



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

Date: October 28, 2005
To: Ways & Means/Budget Committee
Subject: Shamina Fitzpatrick Claim 05L-0153

Recommendation: That the City Council authorize settlement of plaintiff's claim for the amount of \$6,500.00 payable to Shamina Fitzpatrick and her attorney, James Daniels, from Fund/Org. 6900 150 1500 6800, 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): \$6,500.00 from Fund/Org. 6900 150 1500 6800
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

City Goals: Build Community

Background/Supporting Information

On the afternoon of March 21, 2005, Claimant Shamina Fitzpatrick was traveling northbound in the left lane on Emerson Avenue North. Public Works employee, Gary Fasching, who was also traveling northbound in the center lane, turned in front of the claimant's vehicle and attempted to make a left turn onto 18th Avenue North. The claimant struck Fasching's vehicle.

Officer Swanson responded to the scene. When asked what occurred, Fasching pointed to the center lane of Emerson and told Officer Swanson that he was in the center lane and when he attempted to make a left turn and the claimant ran into him. Neither the claimant nor Fasching reported injuries on the scene. However, the claimant later presented at Columbia Park Clinic (her primary care facility) complaining of right shoulder, right side, and back pain. She was given Tylenol-3, instructed to take two days off work and told to follow up.

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Four days later she began treating with a chiropractor, Dr. Donald Gibson. She presented complaining of back, shoulder and neck pain. Gibson noted that she was involved in an automobile accident 3-4 years earlier. She was rear-ended and received treatment for neck and upper back injuries. He also noted that she had been without symptoms for at least one year before the accident at issue.

Claimant was given a temporary total disability rating by Gibson. This apparently changed after an examination on April 5, 2005. Since then, the claimant's condition regarding her complaints of pain have remained consistent. Gibson's notes reflect the fact that she is improving slowly with occasional setbacks where her pain increases. She continues to treat with Gibson. Her outstanding medical bills are just over \$5800.00.

This is currently a claim. If the case were sued out and went to trial the City would be found liable for the accident. The only issue would be the amount of damages. The City would question the legitimacy of her past chiropractic bills and also any claim of future and ongoing medical expenses. A jury could determine that a damages award for future medical expenses is warranted. Additionally, damages for pain and suffering are also a consideration. In an effort to settle this matter before incurring costs of requesting more medical records, an IME and depositions, we believe that an offer of \$6500 for full and final settlement of these claims to be a prudent resolution in the best interests of the City.

05L-0153