



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

Date: August 26, 2008
To: Ways & Means/Budget Committee
Referral to:

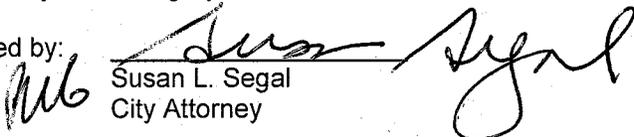
Subject: *Nicholas Hall v. Officer James Burns and Officer Michael Grahn*
Court File No.: 06-cv-4567 (JNE/JJG)

Recommendation: That the City Council authorize settlement of the matter of *Nicholas Hall v. Officer James Burns and Officer Michael Grahn*, Court File No.: 06-cv-4567 (JNE/JJG) in the amount of \$12,500.00, payable to "Law Office of David L Shulman, PLLC, for and on behalf of Nicholas Hall," and that the City Attorney be authorized to execute any documents necessary to effectuate the settlement from Fund/Org. 06900-1500100-145400.

Previous Directives:

Prepared by: Gregory P. Sautter Phone: (612) 673-2683

Approved by:


Susan L. Segal
City Attorney

Presenter in Committee: Susan L. Segal, 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): Fund/Org 06900-1500100-145400
 Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

City Goal(s): Build Community

Background/Supporting Information

Plaintiff Nicholas Hall brought a constitutional claim against Officers James Burns and Michael Grahn for injuries sustained from their interaction with him at the Metrodome after the Vikings – Packers football game on December 24, 2004. Both Officers were at the Metrodome working off duty, in uniform, as security for the Vikings.

After the football game had concluded, Hall and his friends attempted to enter the VIP reception area, even though their tickets did not entitle them access. The private security guard at the entrance of the area tried to explain to Hall that he did not have the appropriate passes and would be barred entry, but Hall refused to accept that answer. The guard then requested assistance from Officers Burns, Grahn, and Geere.

The officers approached and asked Hall to leave. The other members of Hall's group saw the officers and left the building as requested. Hall insisted he was entitled to entry and refused to leave. Officer Geere then escorted Hall's spouse out of the building by her arm. Hall claims that he verbally objected to Geere's action but did not move towards Geere. Burns

and Grahn insist Hall lunged towards Geere and his spouse. Burns and Grahn then pushed Hall against a wall, then brought him to the ground after Hall failed to become compliant. Pepper spray was used while Hall was on the ground. At some point while in the Officers' custody, Hall sustained a fracture to his right forearm. Hall appeared intoxicated to the officers and tested with significant alcohol in his system when he presented at HCMC later. Hall has over \$11,800.00 in verified medical expenses directly related to the arm injury.

The officers were sued individually and in their official capacity for injuries related to the incident. The City of Minneapolis was not named a party to the suit. The involved officers were served with the Complaint and requested defense from the City Attorney's office. Assistant City Attorney Greg Sautter answered the Complaint and served discovery. Sautter also analyzed the case and tendered defense to the Minnesota Vikings, as the claim concerned acts and omissions which were done while in the private employ of the Vikings. The Vikings accepted defense and the Officers' defense was turned over to Paul Peterson, Esq., of Lind, Jensen and Peterson. Neither the Vikings, nor, its insurer Chubb Corp., accepted liability or indemnification of the officers when they accepted defense of the matter.

The City has potential for liability for a judgment in this matter because of the indemnity provisions of Minn. Stat. § 466.07. Under Minn. Stat. § 466.07, the City must indemnify its employees, including police officers, for torts committed when they act in their official capacity. In this case, both Officers had finished their shifts working for Vikings as security immediately prior to the incident. Whether the Officers were considered to be in the employ of the Vikings at the time of the incident, and whether the Officers moved into their official capacity by arresting Hall, is a mixed determination of law and fact for the jury and presiding judge to make. The evidence indicates that Hall sustained his injuries while in the Officers' custody. These inquiries create a significant risk of liability on the part of the City.

The case proceeded through discovery under Peterson's guidance and was set for trial beginning in mid-September, 2008. A settlement conference was held on August 18, 2008, and, at the request of Peterson, the City sent Assistant City Attorney Darla Boggs, Esq., Inspector Robert Skomra, Council President Johnson, and Council Member Benson. Peterson appeared with a claims adjustor from Chubb Corp., the Vikings' insurer. Plaintiff appeared with Counsel. The parties left the conference without resolution, however, all agreed to continue talking. On Friday, August 22, 2008, with the assistance of Magistrate Judge Graham, the parties were able to agree to a settlement on the following terms. John Hall would receive a total payment of \$25,000.00, divided equally between the City of Minneapolis (\$12,500.00) and Chubb Corp. (\$12,500.00). This settlement is a total agreement, dependent on the acceptance and performance of all parties.

Inspector Skomra and CM Benson both attended the settlement conference, both were informed of the settlement terms, and both recommend approval. While the City has certain defenses in this matter, the City Attorney recommends this settlement as being in the best interest of the officers involved, as well as in the best interest of the City.