



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

Date: August 4, 2004
To: Ways & Means/Budget Committee
Referral to: None

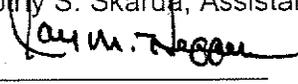
Subject: Herron v. Minneapolis Convention Center, Kelber Catering, Inc. and the Gospel Workshop of America, Hennepin County District Court File No.: 03-014522

Recommendation: That the City Council approve settlement of the lawsuit filed by Florine Herron, Hennepin County District Court file no. 03-014522, in the amount of \$5,000.00, payable to Florine Herron and Albert T. Goins, her attorney, and authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of claims, payable from Fund/Org. 6900 150 1500 8650.

Previous Directives: None.

Prepared by  Timothy S. Skarda, Assistant City Attorney, 673-2553

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 8650
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: Build Community

Background/Supporting Information

The present case arises out of a slip and fall accident that occurred at the Minneapolis Convention Center on August 14, 2001, during a convention of the Gospel Music Workshop of America. Ms. Herron was attending the convention and slipped and fell on a greasy spot on the flooring outside an exhibit hall near the service door to a concession stand operated by Kelber Catering. Ms. Herron has filed a lawsuit alleging negligence by Kelber Catering, Inc., the Minneapolis Convention Center and the Gospel Music Workshop.

Patrick Fleming, the Manager of Safety and Security for the Convention Center, investigated the incident. Mr. Fleming discovered a slippery patch on the floor that was not obvious until stepped upon. He determined that Kelber Catering employees had placed a carton of frozen french fries on the spot that had, apparently, leached the slippery substance onto the flooring. The area was cordoned off and cleaned by Kelber Catering employees. Testimony indicated that Kelber Catering was responsible for cleaning spills that they observed in the vicinity of their concession stands. Testimony also indicated that Convention Center personnel patrolled the facility looking for spills or other dangerous conditions. The Kelber Catering concessions manager on duty at the time indicated in a recent undated written statement that she had observed no slippery spot and substantially denied the admissions made to Mr. Fleming regarding food products left outside the concession stand.

Ms. Herron is a 53 year old a music teacher and is a resident of Slidell, Louisiana. She alleges a variety of injuries, including soreness and pain to her neck, mid-back and lower back; numbness to her right hand and right side; headaches; difficulty remaining awake; and difficulty with mobility. Ms. Herron was in two prior automobile accidents, but alleges that she had fully recovered from any injuries suffered. Ms. Herron currently walks with a cane. She is currently on a disability pension from the State of Louisiana. Ms. Herron alleges that her injuries and physical restrictions placed upon her by her treating physician required her to take a year of leave without pay and resulted in her current inability to work. She indicated that she had planned to work until age 65. Ms. Herron also alleges that her injuries required her to close a music studio where she taught music independent of her employment with the school district.

On August 2, 2004, a court order mediation session was held involving Ms. Herron, Kelber Catering and the Convention Center. The Convention Center was represented by Assistant City Attorney Timothy Skarda, Patrick Fleming and Sue Colby. Ms. Herron initially demanded \$90,000.00 to settle all her claims. A proposed settlement of the lawsuit was reached in the amount of \$15,000.00 with \$10,000.00 payable by Kelber Catering and \$5,000.00 by the City of Minneapolis.

Liability is clear in this case. The floor was slippery and the condition was not obvious to Ms. Herron. It appears that the slippery condition was caused by Kelber Catering and the responsibility of the City of Minneapolis is secondary to that of Kelber Catering. Ms. Herron alleges substantial injuries, although the level of injury is strongly disputed by the Defendants. However, a jury could award a substantial amount in damages for even an aggravation of a pre-existing injury, especially given that Ms. Herron has been awarded a disability pension. The parties involved in the mediation believe that the proposed settlement is in the best interests of the City of Minneapolis and recommend approval.