



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

**Date:** April 1, 2002  
**To:** Ways & Means/Budget Committee  
**Referral to:** None

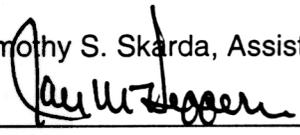
**Subject:** Curtis v. City of Minneapolis, et al.

**Recommendation:** That the City Council approve settlement of the lawsuit filed by Joseph Curtis, federal district court file no. 00-784, in the amount of \$35,000.00, and reasonable attorneys fees in an amount to be determined by the court, payable to Joseph Curtis and his attorney, Robert Bennett, 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 4000.

**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 4000
- Request provided to the Budget Office when provided to the Committee Coordinator

**Community Impact:**

City Goals: Build Community

**Background/Supporting Information**

This incident involves allegations of excessive force on April 8, 1999. Allegations involving illegal search, deprivation of liberty without due process, conspiracy to violate civil rights, assault, battery, discrimination

and the deliberate indifference of the City were dismissed by the court after consideration of the City's motion for summary judgment.

Officers obtained a valid warrant to search 2929 Garfield Avenue South after drug activity was observed in the lower unit of the duplex. An informant also directed officers to the upper unit where Joseph Curtis lived with his nephew. Mr. Curtis' nephew was a subject of the investigation, but Joseph Curtis was not. The Emergency Response Unit entered the lower unit and the upper unit was searched by the precinct Community Response Team. Forced entries were made into both units.

Mr. Curtis was in his bedroom. He is a 53-year-old African American man who has suffered a series of strokes that have severely affected his mobility and ability to speak. Mr. Curtis was sitting on his bed. He was ordered to lie on the floor by officers. When Mr. Curtis did not respond, he was pulled off the bed onto his knees. An officer entered the room with a 'bunker,' a shield behind which officers protect themselves during forced entries. The officer observed that Mr. Curtis was not responding and stuck him on the back with the bunker knocking him face first onto the floor where he was handcuffed. After the apartment was secured, the officers learned that Mr. Curtis was disabled. The handcuffs were removed and he was assisted with his injuries. The entire incident involving the use of force on Mr. Curtis lasted two minutes or less.

Mr. Curtis alleges that his mouth was cut and bruised and that he lost two teeth as a result of striking the floor. The City has disputed that any teeth were lost. Mr. Curtis alleges that officers used excessive force when they pulled him from his bed and stuck him with the bunker. Mr. Curtis alleges that officers should have realized that he was disabled because there was a walker and a cane in his room. He alleges, additionally, that the force used was excessive because he posed no threat to the officers, made no threatening moves or comments and offered no resistance. The officers agree that Mr. Curtis was not threatening or resisting, however, it is standard practice to place people on the floor with their hands exposed. The officers indicated that force was used because Mr. Curtis was not responding to verbal commands from uniformed officers and they did not know why.

A settlement conference was held on September 14, 2000. The Plaintiff sought \$35,000.00 in damages. A settlement was not reached. The City believed that the officers were immune from liability and sought summary judgment. The trial court dismissed all claims except excessive force allegations, ruling that a question of fact existed concerning the reasonableness of the force used by the officers under the circumstances. The City appealed to the Eighth Circuit Court of Appeals. After briefing, the Eighth Circuit dismissed the appeal and returned the case to the district court for trial.

A second settlement conference was held on March 25, 2002, attended by Council Member Barbara Johnson and Deputy Chief Greg Hestness. The Plaintiff initially demanded \$200,000.00 in settlement. A tentative agreement was reached in which the Plaintiff would be paid \$35,000.00 and attorney's fees in an amount to be determined by the district court after submissions and arguments from the parties. When the court has determined the amount of attorney's fees, that amount will be submitted to this committee for approval. Based upon the hours expended in defending the lawsuit, attorney's fees are estimated to be in the range of \$25,000 to \$50,000.

We believe that settling this lawsuit as described would be in the best interests of the City of Minneapolis. Council Member Johnson and Deputy Chief Hestness concur in recommending approval of the tentative settlement. While the officers were following police procedures and may be entitled to immunity, the courts

have ruled otherwise. Mr. Curtis was an innocent third party who was present during the search warrant because his medical and financial condition precluded other housing alternatives. Mr. Curtis' failure to comply with the orders from the officers was due entirely to his medical condition. As the district court and Eighth Circuit rulings indicate, a jury could find that it was unreasonable to use force on an unresisting individual being held at gunpoint and that Mr. Curtis' physical limitations should have been readily apparent to the officers. The fact that Mr. Curtis' physical condition has continued to deteriorate since the incident would make his testimony more compelling to a jury. Should Mr. Curtis prevail at trial, the City would be responsible for the payment of attorney's fees and costs. The current amount of fees and costs could be expected to double through trial. All things considered, this was an unfortunate situation where both the officers and Mr. Curtis were attempting to act reasonably in response to their perception of the circumstances.