

THE JEFF SCOTT OLSON LAW FIRM, S. C.

Jeff Scott Olson

Andrea J. Farrell

131 West Wilson Street, Suite 1200
Madison, Wisconsin 53703

Phone: 608 283 6001
Fax: 608 283 0945

E-Mail: jsolson@scofflaw.com
Website: www.scofflaw.com

May 16, 2008

Mr. Michael P. May
Attorney for the City of Madison
210 Martin Luther King, Jr. Blvd., Rm. 401
Madison, WI 53703

**Re: Jacob Bauer v. City of Madison Police Department
DOI: 12/29/2006**

Dear Mr. May:

I represent Jacob Bauer in connection with personal injuries sustained after a City of Madison police officer employed excessive force against Mr. Bauer while placing Mr. Bauer under arrest.

As I do in almost every such case, I am sending you this fully documented settlement demand letter to afford the City of Madison the opportunity to settle Mr. Bauer's claims early in the litigation process.

THE INCIDENT

On the evening of December 28 and into the early morning hours of December 29, 2006, Mr. Bauer was in downtown Madison with friends enjoying the nightlife and drinking some alcoholic beverages. Near the end of the evening, Mr. Bauer and his friends were drinking at State Street Brats, which is located at 603 State Street, Madison, Wisconsin.

A little before bar time, around 2:00a.m., a customer at State Street Brats was hit in the head by a pint glass and a scuffle ensued. Mr. Bauer was fingered as the individual that hit the customer with the glass and State Street Brats security staff detained Mr. Bauer until police arrived.

Around 1:55am, Officers Stephen Heimsness and Corey Urso of the City of Madison Police Department arrived at State Street Brats. Upon their arrival the officers saw Mr. Bauer sitting in one of the booths in the northeast corner of the bar against the east wall of the building. As the police neared the booth in which Mr. Bauer was seated, Mr. Bauer got up from the booth and ran towards the side door of the building that led to the outdoor patio. As Mr. Bauer approached the door he placed his arms and hands in front of him as he prepared to push open the door. However, unbeknownst to Mr. Bauer, the door was locked. Mr. Bauer hit the door with his hands and realized it would not open.

Officer Heimsness grabbed Mr. Bauer's left wrist and ordered Mr. Bauer to "get on the ground". Mr. Bauer grabbed on to the bars on the door that run parallel to the ground and did not get on to the ground. The officers yelled "stop resisting" and tried to remove Mr. Bauer's grip from the bars on the door and Mr. Bauer refused to let go of the bars on the door. Mr. Bauer was not violently physically resisting the officers. The officers were able to detach Mr. Bauer's grip from the bars on the door and threw Mr. Bauer into a wall in the narrow hallway that leads to the door to the outdoor beer garden area.

A State Street Brats bouncer, [name redacted by *Isthmus*], stepped in for about five seconds to help the officers get Mr. Bauer to the ground. Mr. Bauer was now lying on the ground, face down, with his head pointing towards the general bar area and his feet pointing towards the door that leads to the patio area. The officers continued to yell "stop resisting" and one of the officers yelled "stop resisting or we're going to break your arm". Mr. Bauer was not violently physically resisting the officers. At one point one of the officers yelled, "All right, break his arm."

Officer Urso was on top of Mr. Bauer trying to handcuff Mr. Bauer and had Mr. Bauer's right arm under his control. Officer Heimsness was standing to Mr. Bauer's right side. Officer Heimsness lifted his leg and the heel of his foot and started landing shots from the bottom of his heel on top of Mr. Bauer's head by his ear. Officer Heimsness lifted his leg up and came down forcefully with his heel on top of Mr. Bauer's head. This happened between three and seven times. At this time, Mr. Bauer's head was exposed and there was nothing covering it or any portion of it. The force used by Officer Heimsness was so great that State

Street Brats employees heard a “thud” noise every time his boot heel connected with Mr. Bauer’s head. At this time, the officers could have easily handcuffed Mr. Bauer and taken him into custody but they did not do so. Instead, Officer Heimsness continued his brutal attack on Mr. Bauer and begin kicking Mr. Bauer in the head with a powerful motion.

Once Mr. Heimsness had finished kicking Mr. Bauer in the head, he knelt down next to the right side of Mr. Bauer’s head and began to violently punch Mr. Bauer in the head. Mr. Bauer remained motionless on the floor with a pool of his blood soaking the bar mat that was underneath his body. Mr. Bauer was then handcuffed.

State Street Brats employee Elissa Parker became hysterical during Officer Heimsness’s attack on Mr. Bauer and loudly screamed things like “Stop it!” and “You’re going to kill him!” Ms. Parker became so worried for Mr. Bauer’s life that she called 911 from her cell phone to report that the officers were going to kill Mr. Bauer if they continued to beat him unnecessarily as they were. Mr. Bauer was later removed from the scene by police officers. As Mr. Bauer was being led out of the building, a State Street Brats bouncer, [name redacted by *Isthmus*], heard Officer Heimsness said something to the effect that Mr. Bauer was not bleeding when the officer arrived and now Mr. Bauer was bleeding.

Mr. Bauer had been drinking that evening and is unable to provide a coherent explanation for why he did not immediately follow the directions given to him by the officers. However, the laughingly low level of physical resistance Mr. Bauer exhibited that evening did not warrant the severe beating given to Mr. Bauer by Officer Heimsness.

MEDICAL HISTORY

Mr. Bauer was transported to Meriter Hospital by ambulance for treatment of his injuries and arrived at the Emergency Room at 2:30 a.m. It was noted by admitting physician Dr. Adam Hanson that Mr. Bauer had been “in a fight this evening and requires sutures on his face and right thumb”. It was also noted that there was “some significant swelling to the right eye”. Mr. Bauer allowed the nurse to cleanse his wounds and dried blood was removed from his skin. Upon the removal of the dried blood it was evident that Mr. Bauer had two lacerations; one was 2 centimeters¹ in length and located underneath the right side of Mr. Bauer’s nose; the other laceration was approximately 2 centimeters in length and was located on Mr. Bauer’s right thumb. As the medical staff

¹ Two centimeters is about three-fourths of an inch.

prepared to begin suturing Mr. Bauer's lacerations, Mr. Bauer asked the Madison Police officers if he could make a phone call to his attorney or his mother. The police officers inexplicably refused to allow Mr. Bauer to make a phone call and Mr. Bauer stated that he would not consent to medical treatment until he was able to speak with his attorney or his mother. The officers again refused to allow Mr. Bauer to phone his attorney or his mother so Mr. Bauer ultimately refused further medical treatment. Mr. Bauer left Meriter Hospital against the advice of physicians and was told to follow-up as needed. Mr. Bauer was then transported to the Dane County Jail. As Mr. Bauer was being booked into the Dane County Jail, he was seen by a nurse. The nurse noted that Mr. Bauer had been "in two fights tonight, received lacerations to the face and right hand." The cut near Mr. Bauer's nose appeared to be "1/8 of an inch deep, 1/2 inches long". It was further notes, "lacerations more minor to right hand, all cuts actively bleeding" also "slight swelling and redness to right eye".

About ten weeks later, on March 19, 2007 Mr. Bauer sought medical treatment from Meriter Medical Clinic in Middleton, Wisconsin. Mr. Bauer complained of pain in front of his ear and significant discomfort with chewing due to right temporomandibular joint pain. It was noted that Mr. Bauer had not seen his dentist regarding this pain and he did not have dental insurance. Dr. J. Evan Blanchard's impression was "right-sided temporomandibular joint pain, probably traumatic and possible representing persistent inflammation". Mr. Bauer was advised to seek treatment from a temporomandibular joint specialist if none of the conservative treatment options provided by Dr. Blanchard, including seeing his dentist for a bite block or using Celebrex on a daily basis, helped control Mr. Bauer's pain and discomfort.

On May 1, 2007 Mr. Bauer was treated by his regular dentist, Doctor Patricia Richardson, for jaw pain. Ms. Richardson had a panoramic x-ray completed on Mr. Bauer and referred Mr. Bauer to the Center for Oral and Maxillofacial Surgery for further treatment of his injuries.

On May 1, 2007 Mr. Bauer was treated by Doctor Kim Pansegrau at the Center for Oral and Maxillofacial Surgery. He was referred to Dr. Pansegrau by his regular treating dentist for an evaluation of possible jaw fracture and limited opening and facial asymmetry. At this appointment, Mr. Bauer complained of pain on the right side of his face, especially pain with chewing and trying to open wide which, when attempted, brought on a headache in the right temporal region. Upon clinically and radiographically evaluating Mr. Bauer, Dr. Pansegrau formed the opinion that Mr. Bauer did not have any type of jaw fracture. However, Dr. Pansegrau opined that Mr. Bauer had some anterior disc displacement without reduction. In a letter to Dr. Patricia Richardson, Dr. Pansegrau stated, "The only thing I think that we need to treat is his

temporomandibular joint dysfunction. It is, I think, an anterior displacement without reduction and initially I would recommend that we just try conservative modalities hopefully to decrease any type of inflammation within the joint and thus allow him to reduce over the piece of cartilage. What was outlined to him is anti-inflammatories on a scheduled basis, limited chew diet, limited range of motion, and warm heat to the area over the next four weeks. I will see him back in four week's time. If there is some resolution with this pain in opening, I think we will stay the course. If not, we might consider something like a simple arthrocentesis² to help his opening."

On June 5, 2007 Mr. Bauer returned to the Center for Oral and Maxillofacial Surgery and was seen by Dr. Pansegrau. It was noted in the medical records that Mr. Bauer's pain had improved to the point where he was experiencing pain intermittently instead of constantly. Dr. Pansegrau decided to continue conservative management of Mr. Bauer's symptoms and asked him to return in a month.

On July 9, 2007 Mr. Bauer returned to the Center for Oral and Maxillofacial Surgery for a follow-up appointment with Dr. Pansegrau. It was noted in the medical records for this visit that Mr. Bauer's range of motion had increased and he was not experiencing pain. Dr. Pansegrau informed Mr. Bauer that he should return to the clinic as needed.

PARTIAL MEDICAL EXPENSES

While this list is obviously not complete, Mr. Bauer has incurred the following medical expenses from as a result of the injuries sustained at the hands of City of Madison Police Officer Stephen Heimsness:

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
	Center for Oral and Maxillofacial Surgery SC³ 7007 Old Sauk Road Madison, WI 53717	
05/01/2007	Consultation	\$ 104.00

² Arthrocentesis is joint aspiration, a procedure whereby a sterile needle and syringe are used to drain fluid from a joint. This is usually done as an office procedure or at the bedside in the hospital.

³ The Center for Oral and Maxillofacial Surgery did not charge Mr. Bauer for his visits on 6/5/07 and 07/09/07.

Meriter Medical Clinics
7780 Elmwood Avenue
Middleton, WI 53562

03/19/2007 Office Visit \$ 132.00

Patricia J. Richardson DDS, SC
2945 Triverton Pike Drive
Madison, WI 53711

05/01/2007 Limited Evaluation \$ 64.00

05/01/2007 Panoramic X-ray \$ 106.00

TOTAL MEDICAL EXPENSES: \$ 406.00

PAIN AND SUFFERING

As a result of the irrational behavior on the part of City of Madison Police Officer Stephen Heimsness, Jacob Bauer suffered continuously in numerous facets of his life since December 29, 2006. Mr. Bauer continued to suffer from his jaw injury with daily pain and clicking as well as the loss of motion in his jaw that continued for many months after Officer Heimsness battered him. To date, his jaw still clicks at times. Mr. Bauer was unable to chew and did not have full range of motion of his jaw which caused pain and difficulty over many months. Mr. Bauer has also suffered head trauma and headaches in addition to a swollen face and head. The headaches lasted for two to three months. They subsided as the functionality of his jaw returned.

Mr. Bauer has a permanent reminder of Officer Heimsness's physical attack in the form of a scar on the right side of his nose. Mr. Bauer is reminded every time he looks at that scar that he could have lost his life because of Officer Heimsness's violent attack. Mr. Bauer also suffered two black eyes and stiff muscles following the beating he took at the hands of Officer Heimsness.

The physical remnants of Officer Heimsness's physical attack are nothing compared to the emotional trauma this has inflicted on Mr. Bauer and his family. The sense of security Mr. Bauer and his family once felt while in the presence of

law enforcement officers has been irretrievably broken and replaced with understandable fear. Mr. Bauer is afraid that another officer will violently attack him just as Officer Heimsness attacked him and Mr. Bauer is afraid that the police department will fail to hold the officer responsible because that is exactly what happened with this incident. Mr. Bauer was beaten mercilessly by an on-duty officer who was dispatched to a bar to arrest a drunken patron that was under the benign control of the bar's security staff. Officer Heimsness arrived on the scene and beat Mr. Bauer so badly that an ambulance had to be called to the scene and at least one employee of the bar phoned 911 in fear for Mr. Bauer's life. Officer Heimsness has not received even a letter of reprimand for his atrocious behavior exhibited on December 29, 2006. In fact, during the so-called investigation into Officer Heimsness's actions that early morning, the City of Madison police department failed to interview the bar employee that originally phoned in the 911 call and filed a formal complaint against the officer. Officer Heimsness should no longer be allowed to wear the respected uniform of the City of Madison Police Department as he certainly is not one to "serve and protect" the citizens of the City of Madison.

CONCLUSION

Based on all of the foregoing, Mr. Bauer has authorized me to convey to you his offer to accept the sum of \$45,000.00 in full settlement of his claims.

I realize that the officers involved will likely deny any wrongdoing occurred. I assure you that there were eyewitnesses to these events and that we have thoroughly investigated this matter and are satisfied we can prove the above facts in court. As you know, we will file under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments, and if we are successful we will be able to recover our attorneys' fees as well as Mr. Bauer's damages. Based on recent police misconduct cases, our attorneys' fees and costs through a trial will likely exceed \$100,000. The City and its insurance carrier should seize the opportunity to explore settlement now, while a resolution of this claim can be achieved so reasonably.

Sincerely,
THE JEFF SCOTT OLSON LAW FIRM, S. C.

Jeff Scott Olson

Cc: Mr. Jacob Bauer
JSO:tal