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## Dead man's parents want \$7 million

**BERRIEN SPRINGS** — The arm of the law can be long — as long as memory and bitterness, apparently — as village and Oronoko Township officials discovered early in July.

The parents of a man shot and killed by two Berrien Springs-Oronoko Township policemen on July 29, 1977, filed a \$7 million suit for damages on July 1 in federal district court in Grand Rapids.

On July 29, 1977, two regular police officers, Fred Foster and George John, neither of whom is now on the local force, and a reserve officer, Harold Poling, were called to investigate a routine disturbance at Rose Hill Manor, an apartment complex at 511 Rose Hill Road in Oronoko Township.

The patrolmen found a man, McEldon Tisdell, 28, seated in a chair facing the door of Apartment No. 19. Tisdell was holding a loaded 12 gauge pump shotgun and a .357 magnum pistol, and when an officer ordered him to drop the weapons, Tisdell instead "raised (the shotgun) as if to fire at the officer," according to a July 29

South Bend Tribune account of the shooting. Policemen fired several shots at Tisdell, and Berrien County sheriff's detectives investigating the incident later confirmed John's gun held two expended shells and Foster's gun held six empty cartridges. Tisdell was hit by at least two bullets, the newspaper reported.

According to the newspaper account, the apartment manager, Rosemary Doonan, "went to the apartment shortly after midnight to ask the victim and others in the apartment to quiet down. Apparently they refused, and when she heard what she thought was the sound of a shotgun being pumped, she notified police."

None of the policemen was hurt, nor were five other people in the apartment injured in the shooting. The Berrien County prosecutor later ruled that the slaying was justifiable homicide.

The suit in federal court demands \$1 million in damages,

citing seven counts of civil rights violations and civil liabilities. For a total of \$7 million sought in damages.

Being sued are Oronoko Township, the village of Berrien Springs, the officers who did the shooting, John and Foster, the reserve officer who allegedly fired no shots — Poling — Doonan, and the owners of Rose Hill Manor.

The case will be heard by U.S. District Judge Richard A. Enslin, although a trial date has yet to be set. Plaintiffs are Tisdell's parents, William and Mildred Tisdell, of Benton Harbor.

According to Oronoko Township Clerk Alex Miskiewicz, the governments responsible for operating the police department are covered by liability insurance which will pay for costs of the defense and any damage judgment that may result from the case.

# Law suit is filed, but no court date

KALAMAZOO — A spokeswoman in the office of U.S. District Court Judge Richard A. Enslin said Monday that Judge Enslin's office has so far not received the case file in a \$7 million civil rights suit naming Berrien Springs and Oronoko Township along with five others as defendants. The suit claims that a 28-year-old man who was shot to death by officers of the Berrien Springs-Oronoko Township Police Department on July 29, 1977 was deprived of his

civil rights.

Although Judge Enslin's office has not yet received the file on the case, or a copy of the docket sheet, the case has been given a number — K80-440 — a source in the federal court office here said.

In recent Berrien Springs Village Council and Oronoko Township board meetings and privately local officials have noted that so far their own clerks have received no word about the case. The lack of notification caused one township trustee to

speculate that news of the case was "just a rumor."

The case was filed by Grand Rapids attorney Alphonse Lewis, Jr., who was on vacation this week. But according to the source in Judge Enslin's office, besides the parents of McEldon Tisdell, the man who was killed, there is "a number of plaintiffs. There are a lot of Tisdells," she said. But without the case file, the other plaintiffs could not be identified.

Named in the suit brought by William and Mildred Tisdell,

among others, are defendants Berrien Springs, Oronoko Township, Rose Hill Manor, the police officers who fired at Tisdell — George John and Fred Foster, Harold Poling, a reserve officer who fired no shots, and the then manager of Rose Hill Manor, Rosemary Doonan.

According to a newspaper report of the time, police were called to an apartment at Rose Hill Manor on July 29, 1977 where they found McEldon Tisdell seated in a chair facing the door.

In his lap Tisdell had a .357 magnum revolver and when an officer asked him to drop the weapons, he instead "raised (the shotgun) as if to fire at an officer."

Policemen fired several shots at Tisdell, and at least two bullets hit him, according to a South Bend Tribune article of the time.

No trial date will be scheduled until Judge Enslin's office receives a file on the case, according to the source in his office.

# Policemen covered by insurance in suit

BERRIEN SPRINGS — The village of Berrien Springs, Oronoko Township, and three policemen are covered by liability insurance in the \$7 million lawsuit filed by the parents of a Benton Harbor man who was shot to death by police in 1977.

The Oronoko Township Board learned Tuesday that the township's insurance carrier, Celina Insurance Co., will not cover the policemen who were involved in the July 29, 1977 shooting, which left 28 year old McEldon Tisdel dead.

However, the carrier retained by Berrien Springs, American States Insurance Co., will cover defense and liability costs incurred by the policemen while they were carrying out their official duties. The police officers as individuals, however, are not covered by the American States policy, Supervisor Robert Feather explained.

But Clerk Alex Miskiewicz said, "the officers were working in an official capacity and not in an individual capacity, so they should be covered by the insurance."

Tisdel was shot when Berrien Springs-Oronoko Township police were called to an apartment at Rose Hill Manor to answer a complaint about excessive noise.

When they opened the apartment door, according to a Tribune report of July 29, 1977, the policemen were confronted by an armed Tisdel, seated in a chair facing them. Tisdel reportedly had a .357 magnum revolver in his lap and was holding a .12-gauge shotgun.

As policemen opened the door, Tisdel reportedly moved as if to fire the shotgun.

Police officer Fred Foster fired six shots and policeman George John shot twice. Tisdel was hit by at least two bullets.

Tisdel's parents, William and Mildred Tisdel of Benton Harbor filed suit last month in U.S. District Court in Grand Rapids, claiming \$7 million in damages on grounds that McEldon Tisdel's civil rights were violated when he was killed.

Named in the suit are Oronoko Township; the Village of Berrien Springs; officers John and Foster; Harold Poling, a reserve officer who was with John and Foster when the shooting occurred; Rosemary Doonan, the apartment manager, and the owners of Rose Hill Manor.

The case is to be heard by Federal Judge Richard A. Enslin, although a trial date has not been set.

Of the individual policemen, Feather said, "if they're not covered (by insurance), I think the police commission should hire an attorney for them."

In the past, the two municipalities have been insured separately even though their police operation is jointly maintained. Miskiewicz said that next year the police commission will take out a single policy to cover the police department.

In other business, the board held a public hearing and eventually voted unanimously to accept a resolution defining the township boundaries as the geographic unit which will contain 1.5-mill property tax

assessment to support the joint village-township police

department. The 1.5-mill tax was approved by 57 percent of

township electors during the May presidential primary.

# Suit against Berrien Springs threatening village treasury

9 Sept 80

By JOEL THURTELL

Tribune Correspondent

**BERRIEN SPRINGS** — If a federal judge awards more than \$300,000 in damages to a plaintiff in a \$1 million suit against the village of Berrien Springs, the local government will have to pay damages over that amount.

That was the message the Berrien Springs village council received from attorney Jerry Johnson during their regular meeting Monday. Complications in the handling of the suit have arisen because of some uncertainty about the extent to which the three police officers involved in the 1977 shooting death of McEldon Tisdel are actually protected by village insurance.

Township insurance does not cover

police officers in any way, but the village police officers, through the American States Insurance Co., are covered — as are any employees of the village — while they are acting in an official capacity.

The complication arises from a clause in the insurance policy which states that if a village officer commits "an intentional tort," that is, a willful civil wrong, insurance ceases to cover the case.

The attorney for survivors of Tisdel has complained there was a conspiracy among the three police officers, George John, Fred Foster, and Reserve Patrolman Harold Poling, and Rosemary Doonan, a former apartment manager at Rose Hill Manor, to deprive Tisdel of his civil rights. John and Foster are no longer with the Berrien Springs-Oronoko Twp. police force.

The shooting occurred on July 29, 1977, in apartment 19 at Rose Hill Manor in Oronoko Twp.

If the court should decide in favor of the Tisdel family, village insurance may not cover the patrolmen. Insurance will cover the village for normal damages up to \$300,000, but Johnson said that if the court awards punitive damage in addition to specific damages, the insurance will not cover any of the punitive damages. Federal court rules forbid insurance companies to pay punitive damages for clients when a willful wrong act has occurred.

If specific damages in the case are

court in Grand Rapids on July 1 and the case will be tried in the court of Federal Judge Richard Ensten in Kalamazoo. A trial date has not yet been set.

The complaint lists as defendants Oronoko Twp., the village of Berrien Springs, Rosemary Doonan, Rose Hill Manor and the three police officers involved in the shooting.

Johnson also advised the council that he would be willing to work along with the attorney retained by American States Insurance Co. The lawyer for American States is James Straub of St. Joseph. Johnson pointed out that there is some chance Straub may be called off the case if there turns out to have been an initial tort.

But Johnson explained, "Part way through a case you can't assume you've lost it" and Straub would probably finish the village defense. The possibility nonetheless exists that the insurer's lawyer might retire from the case at some point during the trial.

The council vote unanimously to assign Johnson to the case along with Straub.

In other action, Moon instructed clerk Harold Wagner to instruct the police department that officers should enforce ordinance No. 204 governing the accumulation of cat litter in the village.

John Weakley, who owns a barber shop and sporting goods store on West Fourth Street, said that

Berrien Springs

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# The Journal Era

## Cover-up in police lawsuit?

### Did cops load Tisdel shotgun?

by Joel Thurtell

GRAND RAPIDS — An attorney here has charged that Berrien Springs-Oronoko Township police falsified evidence after local police fatally shot McEldon Tisdel on July 29, 1977.

According to Alphonse Lewis, Jr., a Grand Rapids attorney who is representing the family of the slain Tisdel in a \$7 million lawsuit against the village of Berrien Springs, Oronoko Township, three police officers, and others, police ordered survivors of the Rose Hill apartment house shooting out of the building immediately after two officers shot Tisdel.

"They put all of the people out of that apartment," said Lewis in an interview with the Journal Era Monday. "I have a lad who said they (police) even loaded that shotgun."

While one of the defendants has claimed the ambulance which took Tisdel to the hospital left within 15-30 minutes after the shooting, Lewis says he has evidence the body was not removed until four to five hours after the fatal encounter.

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## Gun loaded after shooting?

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Lewis' complaint continues, saying: That, Plaintiffs believe defendant George John knocked at the door and refused, upon demand, to show any identification or state his purpose, but threatened to kick in the door;

That, Plaintiff Michael Tisdell went outside to talk with Defendant George John, who had his pistol in his hand, completely closing the door behind him;

That, while talking with Defendant John, Defendant Foster ran up the stairs toward the apartment, unable to see therein, with pistol in hand, yelling, "Shoot that - - - - -!", several times.

That, Defendant John asked Defendant Foster, "Why?" and pushed the door open, and both began firing their pistols into the living room?

That, as a result of said shooting, said Defendants, without warning or provocation, shot and killed McEldon Tisdell, who was seated in his living room;

That, said Defendants later loaded a shotgun and a pistol in said apartment and alleged that same were pointed at them, although the door was closed and said weapons had not been loaded;

That, said Defendants also refused medical aid to Decedent

and never sent him to a hospital until several hours after he was shot;

That, said incident took place after Defendant Doonan and one or more of said individual Defendants conferred and conspired for the invasion of said apartment and the resulting injury and death of Decedent. That, said Defendants negligently and willfully exchanged, and relied on, false information and reckless assumptions, in taking the action alleged herein;

That, the aforesaid acts of the Defendants were without authorization of law. That, the defendants acted negligently, willfully, wantonly, knowingly, and purposefully, with the intent to deprive Decedent McEldon Tisdell of his equal right to life and freedom, and to deprive the plaintiffs of their equal rights to freedom from having their loved one subjected to the aforesaid conduct and death; all of these being rights secured to said Decedent and Plaintiffs, by the provisions of the First and Fourteenth Amendments of the United States Constitution and laws of the United States and of the State of Michigan;

According to Lewis, the police never commanded Tisdell to drop his shotgun. Lewis said Foster was firing around the door jamb and Tisdell was "seated when he

was shot. You don't shoot at anybody sitting down with a shotgun," said Lewis.

To the report published in a newspaper that McEldon Tisdell made as if to aim the shotgun, Lewis responded, "that's ridiculous. Foster never said a damned thing to him or to his brother". With his (McEldon's) brother (Michael Tisdell) standing there facing John, John wasn't in any danger - he was behind the brother."

"Why would a man have a loaded shotgun with his wife and children in there?" asked Lewis. "It's just a wonder they weren't shot."

Lewis further questioned how police could see a loaded shotgun through a closed door.

According to Lewis, Foster

"had a previous encounter with McEldon and knew it was his apartment before he got to the apartment. He never talked to the brother or the other police officer."

Lewis said John fired after Foster began firing into the apartment. John had to shoot around the brother, according to Lewis.

"I charge a cover-up right in the complaint, too," said Lewis.

Meanwhile, there is some question now whether the cost of litigation for the three policemen will be covered by municipal insurance. In the August meeting of the Oronoko Township board of trustees, it was revealed that the township's insurance carrier does not cover the police officers while acting in the line of duty. At that time, it appeared to trustees as if village insurance would pay

costs of defending the policemen. But in an interview Monday, John said "everything is up in the air right now." The former policeman said he has retained a lawyer of his own to protect his interests, but "there are a lot of gray areas around this whole thing." John said he should know within a few days whether his legal costs will be paid by village insurance.

Lewis said the village reaction at first was to say that the officers do not work for them, but eventually the names of all three officers appeared on court documents.

According to village attorney Jerry Johnson, however, the officers are included in the village officers are included in the village defense plans.

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## Tisdell suit accuses police

# Was evidence falsified?

By JOEL THURTELL

Tribune Correspondent

GRAND RAPIDS — An attorney here has charged that Berrien Springs-Oronoko Twp. police falsified evidence after local police fatally shot McEldon Tisdell, 28, on July 29, 1977.

According to Alphonse Lewis Jr., police ordered survivors of the Rose Hill Manor apartment house shooting to leave the building immediately after two officers shot Tisdell. The Grand Rapids attorney is representing the family of the slain Tisdell in a \$7 million lawsuit against the village of Berrien Springs, Oronoko Twp., three police officers, Rose Hill Manor and Rosemary Doonan, the apartment manager.

"They put all of the people out of that apartment," Lewis said in an interview with The Tribune, "I have a lad, who said they (police) even loaded that shotgun."

While one of the defendants has claimed the ambulance which took Tisdell to the hospital left within 15 to 30 minutes after the shooting, Lewis says he has evidence that the body was not removed until four to five hours after the fatal encounter.

Lewis filed the multi-million dollar suit in the U.S. District Court for the Western District of Michigan on July 1. Lewis represents plaintiffs Mildred Tisdell, the victim's mother;

William Tisdell, his father; JoAnne Tisdell, the victim's wife, and LeRoy, Loretta and Michael Tisdell, who are siblings of McEldon Tisdell. Tisdell's daughter, Carinna, is represented by Mildred Tisdell.

No trial date for the case has been set, according to a federal court source. Two motions by the defendants are now awaiting action by the judge. An attorney acting for the village of Berrien Springs and the three police officers has filed a motion to dismiss the case, along with a motion for a summary judgment.

The suit claims that McEldon Tisdell's civil rights were violated when officers opened his apartment door and fired eight shots into the living room.

"It is a violation of civil rights by shooting someone for no cause," said Lewis. "There was no crime, and no claim of a crime," when the police were called to the apartment.

According to a Tribune report published on July 29, 1977, two regular police officers, Fred Foster and George John, neither of whom is now working on the police force here, and a reserve officer, Harold Poling, were called to investigate a disturbance at Rose Hill Manor, located at 511 Rose Hill Road in Oronoko Twp.

The newspaper report said the patrolman found a man, McEldon Tisdell, seated in a chair facing the door of Apt. 19. Tisdell allegedly was holding a .12-gauge pump shotgun and a .357 magnum pistol, and when

the incident occurred after the apartment manager, Doonan, "went to the apartment shortly after midnight to ask the victim and others in the apartment to quiet down. Apparently, they refused, and when she heard what she thought was the sound of a shotgun being pumped, she notified police."

A Berrien County prosecutor's report of the shooting ruled Tisdell's death a justifiable homicide. That report is not available to the press, according to Wilbur Schillinger, an assistant prosecutor.

But, said Lewis, "They will release it as soon as I can get it." The attorney said he intends to have the federal court issue a subpoena to have the prosecutor's report released to him.

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Sept 10, 1980

## Village insured to \$300,000

BERRIEN SPRINGS — If a federal judge awards more than \$300,000 in damages to plaintiffs in a \$1 million suit against the village of Berrien Springs, the government is insured only up to \$300,000.

That was the message the Berrien Springs village council received from attorney Jerry Johnson during their regular meeting Monday. Complications in the handling of the suit have arisen because of some uncertainty about the extent to which the three police officers involved in the 1977 shooting of McEldon Tisdel are actually protected by village insurance.

Township insurance does not cover police officers in any way, but the village policy through the American States Insurance Company covers police officers — or any employees of the village — while they are acting in an official capacity.

The complication arises from a clause in the insurance policy which states that if a village official commits an "intentional tort," that is, a wilful civil wrong, insurance ceases to cover the

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## Village must pay damages over \$300,000

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case.

The attorney for the survivors of McEldon Tisdel has claimed there was a conspiracy among the three police officers, and George John, Fred Foster, and reserve patrolman Harold Poling, and Rosemary Doonan, a former apartment manager at Rose Hill Manor, to deprive Tisdel of his civil rights. If the court should decide in favor of the Tisdel family, then village insurance may not cover the patrolmen. Insurance will cover the village for normal damages up to \$300,000, but Johnson said that if the court awards punitive damages, the insurance will not cover punitive damages.

Federal court rules forbid insurance companies to pay punitive damages due to wilful acts by employees.

If specific damages in the case are set at over \$300,000, the village treasury will have to make up the balance, Johnson said. While village council members are not personally liable, a bond issue might be necessary to pay the damages.

Johnson also advised the council that he would be willing to work along with the attorney retained by American States Insurance Company. The lawyer for American States is James Straub of St. Joseph.

Johnson pointed out that there is some chance Straub may be called off the case if it turns out there was an intentional tort.

While Johnson explained that "part way through a case you can't assume you've lost it," and Straub would probably finish the village defense, the possibility nonetheless exists that the insurer's lawyer might retire from the case.

Of Johnson's proposed participation, president Dale Moon said, "we can't afford not to have him do it — if he has to get in the middle, it's best that he be involved at the start."

If the case spends three to four years in court, Johnson's hourly fees could amount to \$10,000 — \$20,000, the attorney said.

The council voted unanimously to assign Johnson to the case along with Straub.



## Shooting death suit settled out of court <sup>Jan. 21, 83</sup>

KALAMAZOO — A \$7 million lawsuit against the Berrien Springs-Oronoko Twp. police, in the 1977 shooting death of a Benton Harbor man, has been settled out of court.

Details of the settlement late Wednesday were ordered suppressed by U.S. District Judge Richard Enslen. As part of the settlement, the civil suit will be dismissed with prejudice, meaning it cannot be filed again.

The suit was filed by the family of McEldon Tisdell, 28, who died in a shootout July 29, 1977, at the Rose Hill Manor apartments. Berrien Springs police went to the apartment where the shooting occurred to investigate a complaint and allegedly shot Tisdell after he refused to put down a shotgun he was holding. The Berrien County prosecutor ruled the death as justifiable homicide.

The suit sought damages of \$1 million each from Oronoko Twp., Berrien Springs village, officers George John, Fred Foster and Harold Poling, Rose Hill Manor, and Rosemary Doonan, manager of Rose Hill. Ms. Doonan later was dropped from the suit.

Still pending are suits against the village and township by their insurance carriers, American States Insurance Co. and Celina Insurance Co., claiming they are not obligated to pay the village and township shares of the settlement.