



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

Date: October 4, 2005

To: Ways & Means/Budget Committee

Subject: Eddie Lee v. Mark Booth and the City of Minneapolis

Recommendation: That the City Council authorize settlement of plaintiffs' case for the amount of \$8,750.00 payable to Eddie Lee and his attorney, Wayne Studard, from Fund/Org. 6900 150 1500 4000, and that the City Attorney be authorized to execute any documents necessary to effectuate this settlement.

Previous Directives:

Prepared by: Sydnee N. Woods Assistant City Attorney Phone: 673-2625

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): \$8,750.00 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

On November 8, 2002 at approximately 1pm, Health and Family Support Department employee Mark Booth was backing out of the White Castle parking lot at Broadway and Lyndale when he hit Plaintiff Eddie Lee's 1997 Mercury sedan, which was entering the parking lot. Booth did not see Plaintiff's vehicle in his rear view mirror. Plaintiff's vehicle sustained damage to the right front door and right quarter panel. There was no damage to the city vehicle. Initially, Plaintiff told Booth he was not injured. Both drivers waited approximately 90 minutes for the police to arrive and then merely exchanged insurance info. During the wait, Booth observed Plaintiff speaking with some people in the parking lot and after the conversation he told Booth, "On second thought, I'm not alright."

Plaintiff presented at North Memorial the day after the accident complaining of lumbar pain and a headache. He was given ibuprofen and discharged. He later consulted his primary physician and was referred to the Institute for Athletic Medicine for physical therapy. He had four PT sessions ending on December 3, 2002. It was noted that he was much

better, his pain was "resolving", and PT treatment was discontinued. He began to treat at Brookdale Integrated Health on May 9, 2003. He told the chiropractors at Brookdale Integrated that he strained his back lifting chairs two or three days prior the May visit to Brookdale. He had 26 sessions between May 9, 2003 and October, 2003. He was diagnosed with a thoracic and lumbrosacral subluxationa and strain/sprain.

Plaintiff was sent to Dr. Ronald Bateman for an IME in September 2003. Dr. Bateman determined Plaintiff suffered a lumbar strain during the November 2002 accident, that had resolved. All treatment at the North Clinic and the Institute of Athletic Medicine was reasonable and necessary. The treatment at Brookdale Integrated, however, was not related to the accident, but to the later chair lifting incident. Plaintiff had no physical limitations and could perform normal activities. In November 2003, Plaintiff's chiropractor at Brookdale Integrated prepared a report in response to Dr. Bateman's report. He diagnosed Plaintiff with a permanent lumbar spine injury resulting from the accident. He stated that Plaintiff was prone to re-injury and earlier advancing degenerative changes as he ages (he was then 68).

Our office attempted to resolve this claim in February 2004, but eventually denied the claim as not having met the statutory threshold of \$4000 in medical expenses. Plaintiff's medical bills from North Clinic and the Institute of Athletic Medicine amounted to less than \$600 and were all paid by his insurance company. His total bills from Brookdale Integrated amount to approximately \$13,000 (this includes the 10 sessions in September of 2004 - coincidentally, just after meeting with his attorney and filing this lawsuit - these bills are outstanding and are approximately \$4100).

If this case were tried, the City would call into question Plaintiff's credibility and also question the legitimacy of Plaintiff's medical bills from Brookdale Integrated. If Plaintiff is unable to prove the legitimacy of the Brookdale bills in the amount of at least \$3600, he cannot recover against the City. Given the conflicting IME reports, it is likely that out of the \$13,000 charged by Brookdale Integrated, a jury may find that at least \$3600 of it is legitimate¹. If so, the the only determination at that point will be the amount of damages to award Plaintiff for pain and suffering. How much is uncertain. Additionally, given the conflicting IME reports, he may also be awarded future medicals. What is certain is that Plaintiff has no liability in this matter and will not be apportioned any percentage of fault by a jury. If Plaintiff were to prevail, the City would be liable for his attorney's fees, as well. Given these considerations, at a court ordered mediation, the City offered Plaintiff \$8,750.00 for full and final settlement of his claims. For the reasons set forth above, we believe this to be a prudent settlement in the best interests of the City.

04L-0503

¹ Judge Aldrich ordered that Brookdale Integrated's Dr. Erickson be present at the court-ordered mediation to give the mediator the opportunity to "assess his credibility." Dr. Erickson attended (with his resume) and the mediator found him to be generally credible.