



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

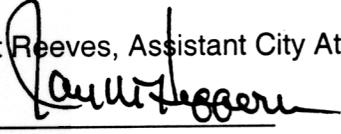
Date: April 3, 2002
To: Ways & Means/Budget Committee
Referral To: None

Subject: Robert Ess v. City of Minneapolis

Recommendation: That the City Council approve the settlement of this case by payment of \$2,500.00 payable to Robert Ess and his attorney, James M. Riley, from Fund/Org. 6900 150 1500 6600.

Previous Directives: None.

Prepared by: Scott Reeves, Assistant City Attorney Phone: 673-2066

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

<p>Financial Impact (Check those that apply)</p> <p><input type="checkbox"/> No financial impact - or - Action is within current department budget. (If checked, go directly to Background/Supporting Information)</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Capital Budget</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Operating Budget</p> <p><input type="checkbox"/> Action provides increased revenue for appropriation increase</p> <p><input type="checkbox"/> Action requires use of contingency or reserves</p> <p><input checked="" type="checkbox"/> Other financial impact (Explain): Fund/Org. 6900 150 1500 6600</p> <p><input type="checkbox"/> Request provided to the Budget Office when provided to the Committee Coordinator</p>
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<p>Community Impact: City Goals: Build Community</p>

Background/Supporting Information

Plaintiff Robert Ess is a 59 year old man. On July 1, 2001, he was helping his daughter move furniture at 3420 Pleasant Avenue South. While helping to carry a piece of furniture off the truck, he stepped into a broken sewer grate. His left leg went through up to his upper thigh. The sewer grate had a broken crosspiece, leaving a hole large enough to step into, and jagged cast iron edges around the hole. Mr. Ess sustained deep lacerations to his calf and thigh which became infected. He also sustained back, groin, and ankle strains. He missed one week of work as a masonry foreman. His wage loss was \$1,940.00. He incurred medical bills in the

amount of \$697.79. He recovered from his injuries after several weeks. He has commenced a lawsuit in Hennepin County District Court to recover damages.

The landlord of the adjacent property reports that he observed the broken sewer grate at least one year and possibly as many as three years prior to the incident. He did not report the broken sewer grate to the City. The evidence indicates that the broken sewer grate was open and obvious, that it had existed for a substantial period of time prior to the incident, and that City inspectors, public works crews, and other employees were in the immediate vicinity during the period of time when the sewer grate remained broken. There is a substantial possibility that a jury could conclude that the City had constructive notice of the defective condition of the sewer grate. A jury verdict in Mr. Ess' favor would likely result in a much higher award than the proposed settlement.

The parties have reached a tentative settlement in the amount of \$2,500.00, subject to City Council approval. We believe this is a fair and reasonable settlement given the risks of a higher award if the case proceeded to trial.

SR:sk/01L-0238