



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

Date: September 08, 2006  
To: Ways & Means/Budget Committee  
Subject: Alan Thomas v. Jomar Villamor, Doug Dubay, & City of Minneapolis 051-0064  
United States District Court No. 05-0010 PAM/JSM

**Recommendation:** That the City Council authorize settlement of Alan Thomas v. Jomar Villamor, et al. for the amount of \$14,000.00 payable to Alan Thomas and his attorney, Peter Nickitas, from Fund/Org. 6900 150 1500 4000, and that the City Attorney be authorized to execute any documents necessary to effectuate this settlement.

**Previous Directives:**

Prepared by: Sydn N. Woods assistant City Attorney Phone: 673-2625

Approvr mil.  
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): \$14,000.00 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**

For a number of years, Wesley Methodist Church, located downtown next to the Convention Center, has provided free meals on Saturday mornings to people in need. Generally, the church feeds 100-150 people on any given Saturday. No church services are held during the service of the meals. Over the years, Convention Center Security has lodged complaints about the rowdy congregants waiting for meals.

On March 13, 2004, at approximately 10:20am, Plaintiff Alan Thomas was waiting for the Wesley Church to open and begin serving meals. He was waiting with a group of friends. There were approximately 30-40 people waiting at the time. While they were waiting, a couple of men (who were drinking) began making a lot of noise and wrestling with one another on the ground. Minneapolis Police Department ("MPD") Officers Jomar Villamor and Doug Dubay were working security for the Auto Show, held in the Convention Center that weekend. The officers received a number of

complaints from Auto Show attendees who passed the Wesley parking lot to enter the Convention Center. The officers went over to the church to check on the disturbance. They observed a number of the Wesley people on the sidewalk dividing the Convention Center from the church. The officers ordered them to move into the church parking lot and off of the sidewalk and tables that were on Convention Center property. Plaintiff and a number of witnesses allege that Officer Dubay began yelling at the people that they were "drunk losers," "welfare cases," and asked if they were standing in line to get welfare checks. Officer Villamor said nothing.

One of the church volunteers, Brian Larson, a computer programmer, was among the crowd handing out numbers for service of the meals. He heard the comments made by Officer Dubay and attempted to talk to both officers to avoid a situation escalating. They ignored him and told him to get back into the parking lot with the others. Larson stated that as Officer Dubay continued to taunt the crowd, they became more agitated, first mumbling under their breath and then speaking out loud. However, finding no actual disturbance, the officers began walking back to the Convention Center. They almost made it to the door when someone yelled something. The officers went back to the crowd and allegedly told them they had to leave the premises. Villamor and Dubay both testified that they never told the people to leave, only to move back into the parking lot.

The officers approached a small crowd of people near the Convention Center, which included Plaintiff Alan Thomas. Plaintiff was a large individual and was using a cane. Plaintiff told the officers that he was on church property and the officers couldn't make him move. He became belligerent and challenged the officers. After repeatedly telling Plaintiff to move to the church lot and him refusing to do so, the officers then informed him they were arresting him for inciting a riot. Plaintiff alleges that the officers repeatedly called him a nigger, however, the officers deny this and none of the witnesses recall hearing racial epithets. Plaintiff admitted that he also made other comments to the officers (i.e. "Are you crazy? Are you officers on drugs? You all are a joke."). When Plaintiff continued to resist, Officer Villamor maced him in the eyes. Plaintiff was wearing sunglasses and was not affected. Villamor maced him again and the officers were able to lead him to their police unit. He was transported to Hennepin County Jail without incident.

In his Complaint, he claims the officers threw him against a wall, twisted his shoulder behind him and hit him in the face with his cane breaking his nose. He claimed he suffered a fractured nose, torn right shoulder, dislocated disc, severe pain, emotion distress, humiliation and embarrassment. Plaintiff later admitted that his nasal injury was not from the March 13, 2004 incident. Many of the witnesses allege seeing Plaintiff mistreated by police. Brian Larson stated he didn't see any physical abuse but did not see Plaintiff after the officers lead him around the corner to their vehicle.

Plaintiff has a history of medical problems since a work-related injury to his neck in 2002. He was on SSI and walked with a cane at the time of his encounter with Officers Dubay and Villamor. He presented at Abbott Northwestern's ER on March 14, 2004 complaining of nasal pain and increasing diffuse pain in his neck, back arms and legs. X-rays revealed arthritis in both hips but no acute injury to the cervical spine. Plaintiff was diagnosed with acute strain of the right leg, shoulder, right forearm, neck and lower back.

Plaintiff was seen on April 10, 2006 for an orthopedic consultation by orthopedic surgeon Dr. Robert Wengler. He was diagnosed as having degenerative disc disease of the cervical spine, a lesion on his right shoulder, a rotator cuff tear, and degenerative osteoarthritis. In July, 2006, orthopedic surgeon Paul Cederburg, diagnosed a history of chronic pain, degenerative disc disease of the neck and low back, history of age indeterminate nasal fracture, a history of tendonopathy, and degenerative joint disease of the right shoulder. There is some dispute about whether the Plaintiffs injuries were exacerbated by his encounter with the officers.

Former Police Chief Tony Bouza submitted an expert report stating that the officers' behavior was unreasonable and "shameful." Defendants' expert, Brooklyn Center Police Chief Scott Bechtold, stated the officers acted reasonably in using the mace given the number of people, their increasing anger, Plaintiffs failure to cooperate, and the possible escalation of violence.

This case was filed in United States District Court in January 2005. Given there are some credibility issues with the officers' testimony and conflicting IME reports, it is likely that Plaintiff will be awarded some amount of money. If Plaintiff were to prevail, the City would be liable for his attorney's fees, as well.

Alan Thomas v. Jomar Villamor, et al.

September 8, 2006

Page 2

At a court ordered mediation, the Plaintiff agreed to accept \$14,000.00 for full and complete settlement of this matter, including attorney's fees. For the reasons outlined above, we believe this to be a prudent settlement in the best interests of the City.

05L-0064