



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

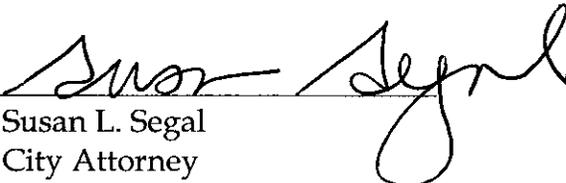
Date: August 12, 2008
To: Ways & Means/Budget Committee
Referral to:

Subject: *DuAll Service Contractors, Inc., v. Michael G. Sweat et al v. City of Minneapolis*

Recommendation: The City Attorney's Office recommends that the City Council approve the settlement of this case by payment of \$123,855.47 to Michael Sweat and his attorney Richard Eskola from Fund/Org. 06900-1500100-145630 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives:

Prepared by: Sara J. Lathrop Phone: (612) 673-2072

Approved by: 
Susan L. Segal
City Attorney

Presenter in Committee: Susan L. Segal, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the ___ Capital Budget or ___ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: ___ Action is within the plan. ___ Action requires a change to plan.
- Other financial impact (Explain): Fund/Org. 06900-1500100-145630
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

Neighborhood Notification

City Goal(s):

Build Community

Background/Supporting Information

MGS Professional Building Maintenance Services, Inc., owned by Michael Sweat, is a high-rise window cleaning company. MGS owns a building at 3620 Central Ave. in Minneapolis. On May 8, 2007, heavy rains washed into the sewer system. The system was not able to handle the extra volume of water, and it back flowed into several properties, including the MGS building. The raw sewage entered the property through toilets and sinks in the basement, resulting in standing sewage/water. Consequently, the basement of the property was severely damaged. Specifically, all of the walls, floor coverings, and custom sized and built cabinets were damaged to the point that none were salvageable.

The City employed Crawford & Company (independent insurance adjusters) to assess the damage to the property, which included issues with asbestos, mold, and sewage. The entire ventilation system had to be replaced, and there were other extensive repairs. Our adjuster Crawford determined that it would cost \$124,125.00 to return the property to its original condition. MGS then hired contractor DuAll Service Contractors, Inc. to clean up and repair the property, at a cost of \$123,855.47, which is actually less than our adjuster estimated.

Minnesota courts have consistently held cities liable for damages sustained by a claimant when the city's intentional or negligent actions divert the natural flow of water, causing damage to property which would not normally be in the water's path. In this case, the City was in the area of MGS's property relining sewer pipes, and City employees had taken out catch basins to facilitate this work. These actions caused additional water to flow into other systems in the area, thereby overloading those systems. The result was the backup that damaged the property. It appears that the City's work on the sewer system was a proximate cause of the damage to claimant's property.

MGS has been negotiating with the City Attorney's Office regarding other claimed losses related to this incident, but in the meantime, DuAll commenced a mechanic's lien lawsuit against MGS for payment of the repair costs. The City Attorney's Office would like to settle the DuAll portion of MGS's claims to compensate MGS for the Du-All repair bill in the amount of \$123,855.47, because that portion of the case is pending in court right now and is due for hearing on September 25, 2008. Robin Harris, Director of Administration, Public Works, has approved this settlement. There would likely be an additional request in the future to settle the balance of MGS's claim.

RECOMMENDATION

The City Attorney's Office recommends that the City Council approve the settlement of this case by payment of \$ 123855.47 to Michael Sweat and his attorney Richard Eskola from Fund/Org. 06900-1500100-145630 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.