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settlement paperwork

Media Release

City Settles Paul Heenan Police Shooting Case for \$2.3 Million

Press Conference with Plaintiff's Counsel and Media Distribution of Video:

Wisconsin State Capitol Senate Parlor Tuesday, August 11, 2015, 1:00 p.m.

Madison, Wisconsin, Tuesday, August 11, 2015. The City of Madison and its insurance company have agreed to pay \$2.3 million to settle the civil rights claims of the family of Paul Heenan, the thirty-year old musician and recording engineer who was shot and killed by Madison Police Officer Stephen Heimsness, on November 9, 2012, after he mistook a neighbor's Baldwin Street house for the one he had moved into a week earlier, prompting a 911 call.

Heenan, who had grown up in Madison, had recently returned to the city after living in New York, and had recently moved into the Baldwin street home with another musician with whom he planned to work, Amelia Royko Maurer, and her family. He had gone out on the evening of November 8 to take in the live-music scene, and was dropped off near his new home just after bar time. When he began to enter the wrong house, the neighbor who lived there, Kevin O'Malley, came to the front door. Recognizing Heenan as his neighbor, O'Malley began walking Heenan to his residence two doors away. In the meantime, O'Malley's wife, unaware that her husband was walking Heenan back to the Maurer residence, erred on what she believed to be the side

of caution, and called 911, specifically reporting that her husband “went down to the door, and I just said is everything okay and he said yes, but I have no idea what’s going on,” and that she wanted “everything to be fairly calm when somebody comes.”

The first officer on the scene was Stephen Heimsness, a Madison police veteran who had been the subject of multiple prior settlements based on his excessive use of force. As far back as 2001, MPD found that “Heimsness employed poor judgment and tactical decision making” and that “he places himself in a position that he eventually believes poses an imminent threat,” and concluded that he used unreasonable deadly force. After the sustained unreasonable use of deadly force in the parking ramp in 2001, Heimsness received six more excessive force complaints, only *one* of which was investigated to completion. The family claimed that failure to fully investigate complaints of excessive force was one of the factors allowing Heimsness to inexplicably remain on the force despite having 11 excessive force complaints lodged against him in a 10 year period between 1999 and 2009.

Heimsness drove to the scene without lights or siren, and silently approached with his gun drawn. Though it was almost 3 a.m., Heimsness did not announce himself as a police officer. He did not approach in a calm or helpful manner, but instead angrily shouted “get down, get down.” O’Malley stepped off to the side, but Heenan moved toward Heimsness, and, O’Malley said, swatted at Heimsness with an open hand. By all accounts, Heenan appeared unarmed and had visibly empty hands. Believing that Officer Heimsness might shoot Heenan, Kevin O’Malley tried desperately to prevent the tragedy, shouting, “He’s a neighbor! He’s a neighbor!” According to Heimsness, he

then employed a one-handed light shove which was sufficient to push Heenan backwards. According to O'Malley, Heenan backed up of his own volition, and began to cower down with his back against the utility pole on scene. Heimsness, then, squared up and fired three shots into Heenan's body.

Heimsness had claimed that Heenan had been reaching for Heimsness's gun. The City took DNA swabs of Heimsness's gun for the purpose of preserving relevant evidence as to whether Heenan's DNA was on the gun, but the City never processed those DNA swabs for evidence.

The Chief Dane County Medical Examiner testified that the autopsy showed that Heenan's left hand was flush or near flush against his abdomen, his right arm was flush with his ribcage, and his back was likely up against a hard surface as Heenan sustained the shots - one through the back of the left hand, one through the chest, and one through his right arm and into his ribcage.

A backup officer, Stacy Troumbly, was on the scene, standing behind Heenan directly in the line of fire. She had her Taser in hand when Heimsness fired. Within seconds, Heenan died at the scene.

The Heenan family and their attorneys Jeff Scott Olson and Andrea Farrell filed a lawsuit on August 29, 2013, alleging excessive force and seeking damages for the loss of Heenan's life. In May of 2014, Wisconsin's most consistently successful civil rights trial lawyer, Michael R. Fox of Fox & Fox joined the plaintiffs' team.

The Heenan family pursued not only an excessive force claim against Heimsness, but, also sought to hold the City of Madison liable for Heenan's death because the

City's lack of supervision , particularly by letting Heimsness remain on the street after many warning signs, made a tragedy like the killing of Paul Heenan all but inevitable.

On June 1 of this year, federal judge William M. Conley, issued a 59-page decision rejecting the arguments of Heimsness and the city that the case should be dismissed before a trial. He found that a reasonable jury could find that Heimsness's choice to shoot Heenan amounted to excessive force, and could also find that the City was liable for not having an effective system of handling civilian complaints of excessive force, for not acting on patterns of complaints against individual officers, and for not monitoring its own computer system for inappropriate messages sent by an officer which indicated the officer was unfit for duty.

After clearing Heimsness for his actions in the shooting of Heenan in 2012, the City sought to discharge Heimsness for inappropriate contempt and anger directed at citizens and coworkers and for untruthfulness during the course of City investigations. The move to terminate Heimsness was dropped pursuant to a settlement in which Heimsness agreed to resign and the City agreed not to oppose Heimsness's application for full disability income through the age of retirement.

The 2.3 million dollar settlement is believed to be the largest for a fatal police shooting case in the state's history.

The Heenan family is still mourning the loss of their son. They have asked that their privacy be respected and that any inquiries be directed to their attorneys. The Heenan's brought this lawsuit on behalf of their son's estate in the name of preservation of life. They hoped to call attention to the immense danger to citizens that is the

predictable result of inept supervision of police officers and bring about change in the City's policies and procedures in officer supervision and excessive force complaint investigation. The Heenan's fought alongside others, following Heenan's death, for legislation requiring outside investigations in cases where officer involved shootings result in death. The legislation they sought was enacted in 2014. The Heenan's are extremely grateful to all those who have supported them in their quest for truth and justice.

During the course of litigation, former Police Chief Noble Wray testified that MPD has found that the officer's use of force was reasonable in every instance that an MPD officer has used deadly force resulting in a citizen's death. Wray also testified that no Madison police officer has died in the line of duty since sometime in the 1940's.

For further information, contact:

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