



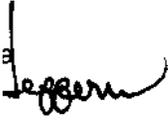
**Request for City Council Committee Action
From the City Attorney's Office**

Date: December 15, 2006
To: Ways & Means/Budget Committee
Referral to:

Subject: Jacob John Kenfield v. Wrecker Services, Inc. and the City of Minneapolis
Court File No. 06-01016 (DSD/SRN)

Recommendation: That the City Council approve the settlement of this case by payment of \$15,000.00 payable to Jacob John Kenfield and his attorney, James A. Heuer, from Fund/Org. 6900 150 1500 4000 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives: None.

Prepared by: Tim S. Aarda  Phone: (612) 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 (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): Payment from Fund/Org. 6900 150 1500 4000

Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact: Build Community

Background/Supporting Information

This matter arises out of a February 15, 2004, incident at the Wrecker Services, Inc. towing facility located at 200 Lyndale Avenue North. Lt. Robert Kroll was working an off duty job providing security at the facility. The Plaintiff and his two sisters had their vehicle towed from a private lot while the Plaintiff was celebrating his 21st birthday. The Plaintiff engaged in a heated discussion with employees of Wrecker Services regarding the return of the towed vehicle. Wrecker Services asked for police assistance. Lt. Kroll engaged in a conversation with the Plaintiff lasting approximately 10 minutes during which the Plaintiff remained agitated and verbally abusive. Eventually, the Plaintiff was ordered to leave Wrecker Service and told by Lt. Kroll that if he returned he would be arrested for trespass. The Plaintiff returned in approximately 10 minutes to continue the conversation.

According to the City and Wrecker Services, the Plaintiff was placed under arrest by Lt. Kroll and placed against a wall for handcuffing. Lt. Kroll had his handcuffs in his right hand as he was preparing to secure the Plaintiff. The Plaintiff turned off the wall and began to swing at the officer. The officer struck the Plaintiff two or three blows to the face while holding his handcuffs. Wrecker Services employees opened a secured door that

the Plaintiff was against and the officer and the Plaintiff fell to the floor in the back office area. The Plaintiff was handcuffed and transported to the Hennepin County Medical Center for treatment of his injuries.

The Plaintiff alleges that he was taken into the back secured room of Wrecker Services and after being handcuffed was struck in the face and kicked by Lt. Kroll.

The Plaintiff suffered bruising and swelling to his face and eyes as documented by the Hennepin County Medical Center photographs. According to this testimony, the Plaintiff has recovered from his injuries except for clicking in his jaw that does not cause pain or affect eating or chewing and headaches that are treated by over the counter medication. There is no claim for lost wages being asserted by the Plaintiff, however, he does have a claim for \$2,777.85 in medical expenses.

In this lawsuit, the Plaintiff has asserted that Wrecker Services, Inc. was negligent and that its employees assaulted, battered and falsely imprisoned him. The Plaintiff asserted that excessive force was used and that he was falsely imprisoned by the officer. The Plaintiff asserts his claims against the City and officer pursuant to 42 U.S.C. § 1983, which would entitle him to recover attorney's fees and costs should he prevail at trial.

On December 12, 2006, a settlement conference was held in Federal District Court before Magistrate Susan Richard Nelson in which a tentative settlement of the lawsuit in the amount of \$27,777.85 with the City responsible for the payment of \$15,000.00 of the proposed settlement and Wrecker Services responsible for the balance of \$12,777.85. In addition to representatives of Wrecker Services, the settlement conference was attended by Council Member Paul Ostrow, Deputy Chief Scott Gerlicher, Lt. Robert Kroll and Assistant City Attorney Timothy Skarda. Lt. Kroll is being dismissed from the lawsuit and the settlement will be made with the City of Minneapolis. In reaching the proposed settlement the parties considered the graphic nature of the photos of the Plaintiff's injuries and the effect such photos may have on a jury, as well as, the potential liability for attorney's fees and costs should the Plaintiff prevail at trial. We believe that the settlement is in the best interests of the City and recommend approval by this Committee.