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

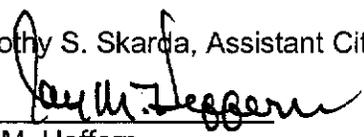
Date: March 25, 2003
To: Ways & Means/Budget Committee
Referral to: None

Subject: Odell Thompson v. City of Minneapolis, U.S. District Court, 02-0008 JMR/FLN.

Recommendation: That the City Council approve settlement of the lawsuit filed by Odell Thompson, federal district court file no. 02-0008, in the amount of \$23,000.00, payable to Odell Thompson and his attorneys Bruce W. Larson and Kimberly M. Ferrier, and to 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: None

Background/Supporting Information

This incident involves allegations of deprivation of Constitution rights protected under to 42 U.S.C. § 1983 for the alleged use of excessive force and the failure to provide medical attention to the Plaintiff arising from an incident that occurred on December 31, 2000.

Minneapolis police officer Marshall Collier was working off duty at Catholic Charities Branch II Secure Waiting Facility. The facility is a short-term homeless shelter mostly for single men. The officer was at the sign-in desk in a room off the lobby with a view of the front entrance and lobby. A Branch II employee, Joe Williams, was

in another part of the building and did not see the incident. He was present only when the Plaintiff came in later complaining of a broken leg.

According to the officer, the Plaintiff was intoxicated when he came in, bypassed the sign-in desk, and tried to go upstairs. He was told to leave. The Plaintiff left the building cooperatively, but returned and tried to get upstairs again. The second time the Plaintiff was uncooperative. The officer tried to escort the Plaintiff from the building. The Plaintiff grabbed the door jam and would not let go. Eventually, after being pushed and pulled, the Plaintiff lost his grip and fell down on the sidewalk. The Plaintiff got up and muttered that his leg was broken. According to the officer, the Plaintiff returned about 45 minutes later. The Plaintiff said he thought his leg was broken and he wanted to use the phone to call an ambulance. The officer knew that he had a duty to render medical assistance, but did not believe the Plaintiff's leg was broken. Joe Williams told the Plaintiff to use the phone across the street at the transit garage.

The Plaintiff alleges that he had left a backpack in the facility and had come back to retrieve it. He alleges that he was upstairs for and was coming downstairs when the officer grabbed him by the collar and hustled him roughly to the door. He alleges that the officer grabbed him by the seat of his pants and collar and threw him out the door onto the sidewalk. The Plaintiff alleges that he felt his leg break and that he was helped up by two people who assisted him back inside where he immediately asked to use the phone. When a phone was refused, he then went to the transit garage and took a bus to the Hennepin County Medical Center. The Plaintiff has a statement from a witness who was standing outside looking through a window that corroborates his version of the incident. It is not certain that the witness would be available for trial.

The Plaintiff sustained a "Weber B fracture" of the ankle. He was treated with a regular cast first and eventually underwent surgery, having hardware inserted into the ankle. The Plaintiff did not follow proper wound care and the incision became infected. He was in a wheelchair for several weeks.

The State of Minnesota has asserted a lien of \$10,850.50 for medical treatment provided and has intervened in the lawsuit. The litigation arises under civil rights statutes that would allow the Plaintiff to collect reasonable attorney's fees if he prevails at trial. We estimate, based on the number of hours spent defending the lawsuit, that the attorney's fees claim was between \$15,000 and \$20,000 at the time of the settlement conference.

A settlement conference was held on March 10, 2003, attended by Council Member Barbara Johnson and Director John Dejung, representing the police department. The Plaintiff demanded \$45,000.00 in damages and attorney's fees, including the lien by the State of Minnesota. A proposed settlement was reached in which the Plaintiff would be paid \$23,000.00. The settlement would include all claims for attorney's fees and the Plaintiff would reimburse the State of Minnesota out of the proceeds of the settlement.

We believe that settling this lawsuit as described would be in the best interests of the City of Minneapolis. Council Member Johnson and Director Dejung concur in recommending approval of the tentative settlement. The reasonableness of the use of force by the officer is a factual dispute with very little corroborating testimony on either side. A jury could find that the officer technically refused medical assistance to the Plaintiff even though the Plaintiff did not suffer any additional injury related to the delay in treatment. A nominal verdict in favor of the Plaintiff would subject the City to liability for attorney's fees substantially in excess of the amount of the proposed settlement. Given the level of damages, the possibility of liability and the potential for additional attorney's fees, we believe that the proposed settlement is in the best interests of the City of Minneapolis.