

SERVICE AND PROCESSING OF CLAIMS

Plaintiff or Claimant: Notice of Claim
Charles Cleveland

Date: 10-2-19

In-person

Process Server

Claimant

Other _____

By mail

By email

By fax

Received by: Ann Marie Reff

➤ Hand deliver to: Ann Marie or Janel

➤ Forwarded to Attorney's Office by Ann Marie or Janel

➤ Response from Attorney's Office

➤ Common Council Agenda: Yes No

10-2-19 ug
1:15P
Ann Neff

NOTICE OF OF CLAIM
PURSUANT TO WIS. STATS. §§ 893.80 and 893.82

TO: West Allis City Clerk Steven A. Braatz, Jr.
Office of the City Clerk
City Hall, Room 108-110
7525 W. Greenfield Ave.
West Allis, WI 53214

Steven Michael Janczak
10226 W. Steepleview Ln.
Franklin, WI 53132

CLAIMANT: Charles Cleveland
2231 S 67th Place, Upper
West Allis, WI 53219

CLAIMANT'S ATTORNEY: Drew J. DeVinney, Esq.
Martin Law Office, S.C.
7280 S. 13th Street, Ste. 102
Oak Creek, WI 53154

DATE OF INCIDENT: November 20, 2018

NOTICE OF CLAIM:

Pursuant to the provisions of § 893.80(1d)(b), Wisconsin Statutes, the Claimant, Charles Cleveland, herewith gives notice and makes a claim for relief in the form of monetary damages.

LIABILITY

On November 20, 2018, Mr. Cleveland was driving his 2005 Ford Focus ZX4 ST eastbound on W. Lincoln Avenue in West Allis, WI. Mr. Cleveland was traveling behind the vehicle being operated by city employee Steven M. Janczak. Suddenly and without warning, Mr. Janczak began making an improper U-turn, colliding with the front of Mr. Cleveland's vehicle.

Mr. Cleveland's vehicle was totaled as a result of the collision.

In addition to Mr. Janczak, Chad M. Cleveland and Robert G. Martin were passengers of the City of West Allis garbage or refuse truck, and were present at the time of the collision. The West Allis Police Department responded to the scene of the collision and prepared a Wisconsin Motor Vehicle Crash Report. Mr. Janczak was cited for failing to yield to the right of way.

Liability of this collision is clear and falls 100% on Mr. Janczak.



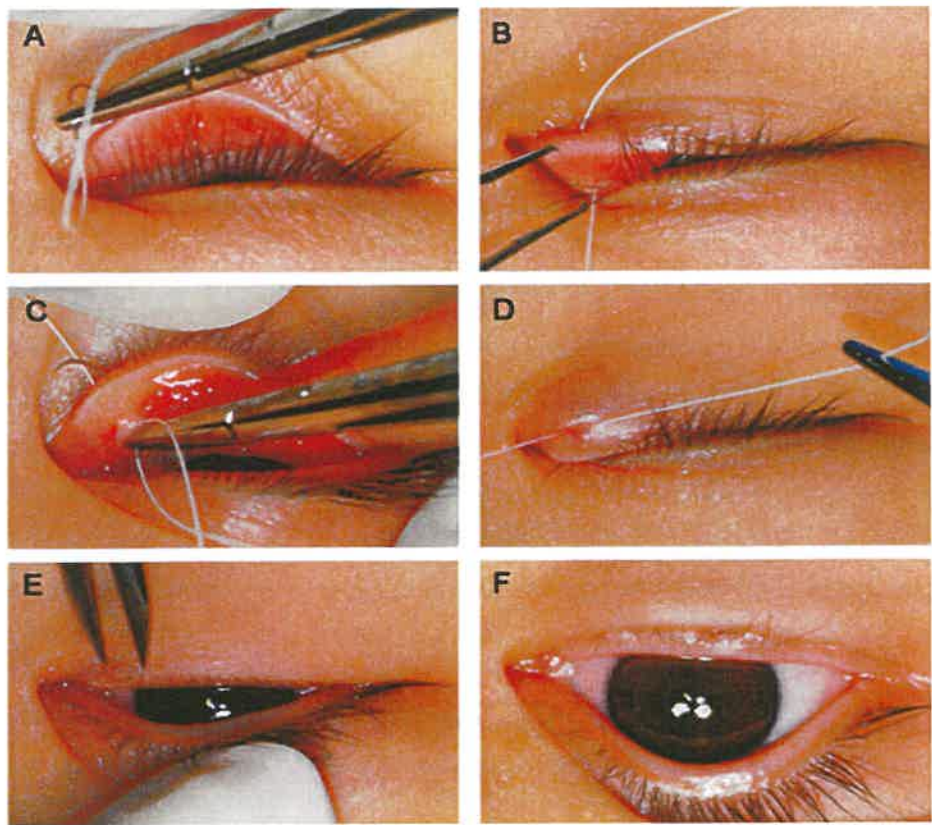
TREATMENT & INJURIES

West Allis Fire Department responded to the accident. They evaluated Mr. Cleveland for his *complaints of head and right knee pain*. Mr. Cleveland was transported to Aurora West Allis Memorial for further evaluation.

Upon arrival to the emergency department it was noted that Mr. Cleveland presented with *right facial and eye lid lacerations, lower back abrasion, and right knee abrasion*. Mr. Cleveland reported *experiencing blurry vision, mild headache, right sided neck pain and right knee pain*. During the physical examination the attending physician noted that the *right eye exhibited chemosis and that the right conjunctiva had sustained a hemorrhage*. The attending physician discussed the injury with Mr. Cleveland and recommended that he have *sutures placed on the right eyelid to close the laceration*. After consenting to care, Mr. Cleveland's eyelid was sterilely prepped. Lidocaine



was injected to the area and *four sutures were placed*. Antibiotic ointment was then applied to the closed laceration. Mr. Cleveland was discharged from the hospital shortly after the laceration repair with instructions to follow up with his primary care physician.



On November 27, 2018, Mr. Cleveland presented to Aurora West Allis for suture removal.

On November 29, 2018, Mr. Cleveland presented to Dr. Douglas Bower at Froedtert Tosa Health Center. During the visit Mr. Cleveland reported that he had been involved in a motor vehicle accident on November 20, 2018 and sustained a cut to his right eyelid requiring stitches. He noted that since the accident he was continuing to experience back pain and neck pain that was radiating into his shoulder blades. The pain in his neck and back was making it difficult for him to get a full night's sleep. Mr. Cleveland has been taking ibuprofen and using biofreeze to help with the pain, but these interventions were only providing minimal relief. Dr. Bower prescribed Mr. Cleveland with amitriptyline to help with relieve his pain and provide some assistance with sleeping. R. Cleveland was instructed to return in ten days for a re-evaluation.

Mr. Cleveland presented for a follow-up with Dr. Bower on December 12, 2018. It was noted that Mr. Cleveland was continuing to experience neck and back pain. During the visit Dr. Bower became concerned about Mr. Cleveland's blood pressure and sugars, and decided that these health issue needed to be addressed immediately. No plan of care was established for treating Mr. Cleveland's neck and back pain further.

In January of 2019, Mr. Cleveland had a change with regard to his health insurance and Dr. Bower was no longer covered. Mr. Cleveland establish care with Barbara Szopinski, FNP at Lubsey Medical Center. Barbara Szopinski, FNP provided Mr. Cleveland with a referral to Milan Grbic PT to treat his continued neck and back pain as a result of the November 20, 2018 motor vehicle accident.

Mr. Cleveland presented to Milan Grbic PT on January 24, 2019 for a physical therapy evaluation. He attended regular physical therapy sessions through his discharge on April 10, 2019.

Mr. Cleveland remains symptomatic but expects to reach a full recovery with his home exercise program.

DAMAGES

1. Past Medical Expenses

PROVIDER	DATE OF SERVICE	AMOUNT
West Allis Fire Dept./LifeQuest	11/20/18	\$815.04
Aurora Health Care	11/20/18, 11/27/18	\$7,139.00
ERMED, S.C.	11/20/18, 11/27/18	\$1,818.00
Milan Grbic PT	01/24/19 to 04/10/19	\$6,180.00
Froedtert Tosa Health Center	11/29/18, 12/12/18	\$349.00
	TOTAL	\$16,301.04

2. Property Damage Expenses

Our office previously sent a demand to the City, by letter dated February 18, 2019, on behalf of Mr. Cleveland for his property damage. The city declined to consider Mr. Cleveland's property damage claim until he was prepared to move forward with his claim for personal injuries.

Please note that, since the previous property damage claim was sent, Mr. Cleveland's damages for the loss of use of his vehicle have increased. By the time that this claim is likely to be considered by the City, it will be **over nine months since the date of this collision**. Mr. Cleveland continues to be unable to afford a replacement vehicle. As such, his damages for loss of use will continue to accrue until he is either (1) able to afford a replacement vehicle or (2) the City agrees to compensate him for the loss of his 2005 Ford Focus ZX4 ST.

As discussed, Mr. Cleveland's 2005 Ford Focus ZX4 ST was totaled in the collision. At the time of the collision, the vehicle had 75,559 miles and was in excellent condition. Kelley Blue Book (<https://www.kbb.com/whats-my-car-worth/>¹) identifies a price range between \$2,866 and \$4,539.00, with a Private Party Value of **\$3,703.00**.

This estimate is consistent with the prices found for similar vehicles listed in this area. A search on Cargurus.com (www.cargurus.com)² for 2005 Ford Focus within 100 miles of 53219 results in 21 listings (only 3 of the listed vehicles have under 100,000 miles; 3 listings have no price³). The mean price of all Ford Focus's listed on cargurus.com is \$3,704.06.

In addition, Mr. Cleveland incurred **\$121.44** in towing expenses from N & S Towing, Inc.

Finally, Mr. Cleveland has a valid claim for past loss of use of his vehicle. Kim v. American Family Mut. Ins. Co., 176 Wis. 2d 890 (1993). Since the collision, Mr. Cleveland has been unable to afford a replacement to his vehicle. As such, he has been without use of a vehicle for at least 268 days. Wis. J.I.—Civil 1801 notes, in evaluating the damages for past loss of use, "You may consider the reasonable cost to rent a comparable automobile." A search of Travelocity.comⁱ for a compact car rental in Milwaukee shows an average daily price of \$25.00. This is consistent with the amount typically tendered by automobile insurance companies for loss of use claims. Over 268 days, Mr. Cleveland's loss of use claim amounts to \$6,700.00.

I want to stress that the loss of use claim may continue to increase if not timely paid.

In sum, Mr. Cleveland incurred \$10,524.44 in property-related damages a result of this accident:

Property Damage:		\$3,703.00
Towing Fee:		\$121.44
Loss of Use:	+	<u>\$6,700.00</u>
		<u>\$10,524.44</u>

CLAIM AMOUNT

As a result of this accident, Charles Cleveland sustained **\$16,301.04** in past economic losses associated with his personal injury claims. As you are aware, under Wisconsin Law, Mr. Cleveland is also entitled to be compensated for his pain and suffering.

In light of your employee's conduct and Mr. Cleveland's economic and non-economic losses, he will accept **\$51,301.04** in full settlement of his personal injury claim.

With respect to his claim for property damage, Mr. Cleveland will accept **\$10,524.44** in full settlement of his property damage claims.

¹ Last accessed 2/18/2019

² Last accessed 2/18/2019

³ Controlling for 2005 Ford Focus listings with mileage under 100,000, the average price is \$4,996.

CONCLUSION

I look forward to hearing from you after you have had a chance to review this matter. Supporting documentation is concurrently being sent to the City Attorney's Office along with a copy of this Notice of Claim for review.

Dated: 9/25/19

Sincerely,

MARTIN LAW OFFICE, S.C.

Electronically Signed by Drew J. DeVinney

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drew@martin-law-office.com

DJD/kd

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<https://www.travelocity.com/carsearch?date1=02%2F18%2F2019&date2=5%2F20%2F2019&dpln=602647&loc2=&locn=Milwaukee%2C%20Wisconsin&time1=1000PM&time2=1000PM>