



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

Date: February 22, 2006  
To: Ways & Means/Budget Committee  
Referral to:

**Subject:** Janet Lynn Hodnik and Timothy P. McCarthy v. City of Minneapolis and Perry J. Ebner

**Recommendation:** That the City Council approve settlement of the above-referenced matter in the amount of \$25,000.00, payable to Janet Hodnik and Ramsay & DeVore, P.A. from Fund/Org. 6900 150 1500 2800 and further authorize the City Attorney's Office to execute all documents necessary to finalize the settlement.

**Previous Directives:**

Prepared by: Joel M. Fussy, Assistant City Attorney Phone: 673-2067

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): \$25,000.00 payable from Fund/Org. 6900 150 1500 2800
- Request provided to the Budget Office when provided to the Committee Coordinator

**Community Impact:**

**Background/Supporting Information**

This case arises as a result of a vehicular accident that occurred on July 17, 2000 between Minneapolis Fire Engine 11 and a Ford Focus driven by Plaintiff Janet Lynn Hodnik. Plaintiff was driving her vehicle immediately behind Engine 11 (which was not operating in an emergency response mode or with its lights or sirens activated) on Buchanan Street NE. While both vehicles were legally and properly stopped at the intersection with East Hennepin Avenue, a semi-trailer began a wide-turn from East Hennepin onto

Buchanan. Engine 11's driver, Perry Ebner, fearing that the semi might be turning into his path, immediately placed the Engine in reverse to back out of the way and struck Ms. Hodnik's vehicle. Ebner had not noticed Plaintiff's vehicle and did not obtain the assistance of his crew in backing up. Consequently, he did not see Plaintiff's vehicle stopped behind him. The collision resulted in light structural damage to Plaintiff's vehicle which necessitated repairs totaling \$1,100.00 (not part of this claim). Based on these facts, it appears that the liability of the City is clear.

Ms. Hodnik tensed against the wheel and pedals, causing pain to her right shoulder and ankle upon being backed into. She went to urgent care following the accident and was released after negative x-rays to her foot. On August 1, 2000 she began chiropractic treatment and shoulder massage, also complaining of low back pain. Later that month she began seeing Dr. Daly regarding continued complaints. Dr. Daly diagnosed right shoulder suacromion bursitis and right Achilles insertionitis and ordered physical therapy for pain and limited range of motion in her right shoulder and foot.

By October she returned to Dr. Daly with continued complaints of shoulder pain. He ordered MRI's of her back and shoulder. The MRI's showed some arthrosis and herniation issues in her shoulder and back, including two bulging and one herniated disc. Following the MRI's, Dr. Daly continued physical therapy and shoulder injections. He then recommended shoulder surgery which Plaintiff underwent (type 2 SLAP arthroscopic debridement) by Dr. Buss. The surgery was largely successful although Plaintiff was forced to delay the planned adoption of a child and her parenting has been restricted in terms of picking-up the child and other activities since such time.

The City did obtain an independent medical examination (IME) which concluded that the treatment for Plaintiff's back and foot injuries was warranted; although it further concluded that much of Plaintiff's need for the shoulder surgery was attributable to pre-existing conditions. Plaintiff's surgeon placed the majority of the need for her surgery upon the accident, but also conceded that some of the need was attributable to her pre-existing condition. Plaintiff's husband, Timothy McCarthy, is listed as a co-plaintiff to the present lawsuit under a loss of consortium claim.

The City's Litigation Committee met to consider the merits of settlement of this litigation. Settlement was authorized and negotiated in the proposed amount of \$25,000 in release of all claims, including pending subrogation claims asserted by Plaintiff's medical insurance provider. It should be noted that the City was successful in having Plaintiff's no-fault provider drop its asserted subrogation claim based on statutory and case law which excludes a marked fire apparatus from the ambit of the no-fault statutes.

The City Attorney recommends that the finance officer be authorized to issue a settlement check to Janet Hodnik and Ramsay & DeVore, P.A. in the amount of \$25,000.00 payable from Fund/Org. 6900 150 1500 2800 and further recommends that the City Attorney's Office be authorized to execute any documents necessary to finalize the settlement.