



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

Date: November 2, 2005

To: Ways & Means/Budget Committee

Subject: Boone Trucking, et al. v. Weis Construction Company and the City of Minneapolis, et al.
U.S. District Court No.: 05-0024 MJG/JGL – Claims of Tatanka Concrete and Masonry

Recommendation: That the City Council authorize settlement of Plaintiff Tatanka Concrete and Masonry's case for the amount of \$3,000.00 payable to Tatanka Concrete and Masonry and its attorney, David Shulman, from Fund/Org. 6900 150 1500 3000, and that the City Attorney be authorized to execute any documents necessary to effectuate this settlement.

Previous Directives:

Prepared by: Sydnee N. Woods Assistant City Attorney Phone: 673-2625

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): \$3,000.00 from Fund/Org. 6900 150 1500 3000
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

City Goals: Build Community

Background/Supporting Information

The Boone trucking case involves claims of discrimination in the hiring of subcontractors by contractors working on Heritage Park and the new Central Library. A similar case, Faith Burns v. City, has also been filed relating to subcontracting at Heritage Park.

The City pursued a Rule 12 Motion to Dismiss/ Motion for Summary Judgment with only limited success. We recently attended an early Settlement Conference with Magistrate Judge Lebedoff, but no progress was made toward settlement. The prime contractors on both projects were adamant that they did not discriminate and our liability, if any,

is derivative of theirs. During the settlement conference, Plaintiffs' counsel, David Shulman, made a monetary demand for Plaintiff Tatanka Concrete and Masonry of \$50,000.

Prior to the start of the project, Tatanka submitted a bid to do work on Heritage Park. Tatanka was chosen by Weis. Subsequently, however, Tatanka stated it did not have the requisite capital to complete the work. Weis offered to buy the materials necessary and still allow Tatanka to perform the labor. Tatanka told Weis it was also unable to perform the labor. Tatanka voluntarily withdrew from the project. Tatanka later alleged that Weis failure to use them was based on racial discrimination. Tatanka also alleged that Weis informed the City that it was using Tatanka even after the decision was made not to use Tatanka. Tatanka alleged that the City knew Weis was not using Tatanka but did not penalize Weis for this alleged violation of the SUBP ordinance.

Weis' attorney had several conversations with the plaintiff's attorney and then contacted our office to say that he believed the Heritage Park claims could be settled quite cheaply. He asked if we would be interested in contributing to a settlement of those claims. He suggested that both the City and Weis offer \$3,000 to the plaintiff (for a total of \$6,000). Weis and the City previously settled the claims by the other plaintiff in the Heritage Park portion of the case, Your Way Cleaning, for \$999.

The City Attorney authorized a settlement of \$3,000.00 to settle Tatanka's claims. Tatanka has agreed to a settlement of \$6,000.00, with the City paying \$3,000.00