



**Request for City Council Committee Action
From the City Attorney's Office**

Date: July 3, 2007
To: Ways & Means/Budget Committee
Referral to:

Subject: Keith Douglas King v. Christopher George Mely and the City of Minneapolis
Court File No.: 27-CV-06-14524

Recommendation: That the City Council approve the settlement of this case by payment of \$12,000.00 payable to Keith Douglas King and his attorneys, Paige J. Donnelly, Ltd., from Fund/Org. 6900 150 1500 6660 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives:

Prepared by: Thomas J. Miller Phone: (612) 673-2897

Approved by: Jay M. Heffern
pub Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact:(Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the Capital Budget or Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: Action is within the plan. Action requires a change to plan.
- Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 6660
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact: Other

Background/Supporting Information:

This matter and subsequent claim arise out of a motor vehicle accident that occurred on January 30, 2003. At that time and place, Keith Douglas King was operating a vehicle westbound on East 55th Street approaching Shoreview Avenue. A city truck was proceeding northbound on Shoreview Avenue. This was an uncontrolled intersection, and therefore King, being on the right of the City truck, had the right of way. Minneapolis Patrolman Illgen responded to the scene of the collision and in his accident report noted "failure to yield right of way" on the part of the City employee as the sole cause of the accident.

As a result of the crash, thirty-nine year-old Keith Douglas King sustained permanent injuries to his neck and back, and in excess of \$39,421.57 in treatment expenses. He now suffers neck, mid back and lower back pain with pain radiating down his left leg as a result of the accident. An MRI done March 22, 2003 shows a moderate disc herniation in his low back which clinically correlates to the pain in his left leg.

Following extensive negotiations we have reached a tentative settlement of Mr. King's bodily injury claim against Mr. Mely and the City in the amount of \$12,000.00. We believe that the settlement is in the best interests of the City and recommend approval by this Committee.

TJM / 04L-0479



**Request for City Council Committee Action
From the City Attorney's Office**

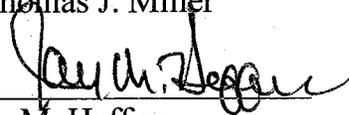
Date: July 3, 2007
To: Ways & Means/Budget Committee
Referral to:

Subject: Wence Ledell Edwards v. City of Minneapolis
Court File No.:

Recommendation: That the City Council approve the settlement and close-out of this No-Fault claim by payment of \$4,500.00 payable to Wence Ledell Edwards and his attorney, John M. Gearin, from Fund/Org. 6900 150 1500 4000 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives: The payment of Mr. Edward's No-Fault bills was authorized by the City Council on May 11, 2007. \$1,959.47 in medical costs have been paid as of June 25, 2007 pursuant to this authorization.

Prepared by: Thomas J. Miller Phone: (612) 673-2897

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact:(Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
 Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
 Action provides increased revenue for appropriation increase.
 Action requires use of contingency or reserves.
 Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
 Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000
 Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact: Other

Background/Supporting Information:

This matter and subsequent No-Fault claim by Wence Edwards arise out of a motor vehicle accident that occurred on August 25, 2006. At that time and place, Wence Edwards was riding in the rear seat of an unmarked police vehicle when it was rear-ended by another vehicle at a red stop light. Mr. Edwards is uninsured by any other policy and is therefore eligible for No-Fault benefits through the City of Minneapolis. Mr. Edwards is represented by counsel and sustained injuries to his head, neck, back and shoulder. He has sought care for his injuries and has incurred bills. Treatment has been rendered in Mankato at Immanuel St. Joseph's Clinic and Schugel Family Chiropractic. His current treatment is for neck and low back strains.

Pursuant to ordinance, the city attorney appeared before the standing committee on ways and means/budget and requested initial authorization to submit all current and ongoing bills relating to this no-fault claimant directly to the city finance officer for payment. Authorization was granted by the city council on May 11, 2007 and treatment bills totaling \$1,959.47 have been paid. Initial total exposure for the City of Minneapolis was \$20,000.00 for medical treatment and \$20,000.00 for wage loss. Remaining exposure is \$38,040.53.

Following extensive negotiations with claimant's counsel we have reached a tentative settlement of Mr. Edward's No-Fault claim against the City in the amount of \$4,500.00. We believe that the settlement is in the best interests of the City and recommend approval by this Committee.

TJM / 07-04271



**Request for City Council Committee Action
From the City Attorney's Office**

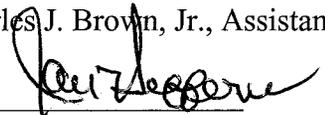
Date: June 26, 2007
To: Ways & Means/Budget Committee
Referral to:

Subject: Aminia Birimbir
Auto/Personal Injury Claim

Recommendation: That the City Council approve settlement of the claim filed by Aminia Birimbir in the amount of \$15,000.00, payable to Aminia Birimbir and Michael J. Riehm, Esq., her attorney of record, and authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of claims in this matter, payable from Fund/Org. 6900 150 1500 4000.

Previous Directives: None.

Prepared by: Charles J. Brown, Jr., Assistant City Attorney Phone: 612-673-2903

Approved by: 
 Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:
City Goals: Build Community

Background/Supporting Information

On March 8, 2006, at approximately 7:00 p.m., claimant Aminia Birimbir was a front seat passenger in a 1998 Audi Quattro which was traveling northbound in the left lane on Cedar Avenue. During this time, Minneapolis Police Officer Derek Chauvin was driving his squad car northbound in the right lane on Cedar Avenue and gauging oncoming southbound traffic in order to negotiate a left turn onto 7th Street. Officer Chauvin activated his left turn signal in an attempt to make the u-turn; however, as he attempted a left turn, his squad's left bumper collided with the front passenger door of the Audi. Ms. Birimbir was 47 years old at the time of this accident.

Immediately following the collision, Ms. Birimbir claims an onset of neck, right shoulder and back pain. Consequently, she presented to Allina Medical Clinic with complaints of neck, shoulder, upper back, right middle finger and arm pain. Ms. Birimbir also complained of dizziness. Dr. Varikuti examined her and prescribed Darvocet and Zanaflex for her pain. Dr. Varikuti also recommended chiropractic treatment and physical therapy.

On March 17, 2006, Ms. Birimbir presented to Bloomington Lake Chiropractic. Dr. Smith treated her and advised her to return for treatment three to four times a week for the following four weeks. Dr. Smith also referred Ms. Birimbir to rehabilitation and massage therapy. On June 22, 2006, Ms. Birimbir presented to Noran Neurological Clinic for a consultation. Upon presentation, Dr. Ryberg examined Ms. Birimbir and suspected she suffered a musculoligamentous injury of the neck and back. He also stated that Ms. Birimbir may have a herniated disc or a torn rotator cuff. As a result, Dr. Ryberg scheduled an MRI diagnostic test and prescribed Naprosyn. On June 29, 2006, Ms. Birimbir underwent an MRI of her cervical and lumbar spine and right shoulder. The MRI confirmed a torn rotator cuff tear. On August 1, 2006, Ms. Birimbir was referred to Twin Cities Orthopedics by Dr. Ryberg for an evaluation of her right shoulder. Upon examination and review of Ms. Birimbir's MRI results, Dr. Riggi concluded that she would be a good candidate for surgery to repair her torn rotator cuff tear.

Since the accident, Ms. Birimbir has not undergone surgery. She also claims that continued pain and physical restrictions have detrimentally affected all aspects of her life. Ms. Birimbir alleges pain in her neck, right shoulder and back which limit her daily activities. She is also limited in lifting, carrying, and bending which makes many of her job and household duties difficult. To date, Ms. Birimbir continues to treat with her health care providers on an as needed basis. It appears she sustained a verifiable turn rotator cuff injury as a result of the subject accident. In addition, Ms. Birimbir's medical bills for treatment related to the subject accident total \$12,0007.71.

Ms. Birimbir initially demanded a settlement of \$50,000.00. However, after much negotiation, she has agreed to accept \$15,000.00 as full and final settlement of her claim against the City of Minneapolis.

Liability is clear in this case because the City police officer failed to yield to or recognize the vehicle in which Ms. Birimbir was a front passenger. In addition, Ms. Birimbir has verifiable injuries and damages. Given the apparent liability on the part of the City and Ms. Birimbir's medical costs and possible future surgery, a jury could award a substantial judgment in her favor.

Accordingly, the City Attorney's Office believes that the proposed settlement is in the best interest of the City of Minneapolis and recommends approval.

06L-05317



**Request for City Council Committee Action
From the City Attorney's Office**

Date: June 21, 2007
To: Ways & Means/Budget Committee
Referral to:

Subject: Carolyn Rose Thomas v. City of Minneapolis
Court File No. 05-2832 (RHK/JSM)

Recommendation: That the City Council approve the settlement of this case by payment of \$13,000.00, payable to Carolyn Rose Thomas and her attorney, R. Donald Hawkinson, from Fund/Org. 6900 150 1500 4000 and authorize the City Attorney's Office to execute any documents necessary to effectuate the settlement.

Previous Directives: None.

Prepared by: Timothy S. Skarda Phone: (612) 673-2553

Approved by: Jay M. Heffern
Jay M. Heffern
City Attorney

PWB

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
- Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact: Build Community

Background/Supporting Information

This incident arose on May 5, 2002, at the Rainbow Foods grocery store located at 2919 - 26th Avenue South where the Plaintiff was subdued, ticketed and transported to a shelter and eventually to the hospital by Minneapolis police officers. The Plaintiff alleges that she entered the store and was lawfully browsing the greeting cards and went outside to have a cigarette. She alleges, further, that Officers Peterson, Fuchs and Trobec pushed and shoved her without provocation, struck her in the face and twisted and bruised her arms. The Plaintiff also alleges that officers forced her out of their vehicle and refused medical attention for her injuries after she had requested to be taken to the hospital. The arrest and use of force has resulted in the current lawsuit in Federal District Court asserting § 1983 claims for excessive force and false arrest, as well as, tort allegations of assault, battery, false arrest and violation of the Minnesota Constitution.

The officers indicate that two squads were dispatched to an unwanted party at the Rainbow Foods store. The officers observed the Plaintiff harassing customers and hitting things in front of the store. The Plaintiff was told to leave the area and replied with an obscenity and ran into the store. From their brief contact with the Plaintiff, the officers believed that she was drugged, drunk or had mental health issues. The officers went into the store

and the Plaintiff began to yell and scream at the officers. The officers took the Plaintiff by her arm to escort her outside. When the Plaintiff began to kick at a security stand at the exit, the officers forced her to the ground. The Plaintiff did not cooperate with the handcuffing process. Officer Peterson used his flashlight to attempt to pry the Plaintiff's right arm out from beneath her, but was not successful. The Plaintiff was stuck twice in the arm with the flashlight and ordered to put her hands behind her back. The Plaintiff was finally handcuffed and secured in a squad car. The Plaintiff calmed down and requested to be taken to Cedar and Franklin Avenues and dropped off so she could go to a shelter. The Plaintiff was released as requested and given a citation for disorderly conduct.

Later that evening, a second squad car responded to a call for assistance from the caretaker of a building at 2019 - 16th Avenue South who reported that the Plaintiff was crying and banging on the door. The Plaintiff was transported to the Hennepin County Medical Center by a second set of officers. Medical records indicated that she had a contusion to her eye and bruises on her arms although no photographs were taken. The Plaintiff alleges that she continues to have vision problems, arm and shoulder pain. The Plaintiff went to Fairview Hospital the following day where photos were taken showing her left eye swollen shut and bruised from her eyebrow onto her left cheek. The officers have documented their use of force, but do not recall seeing any injury to the Plaintiff's eye and documented no facial injuries. City investigators have not been able to locate the Rainbow Foods employee who made the initial call for service.

The City participated in a settlement conference on June 18, 2007, before Federal Magistrate Janie Mayeron. The settlement conference was attended by Council President Barbara Johnson, Assistant City Attorney Timothy S. Skarda, Deputy Chief Scott Gerlicher and Officers Fuchs and Peterson on behalf of the City. The Plaintiff initially demanded \$45,000.00, exclusive of attorney's fees and costs. A proposed settlement was reached in the amount of \$13,000.00, including attorneys' fees and costs. Chief Dolan has reviewed the proposed settlement and recommends its approval. The proposed settlement would be taken with the City and the officers dismissed from the litigation. All the parties involved in the settlement conference believe that the proposed settlement is in the best interest of the City and recommend approval by this Committee and the City Council.



**Request for City Council Committee Action
From the City Attorney's Office**

Date: June 21, 2007
To: Ways & Means/Budget Committee
Referral to:
Subject: Hector Lopez Martinez vs. City of Minneapolis
Court File No. 27-CV-06-17906

Recommendation: That the City Council approve the settlement of this case by payment of \$26,000.00, payable to Hector Lopez-Martinez and his attorney, Paul J. Phelps, from Fund/Org. 6900 150 1500 4000 and authorize the City Attorney's Office to execute any documents necessary to effectuate the settlement.

Previous Directives: None.

Prepared by: Timothy S. Skarda Phone: (612) 673-2553

Approved by: Jay M. Heffern
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the Capital Budget or Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: Action is within the plan. Action requires a change to plan.
- Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact: Build Community

Background/Supporting Information

This case arose from an automobile accident on June 9, 2006. Mr. Lopez-Martinez is 32 years old, working full time as assistant manager at *Chipotle*. He emigrated from Mexico in 1989 and speaks limited English. He was alone in his vehicle stopped at a red light on Lake Street when he was struck from the rear by an unmarked Minneapolis squad car driven by Officer Christopher House. He was wearing a seat belt at the time of the accident. Lake Street was under construction and when the officer first saw brake lights, he did not have time to stop. Mr. Lopez-Martinez was uninsured at the time of the accident. Liability clearly rest with the City and the only issue presented by the case is an evaluation of the level of damage suffered by the Plaintiff.

Mr. Lopez-Martinez began to experience pain at the scene of the accident and was evaluated and transported to the Hennepin County Medical Center by ambulance.

Currently, Mr. Lopez-Martinez complains of pain in his upper back and neck, all of the way down to the lower back. The pain is burning in the thoracic spine and aching in the low back. He states the pain in his back increases with standing and walking. He also complains of some right ankle pain. He is able to drive a car. He

does his normal activities of daily living. He states he does some back exercises. He does not play any sports and does no aerobic exercises. He has some problems with anxiety, and he states he has a phobia about driving a car since the accident. Dr. Alfonso Morales of Central Medical Clinic diagnosed trigger points with a cervical strain, cervicothoracic myofascial pain, posttraumatic lumbar strain and a right ankle contusion. On July 26, 2006, an MRI of his cervical spine showed a central disc bulge at C4-5 with extension to the cord, creating a mild central stenosis. The examination also revealed a central protruding disc at C5-6 with extension posteriorly, approximately 1-2 mm. An MRI of the lumbar spine was completely normal. An MRI of the right ankle revealed an osteochondral defect on the right lateral talar dome.

In an independent medical evaluation conducted by the City, the doctor believed that Mr. Lopez-Martinez did not sustain any significant injury to his cervical, thoracic, lumbar spine or ankle. The evaluation indicated that the medical problems were pre-existing or injuries from which he should have recovered within three months.

The Plaintiff incurred medical expenses of approximately \$12,238.58 and alleges damages to his vehicle of \$2,262.42. The Plaintiff asserts a claim for \$7,500.00 for future medical expenses and \$25,000.00 for pain and suffering. The Plaintiff demanded \$44,738.58 in settlement of all claims. Because the Plaintiff was not insured, the City is responsible for the medical treatment expenses for the Plaintiff that would normally have been assumed by the Plaintiff's insurance provider.

The squad car suffered approximately \$6,300.00 in damage.

A settlement conference was scheduled for June 20, 2006, in Hennepin County District Court before the Honorable Richard S. Scherer. Prior to the settlement conference, the Plaintiff accepted the final settlement offer of the City in the amount of \$26,000.00, including all past and future claims. The proposed settlement has been reviewed and approved by the City Attorney Litigation Committee. Chief Dolan has reviewed the proposed settlement and recommends its approval. We believe that the settlement is in the best interest of the City given that liability rests with the City and the level of injury suffered and recommend approval by this Committee and the City Council.