the 9-1-1 call made by Brittany Zimmermann to the Dane County 9-1-1 Communications Center and handled by Rita Gahagan, information was obtained during the call that would lead any Dane County 9-1-1 Communications Center operator to reasonably believe that police services were needed and which would require, under the laws, rules and regulations of Dane

County that such operator, operating under the mandatory, non-discretionary rules and regulations that must be followed by all Dane County 9-1-1 Communications Center operators to dispatch police to Brittany Zimmermann's location and to so advise Brittany Zimmermann and to keep the line open until police arrived.

24. Upon information and belief, contrary to the mandatory, non-discretionary rules and regulations of Dane County applicable to Dane County 9-1-1 Communications Center operators, after approximately 90 seconds, Rita Gahagan negligently hung up on Brittany Zimmermann, did not dispatch police or any other responding authorities to Brittany Zimmermann's locations, did not call Brittany Zimmermann back and forgot about the call from Brittany Zimmermann.

25. Upon information and belief, some time later Brittany Zimmermann was murdered by the intruder.

26. Upon information and belief, Dane County has admitted that in handling the 9-1-1 call from Brittany Zimmermann to the Dane County 9-1-1 Communications Center Rita Gahagan failed to follow the mandatory rules and regulations of Dane County that must be followed by all Dane County 9-1-1 Communications Center operators.

27. Upon information and belief, at all times material hereto the conduct, acts and omissions of Dane County and Rita Gahagan were done under color, authority and pretense of the laws, statutes, regulations, customs and usage of the State of Wisconsin and Dane County and under the authority of their official capacities and under color of law.

28. Upon information and belief, the conduct of Rita Gahagan described above violated the clear rules and regulations of Dane County applicable to 9-1-1 Communications Center operators which are

applicable to and must be followed by 9-1-1 Communications Center operators without the exercise of discretion. Such conduct was far removed from the ordinary course of her duties as a Dane County 9-1-1 Communications Center operator, outside any discretionary authority she had to act, and does not entitle her to a defense of a claim of qualified immunity or any other immunities.

29. Upon information and belief, such conduct on the part of Dane County and Rita Gahagan described above was negligence and caused severe and grievous emotional distress to Brittany Zimmermann by causing her to realize that her call for help while she was being attacked by an intruder would not be responded to by public authorities, and thereby deprived Brittany Zimmermann of her constitutional rights to life and liberty including, but not limited to, the right to be free of emotional distress guaranteed to her by the Fifth and Fourteenth Amendments to the United States Constitution, and caused her death.

30. Brittany Zimmermann's constitutional rights described in paragraph 39 were clearly established at the time of the violations and wrongful conduct of Dane County and Rita Gahagan alleged above; and Dane County and Rita Gahagan knew or should have known of such rights of the Plaintiff and knew or should of known that their wrongful and illegal conduct violated Brittany Zimmermann's rights in that regard.

31. Such conduct of the part of Dane County and Rita Gahagan, acting under color of law, regulations and ordinances of Dane County, negligently, recklessly, intentionally and in bad faith deprived Brittany Zimmermann of her rights, privileges and immunities secured and guaranteed to her by the Fifth and Fourteenth Amendments of the

United States Constitution in that it deprived her of her right to life and liberty.

32. Brittany Zimmermann's rights described above were clearly established at the time of the violations and wrongful conduct alleged in this Complaint by Dane County and Rita Gahagan. Dane County and Rita Gahagan knew or should have known of Plaintiffs rights and knew or should have known that their wrongful and illegal conduct violated such rights of the Plaintiff.

33. As a direct and proximate result of the illegal and wrongful acts of Dane County and Rita Gahagan, Brittany Zimmermann suffered grievous and extreme emotional distress until the moment of her death, and her ultimate death.

34. Upon information and belief, Dane County permitted, encouraged, tolerated and ratified a pattern and practice of its 9-1-1 Communications Center of it being understaffed, its staff being untrained and/or under-trained with regard to the mandatory, non-discretionary rules applicable to 9-1-1 operators, being under and improperly supervised such that its 9-1-1 Communications Center's operators were either unaware of or not required to abide by the mandatory, non-discretionary rules and procedures applicable to, or which should have been implemented and made applicable to the operators of the Dane County 9-1-1 Communications Center.

35. Upon information and belief, such acts, omissions and systematic deficiencies engaged in by Dane County with regard to its 9-1-1 Communications Center constitute policies, practices and customs of Dane County which caused its employees operating the Dane County 9-1-1 Communications Center to disregard the laws, rules and regulations governing the operations of operators at the 9-1-1 Communications Center.

36. Upon information and belief, as a direct, proximate and legal result of such illegal and wrongful acts, omissions and systematic deficiencies, policies, practices and customs of Dane County, Brittany Zimmermann was deprived of her constitutional right to life and liberty including, but not limited to, the right to be free of severe and grievous emotional distress, guaranteed to her by the Fifth and Fourteenth Amendments to the United States Constitution.

37. Such conduct on the part of Dane County and Rita Gahagan caused the Plaintiffs, Kevin and Jean Zimmermann to lose the love, society and companionship of their daughter, Brittany Zimmermann and caused them to incur medical and funeral expenses, entitling the Plaintiffs to compensatory damages under Sec. 895.04, Wis. Stats., and to punitive damages for the intentional disregard of their rights, contrary to Sec. 895.043, Wis. Stats.

Claimant Estate of Brittany Zimmerman makes claim against Dane County and Rita Gahagan for:

Abridgment of 5th and 14th Amendment Rights \$10,000,000.00

Emotional Distress of Brittany Zimmermann \$20,000,000.00

Claimants Kevin and Jean Zimmermann make claim against Dane County and Rita Gahagan for:

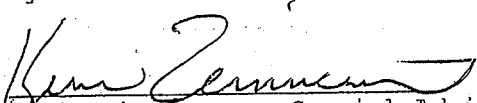
Wrongful Death of Brittany Zimmermann \$20,000,000.00

Medical and Funeral Expenses \$10,000.00

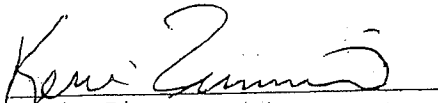
Dated this 6 day of June, 2008.

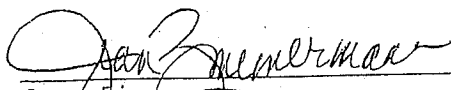
Estate of Brittany Zimmermann

By:



Kevin Zimmermann, Special Administrator of
the Estate of Brittany Zimmermann


Kevin Zimmermann


Jean Zimmermann

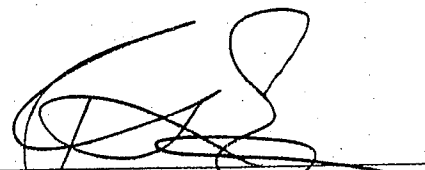

ROBERT L. ELLIOTT, Attorney
for Claimants

ROBERT L. ELLIOTT
Attorney at Law
#1013862
633 West Wisconsin Avenue, Suite 1001
Milwaukee, WI 53203
(414) 225-9000

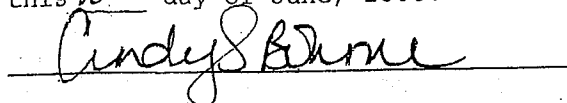
STATE OF WISCONSIN)
) SS
MILWAUKEE COUNTY)

ROBERT L. ELLIOTT being duly sworn on oath deposes and says:

That he is the attorney for the above named claimant and that he makes this Affidavit in claimant's behalf being duly authorized to do so; that he is a resident of the City and County of Milwaukee, State of Wisconsin; that he has read the foregoing Notice of Injury and Notice of Claim for Damages and believes upon information and belief that the matters stated therein are true. That the source of affiant's information are statements made by the claimant and that he has been duly authorized to verify this Notice of Injury and Notice of Claim for Damages.


ROBERT L. ELLIOTT

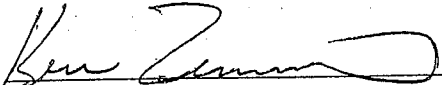
Subscribed and sworn to before me
this 10th day of June, 2008.


Cindy S. Boone

Notary Public, State of Wisconsin
My Commission Expires: 1-5-09

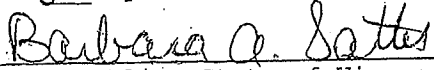
STATE OF WISCONSIN)
) SS
WOOD COUNTY)

KEVIN ZIMMERMANN, being duly sworn on oath deposes and says: That she is an adult resident of the State of Wisconsin; that she has read the foregoing Notice of Injury and Notice of Claim for Damages and believes upon information and belief that the matters stated therein are true.



KEVIN ZIMMERMANN

Subscribed and sworn to before me
this 6th day of June, 2008.




Notary Public, State of Wisconsin
My Commission Expires: 7-27-08

CITY OF WOOD
STATE OF WIS.

STATE OF WISCONSIN)
) SS
WOOD COUNTY)

JEAN ZIMMERMANN, being duly sworn on oath deposes and says: That she is an adult resident of the State of Wisconsin; that she has read the foregoing Notice of Injury and Notice of Claim for Damages and believes upon information and belief that the matters stated therein are true.


JEAN ZIMMERMANN

Subscribed and sworn to before me
this 6th day of June, 2008.

Barbara C. Satter
Notary Public, State of Wisconsin
My Commission Expires: 7-27-08
CITY OF WOOD
STATE OF WI



DANE COUNTY

Kathleen M. Falk
County Executive

May 6, 2008

Kevin & Jean Zimmermann
709 East Becker Road
Marshfield, Wisconsin 54449

Dear Mr. & Mrs. Zimmermann:

I write to express my deep sorrow over the death of your daughter, Brittany. As a mother, I cannot imagine the grief and anger I would feel if I were to learn that my son had been murdered.

I am currently reviewing the 911 Center's handling of the calls related to this terrible crime. Representing Dane County government, I do owe you and the public an apology for any errors related to the Center's work on that call. The system did not work as it should. In terms of what went wrong, I do not believe anyone erred intentionally. I am enclosing a document that identifies and describes, to the extent we can at this stage of the investigation, those errors.

The communicator has a solid, twenty-year work record. In light of the communicator's competence, we are looking at every aspect of the system to determine if anything in our equipment or training or processes contributed to the failures I have described. With our partners at Madison Police Department, we will also discuss whether we should dispatch police more often to what seem to be 911 wireless calls made in error.

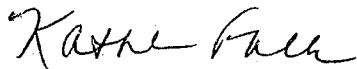
I have asked the District Attorney's Victim & Witness Unit to review a draft of this letter. I must avoid disclosing some information to anyone -- even you, who deserve as much information as soon as possible -- that could hinder the investigation or prosecution of this case. In addition to this letter, I am enclosing the latest public statement with everything we believe we can release. As soon as we can share more information with you, we will.

As I have followed this case, I am always struck by the grace with which you have handled this unspeakable tragedy. Clearly, your daughter lived her life with the grace she had learned



from you. That is why she is so widely and deeply grieved in Madison and why her loss is so awful. I am so sorry for your loss.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen Falk".

Kathleen M. Falk
Dane County Executive

KMF:gh

/Enclosure

h:\exec\tw\pr\08\zimmermann\zimmermann.ltr

**NOTICE OF INJURY
AND
NOTICE OF CLAIM FOR DAMAGES**

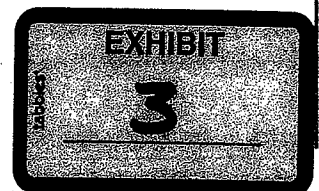
**To: Chairman of the Dane County Board/County Executive
Dane County
City-County Building, Room 421
210 Martin Luther King, Jr. Boulevard
Madison, Wisconsin 53703-3345**

CLAIMANT:

**Jordan C. Gonnering
S625 Karau Avenue
Marshfield, Wisconsin 54449**

PLEASE TAKE NOTICE that:

1. Jordan C. Gonnering ("Mr. Gonnering") is an adult individual residing at S625 Karau Avenue, Marshfield, Wisconsin 54449.
2. At all times material hereto Mr. Gonnering and Brittany Zimmermann ("Ms. Zimmermann") were students attending the University of Wisconsin - Madison and were tenants living at the rental property located at 517 West Doty Street, Madison, Wisconsin.
3. At all times material hereto, Mr. Gonnering and Ms. Zimmermann were engaged to be married and lived many aspects of their life as husband and wife and held deep love and affection for one another.
4. Defendant Dane County is a municipality in the Western District of Wisconsin.
5. Upon information and belief, at all times material hereto, Dane County is responsible for the supervision, training, funding and staffing of its employees including, but not limited to, its agency known as the "9-1-1 Communications Center" and its employees including, specifically, Rita



Gahagan ("Ms. Gahagan"), a Dane County employee and a dispatcher in the Dane County 9-1-1 Communications Center.

6. Upon information and belief, defendant Ms. Gahagan is an adult individual residing in the Western District of Wisconsin and at all times material hereto was an employee of Dane County, specifically, as a dispatcher for the Dane County 9-1-1 Communications Center.

7. Upon information and belief, defendants Dane County and Ms. Gahagan at all times material hereto acted under color, authority and pretense of the laws, statutes, regulations, customs and/or usages of the State of Wisconsin, Dane County and under the authority of their official capacities.

8. Upon information and belief, each and every act or omission of Dane County and Ms. Gahagan as alleged in this Complaint was done by them in the execution and implementation of an official policy, practice and/or custom of Dane County and the Dane County 9-1-1 Communications Center.

9. On or for some time prior to April 2, 2008, Mr. Gonnering and Ms. Zimmermann were tenants in a rental unit owned and operated by Wisconsin Management Co., Inc., at 517 West Doty Street, Madison, Wisconsin.

10. Upon information and belief, the property known at 517 West Doty Street, Madison, Wisconsin, was known to law enforcement agencies and Dane County as located in a part of the City of Madison known to be frequented by vagrants, panhandlers and criminals who preyed upon, harassed, and sought to victimize residents in that area.

11. Upon information and belief, on April 2, 2008, while Ms. Zimmermann was in her rental unit at 517 West Doty Street, an intruder gained entry to the premises of 517 West Doty Street

and entrance to the premises rented by Wisconsin Management Co., Inc. to Ms. Zimmermann and assaulted and ultimately murdered her.

12. Upon information and belief, in 2004 Dane County received a 145-page Strategic Plan from MTG Management Consultants of Seattle advising Dane County that it had serious deficiencies with its 9-1-1 Communications Center which must be corrected including, but not limited to, increasing the staff of the 9-1-1 Communications Center, changing the procedures of the 9-1-1 Communications Center, having stronger supervision and oversight over the 9-1-1 Communication Center and having the 9-1-1 Communications Center operated independent from the supervision and the funding of the Dane County Board.

13. Upon information and belief, since 2004, Dane County has not followed the warning and recommendations of the Strategic Plan it received from MTG Management Consultants of Seattle and has not further studied or properly supervised the operations of its 9-1-1 Communications Center, nor has Dane County employed the software it purchased and possesses which would allow it to study the effectiveness and efficiency of its 9-1-1 call system.

14. Upon information and belief, since 2004, Dane County has negligently failed to properly fund the 9-1-1 Communications Center, has failed to review and create sufficient mandatory, non-discretionary rules and regulations which must be followed by its 9-1-1 operators, has negligently failed to properly supervise the employees, including the operators of the 9-1-1 Communications Center, to make certain that they follow the mandatory, non-discretionary rules it did create, has negligently failed to properly staff the 9-1-1 Communications Center, has failed to properly train the employees of its 9-1-1 Communications Center, and has negligently failed to

properly respond to the complaints of its employees of lack of training, staffing, funding or supervision.

15. Upon information and belief, on and before April 2, 2008, the Dane County 9-1-1 Communications Center was able to receive a 9-1-1 call from a cell phone and identify the caller's name, cell phone telephone number and location.

16. Upon information and belief, in conjunction with the City of Madison Police Department, the Dane County 9-1-1 Communications Center did create some mandatory, non-discretionary rules and regulations that must be followed by all 9-1-1 operators which required:

- a. If an operator receives a 9-1-1 call and does not hear anyone on the line, the operator is required to not hang up, to keep the line open and to dispatch appropriate police resources to the location of the call;
- b. Any 9-1-1 call received from a cell phone which is disconnected before completed or which cannot be understood by the 9-1-1 operator must be called back by the 9-1-1 operator and, if the dispatcher has reason to believe police services are needed, the dispatcher must dispatch appropriate police resources to the scene; and
- c. If the operator calls back to a disconnected 9-1-1 call and cannot get an answer, the operator is required to dispatch police resources to the location of the call.

17. Upon information and belief, during the course of being assaulted, Ms. Zimmermann placed a 9-1-1 call to the Dane County 9-1-1 Communications Center, a call which was handled by Ms. Gahagan.

18. Upon information and belief, this call from Ms. Zimmermann to the 9-1-1 Communications Center lasted approximately 90 seconds.

19. Upon information and belief, using the equipment of the 9-1-1 Communications Center Ms. Gahagan was able to identify Ms. Zimmermann's name, her cell phone telephone number and her location at 517 West Doty Street.

20. Upon information and belief, Ms. Zimmermann's location at 517 West Doty Street was approximately 4-5 blocks from a City of Madison Police station.

21. Upon information and belief, Ms. Zimmermann's location at 517 West Doty Street was widely known in the Madison community and among law enforcement and Dane County and its agencies including, but not limited to, the Dane County 9-1-1 Communications Center to be a location frequented by vagrants, panhandlers, drug users and criminals.

22. Upon information and belief, the location of Ms. Zimmermann at 517 West Doty Street was known to Dane County, the Dane County 9-1-1 Communications Center and Ms. Gahagan as a location in the City of Madison which generates a high number of serious, legitimate calls to the Dane County 9-1-1 Communications Center which require a dispatch of appropriate police resources to the scene of the calls.

23. Upon information and belief, during the 9-1-1 call made by Ms. Zimmermann to the Dane County 9-1-1 Communications Center and handled by Ms. Gahagan, information was obtained during the call that would lead any Dane County 9-1-1 Communications Center operator to reasonably believe that police services were needed and which would require, under the laws, rules and regulations of Dane County that such operator, operating under the mandatory, non-discretionary rules and regulations that must be followed by all Dane County 9-1-1 Communications Center

operators to dispatch police to Ms. Zimmermann's location and to so advise Ms. Zimmermann and to keep the line open until the police arrived.

24. Upon information and belief, contrary to the mandatory, non-discretionary rules and regulations of Dane County applicable to Dane County 9-1-1 Communications Center operators, after approximately 90 seconds, Ms. Gahagan negligently hung up on Ms. Zimmermann, did not dispatch police or any other responding authorities to Ms. Zimmermann's location, did not call Ms. Zimmermann back and forgot about the call from Ms. Zimmermann.

25. Upon information and belief, some time later Ms. Zimmermann was murdered by the intruder.

26. Upon information and belief, Dane County has admitted that in handling the 9-1-1 call from Ms. Zimmermann to the Dane County 9-1-1 Communications Center, Ms. Gahagan failed to follow the mandatory rules and regulations of Dane County that must be followed by all Dane County 9-1-1 Communications Center operators.

27. Upon information and belief, at all times material hereto the conduct, acts and omissions of Dane County and Ms. Gahagan were done under color, authority and pretense of the laws, statutes, regulations, customs and usages of the State of Wisconsin and Dane County and under the authority of their official capacities and under color of law.

28. Upon information and belief, the conduct of Ms. Gahagan described above violated the clear rules and regulations of Dane County applicable to the 9-1-1 Communications Center operators which are applicable to and must be followed by 9-1-1 Communications Center operators without the exercise of discretion. Such conduct was far removed from the ordinary course of her duties as a Dane County 9-1-1 Communications Center operator, outside any discretionary authority

she had to act, and does not entitle her to a defense of a claim of qualified immunity or any other immunities.

29. Upon information and belief, on or about April 2, 2008, Mr. Gonnering, returned to the apartment he shared with Ms. Zimmermann shortly after the intruder left and discovered her bleeding and murdered in their mutual home and such discovery caused him grievous distress and severe emotional injury.

30. Upon information and belief, such conduct on the part of Dane County and Ms. Gahagan described above was negligent and caused severe and grievous injury and emotional distress to Mr. Gonnering and that the conduct on the part of Dane County and Ms. Gahagan was the cause in fact of Mr. Gonnering's injury and emotional distress.

31. Such conduct on the part of Dane County and Ms. Gahagan, acting under the color of law, regulations and ordinances of Dane County, emotionally injured Mr. Gonnering and caused him much emotional distress as he came upon the murdered body of his fiancée when he entered his and Ms. Zimmermann's apartment.

32. As a direct and proximate result of the negligent and wrongful acts of Dane County and Ms. Gahagan, Mr. Gonnering suffered grievous and extreme emotional distress.

33. Upon information and belief, Dane County permitted, encouraged, tolerated and ratified a pattern and practice of its 9-1-1 Communications Center of it being understaffed, its staff being untrained and/or undertrained with regard to the mandatory, non-discretionary rules applicable to 9-1-1 operators, being under and improperly supervised such that its 9-1-1 Communications Center operators were either unaware of or not required to abide by the mandatory, non-discretionary

rules and procedures applicable to, or which should have been implemented and made applicable to the operators of the Dane County 9-1-1 Communications Center.

34. Upon information and belief, such acts, omissions and systematic deficiencies engaged in by Dane County with regard to its 9-1-1 Communications Center constitute policies, practices and customs of Dane County which caused its employees operating the Dane County 9-1-1 Communications Center to disregard the laws, rules and regulations governing the operations of operators at the 9-1-1 Communications Center.

35. As a direct, proximate and legal result of such illegal and wrongful acts, omissions and systematic deficiencies, policies, practices and customs of Dane County, Mr. Gonnering has been permanently injured.

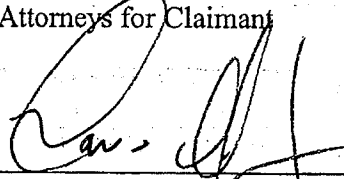
Claimant Jordan Gonnering makes claim against Dane County and Rita Gahagan for:

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS: \$2 MILLION

JORDAN C. GONNERING, an Adult Individual



HALE & WAGNER, S.C.
Attorneys for Claimant



K. Scott Wagner (SBN 1004668)
Karl A. Meyer, Jr. (SBN 1023838)
205 East Wisconsin Avenue, #300
Milwaukee, WI 53202
Telephone: (414) 278-7000
Facsimile: (414) 278-7590