



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

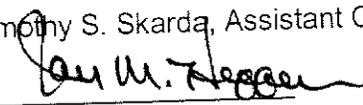
Date: August 4, 2004
To: Ways & Means/Budget Committee
Referral to: None

Subject: Kevin Anderson v. City of Minneapolis, et al. United States District Court File No.: 03-5319
RHK/AJB

Recommendation: That the City Council approve settlement of the lawsuit filed by Kevin Anderson, United States District Court file no. 03-5319, in the amount of \$80,000.00, payable to Kevin Anderson and Peter J. Nickitas and Theodore D. Dooley, his attorneys, and authorize the City Attorney to execute any documents necessary to effectuate the settlement, release of claims and structured settlement, 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

<p>Financial Impact (Check those that apply)</p> <p><input type="checkbox"/> No financial impact - or - Action is within current department budget. (If checked, go directly to Background/Supporting Information)</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Capital Budget</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Operating Budget</p> <p><input type="checkbox"/> Action provides increased revenue for appropriation increase</p> <p><input type="checkbox"/> Action requires use of contingency or reserves</p> <p><input checked="" type="checkbox"/> Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000</p> <p><input type="checkbox"/> Request provided to the Budget Office when provided to the Committee Coordinator</p>

<p>Community Impact: Build Community</p>

Background/Supporting Information

This case involves Kevin Anderson who claims to have been an innocent bystander during the hockey riots near the University of Minnesota campus on April 13, 2003. The Plaintiff claims to have been hit in the arm with a baton by a police officer without provocation. Mr. Anderson suffered a displaced fracture of the right ulna. The injury required surgery and the insertion of pins and plates to support the broken bone. Mr. Anderson incurred medical expenses in excess of \$4,000.00. Mr. Anderson is a right-handed carpenter who

asserts that he continues to have pain and functional limitations related to the injury. Mr. Anderson has filed a lawsuit in federal district court alleging 42 U.S.C. § 1983 violations for the use of excessive force and illegal search and seizure; § 1983 violations by the City of Minneapolis relating to training and discipline of police officers; battery; Minnesota State Constitutional violations relating to search, seizure and the use of force; and negligence.

On April 13, 2003, Minneapolis police officers were responding to a difficult situation near the campus of the University of Minnesota. At the conclusion of the NCAA hockey championship game, revelers spilled into the streets from bars, restaurants and residences in the Dinkytown neighborhood. The situation turned violent with cars being overturned and burned, fires in the streets and businesses being broken into by rioters. In the course of the evening all on duty squads were dispatched to the location.

Mr. Anderson has made specific allegations of police misconduct. The City is not able to effectively defend the allegations because the parties have been unable to identify any police officer who had contact with Mr. Anderson. The inability to identify an officer could result in a dismissal of the § 1983 cause of action against the unknown police officers. However, the Plaintiff would still be able to pursue a § 1983 cause of action against the City of Minneapolis on the training and discipline issues and, more importantly, a state court cause of action under a theory of vicarious liability. Vicarious liability holds the employer responsible for the foreseeable actions of an employee. The use of force by a police officer is considered foreseeable. Vicarious liability has been applied to other public employers for the foreseeable conduct of employees. Under this theory, the City could be responsible for damages proved by Mr. Anderson limited by the liability cap of \$300,000.00 provided by Minn. Stat. § 466.04. The City would not be responsible for attorney's fees.

There are a variety of plausible explanations for Mr. Anderson's injuries that do not involve police misconduct or the use of excessive force, including his injury by rioters at the scene or through the proper use of force when Mr. Anderson interfered with legitimate police activities. However, there is no evidence that Mr. Anderson was engaged in any misconduct at the time that he sustained his injuries. Because the City cannot identify any police involvement with Mr. Anderson, we are severely hampered in supporting any alternative explanation for his injuries. Mr. Anderson's explanation of the manner of his injury has remained consistent from the time he first sought medical attention later in the day on April 13th. Finally, no police officer prepared a use of force report indicating a baton strike to the arm of a rioter or the use of force to prevent the interference with a legitimate arrest. In trial, a sympathetic and injured Plaintiff would be able to provide specific testimony about his treatment. The City would be able to respond only with general denials that officers would not have used force against someone who was not threatening the officers.

A settlement conference was held before Magistrate Judge Arthur Boylan on August 3, 2004, attended by Council Member Barbara Johnson, Deputy Chief Lucy Gerold and Assistant City Attorney Timothy Skarda on behalf of the City. The settlement conference was held before discovery was completed. The parties have engaged in an extensive course of discovery on a related case arising from the hockey riots. Much of the information obtained in the related case is relevant to Mr. Anderson's case. Based on experience in the related litigation, we anticipate that the Plaintiff will engage in an extensive course of discovery in the next several months in an attempt to identify the officer involved with Mr. Anderson or to show that the City cannot identify the officer. We anticipate that discovery could include the deposition of all officers who responded to the scene who possessed batons or riot sticks. Given that officers were responding to a chaotic situation in a location unfamiliar to them and many officers were wearing gas masks and riot helmets, we anticipate that the process would be lengthy, expensive and ultimately fruitless. It is unlikely that under the circumstances faced on April 13, 2003, an officer would recall what was most likely an incidental use of force that resulted in unexpected injuries unknown to the officer. An incident that was dramatic or memorable to the officer would have resulted in arrest or reporting of the incident. Officers are trained to not break rank to pursue individuals in the crowd.

Anderson v. City of Minneapolis

August 4, 2004

Page 3

The Plaintiff initially demanded \$500,000.00 in settlement of his claims. In the course of negotiation, we arrived at a proposed settlement in the amount of \$80,000.00 that we jointly recommend for approval. We believe that the settlement is in the best interests of the City of Minneapolis, given the problems of defense previously discussed, as well as, the costs of continued litigation.

03L-0658 /Ways & Means: Request for City Council Action