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

Date: April 19, 2004
To: Ways and Means/Budget Committee
Referral to:

Subject: Troy Bargel v. William Goodchild and the City of Minneapolis

Recommendation: That the City Council approve payment of the judgment in this matter by the payment of $10,000.00 plus costs to Troy Bargel and his attorney Russell Norum from Fund/Org 6900 150 1500 6850, and also approve the settlement of the subrogation claim of Progressive Insurance Company and its attorney, James Young, for $5400.00 from Fund/Org. 6900 150 1500 6850.

Previous Directives: None

Prepared by: Edward Backstrom, Assistant City Attorney Phone: 673-2072

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
X Other financial impact (Explain): Fund/Org 6900 150 1500 6850
___Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:
City Goals: Build Community

Background/Supporting Information

This matter involves an automobile accident which occurred on July 2, 2001, near a City of Minneapolis construction site. Plaintiff was driving his vehicle westbound on E. Hennepin and had stopped at the red light at Johnson Street. Plaintiff claims that a City dump truck operated by William Goodchild struck him from behind while he was stopped at that intersection with such force that the plaintiff was pushed through the intersection. He also alleges that the impact

collapsed the front seat of his vehicle. The City's driver, Goodchild, states that he and plaintiff had stopped for the red light. The light had changed to green and Plaintiff had started to proceed. A Minneapolis public work employee was also at the intersection with a manual stop sign. After the light changed to green, he displayed the stop sign in order to stop westbound traffic. Plaintiff then stopped and Goodchild didn't see the change and ran into the back of plaintiff's pickup truck. Goodchild was going to stop at the other side of the intersection where he was going to dump his load. His attention was directed toward the worker at that location who was waiving at him telling him where to go to unload the dump truck.

As a result of the accident the plaintiff was found by his medical providers to suffer from low back pain syndrome, pelvic/sacroiliac dysfunction from strain of this area, myofascial pain in upper back and paraspinal muscles. Plaintiff also claimed lost wages from 7-2-01 until 7-9-01. He was making $16.00 an hour as a painter. He further claims that painting still causes him pain and that he has to take frequent breaks when working because of the pain. Bargel had a MRI done on July 11, 2003. It showed mild disk desiccation at L3-4 and L 4-5 and a disk bulge at L4-5. The MRI was done because of chronic low back pain and left leg weakness Bargel has claimed since the accident.

As a result of the accident his No-fault insurer, the Progressive Insurance Company, paid plaintiff $6386.99 for his medical treatment. The truck Goodchild was driving falls within the definition of a commercial vehicle under the Minn. Stat. § 65B, The No-fault Act. Therefore Progressive Insurance Company has a subrogation claim for the amount it paid to Bargel. It is entitled to use binding arbitration to enforce its subrogation claim.

Pursuant to court order, the case was submitted to Hennepin County District Court arbitration, which resulted in an award to Bargel of $10,000 plus costs in addition to the sums previously paid to him by his insurance company. This was the amount the City Attorney's office litigation committee had determined would be a satisfactory settlement amount. Plaintiff asked for $38,000 at the arbitration. Because the award was in an amount that the City Attorney's office had determined was reasonable in this case, the City did not appeal the arbitrator's award. Plaintiff also did not appeal the award. This resulted in judgment for Plaintiff in the amount of $10,000.00 plus costs. There was also binding arbitration scheduled for the subrogation claim of $6,386.99. Prior to the arbitration hearing an agreement was reached to settle Progressive's claim for $5400.00.

It seems clear that the city is at fault in the accident and that plaintiff was injured as result. Plaintiff's medical providers state he has a permanent back injury and plaintiff claims to continue to suffer back pain. A MRI shows disk problems, which would account for his claimed continuing symptoms. Therefore the settlement with Progressive Insurance Co. should be approved and the judgment which has been entered against the City of Minneapolis should be paid.