



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

Date: August 4, 2005
To: Ways & Means/Budget Committee
Referral to:

Subject: Harris et. al v. Ochs et. al.
Court File No.: 02-3553 JNE/JGL

Recommendation: That the City Council approve the settlement of this case by payment of \$9,500.00 payable to Bernard Harris and Monica Ford and their attorney, David Shulman, from Fund/Org. 6900 150 1500 4000 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives:

Prepared by: C. Lynne Fundingsland, Assistant City Attorney Phone: 673-3339

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): 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

This case arises from March 9, 2002, when the Plaintiffs, Bernard Harris and Monica Ford, were at the E Z Stop gas station at 1624 Washington Avenue North in Minneapolis. Mr. Harris states that he observed Officers Ochs and Hafstad parking in the parking lot. Mr. Harris claims that Ochs has a history of animosity toward Harris and has harassed and stopped him without cause on numerous occasions. Mr. Harris states that Officer Ochs called him over to the squad and began verbally harassing him. The officers do not agree on whether Mr. Harris voluntarily approached the squad or whether he was called over by Officer Ochs.

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The officers state that, once Mr. Harris was by the squad, he spit on the squad car. At the time, it was late at night and there were many people in the parking lot and in the area. The officers claim that Harris was yelling at the officers. The officers believed that, given Mr. Harris' attitude and actions, and the fact that he might incite the crowd, he should be arrested for disorderly conduct. When the officers attempted to handcuff Harris, he refused to comply with the officers' commands and the officers maced him and struck him in the face. In attempting to place him in the squad, they were approached by Ms. Ford. The officers told her to stay back and sprayed a burst of mace in her face. Mr. Harris was placed in the rear of the squad. Mr. Harris was booked for disorderly conduct which was ultimately dismissed.

Mr. Harris claims that he was maced for no reason and that he was struck several times by the officers, including on the way to jail when they pulled over and went to the back of the squad car and struck him. The officers deny this, but do admit to macing Mr. Harris when he was handcuffed in the back of the squad car. A witness at the scene stated he saw the officers strike Mr. Harris while he was handcuffed.

Plaintiffs brought suit in United States District Court. Ms. Ford states that she experienced discomfort from the use of mace, but did not suffer any permanent injuries or seek any medical treatment. Mr. Harris' face was swollen from being hit by the officers. Plaintiff claim excessive force and race discrimination under the Minnesota Human Rights Act.

Plaintiffs moved the Court to add a count of punitive damages under the Human Rights Act based upon the purported history between Mr. Harris and Officer Ochs. The Court granted this motion.

This case is currently set for trial in August, 2005. On July 18, 2005, a final settlement conference was held before Chief Magistrate Judge Lebedoff. In attendance for the City were: Council Member Benson; Lieutenant Michael Davis; Officer Ochs; Officer Hafstad and Assistant City Attorney C. Lynne Fundingsland. After discussions at the conference, a proposed settlement was reached whereby the City would pay \$9,500.00 to Mr. Harris and Ms. Ford for total and complete resolution of this claim. All parties present for the City are in agreement with this proposed settlement. While the City has certain defenses in this litigation, because of the above, the fact that the officers differ as to why Mr. Harris first approached the squad, and the fact that a jury verdict could include punitive damages and payment of attorney's fees, we believe this is prudent settlement proposal and, therefore, recommend its approval.

02L-0123