



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

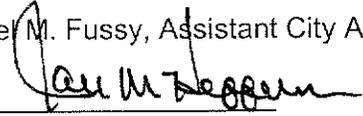
Date: September 23, 2004
To: Ways & Means/Budget Committee
Referral to:

Subject: Auto-Owners Insurance Company v. City of Minneapolis
Claim

Recommendation: That the City Council approve settlement of the above-referenced matter in the amount of \$4,750.31, payable to Auto-Owners Insurance Company from Fund/Org. 6900 150 1500 2800 and further authorize the City Attorney's Office to execute all documents necessary to finalize the settlement.

Previous Directives:

Prepared by: Joe M. Fussy, Assistant City Attorney Phone: 673-2067

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): \$4,750.31 payable from Fund/Org. 6900 150 1500 2800
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

Background/Supporting Information

This case arises as a result of a multi-vehicle accident that occurred on December 9, 2002 involving Minneapolis Fire Engine 17. Three separate claims which also involve this accident have previously been settled by the City of Minneapolis along terms identical to those negotiated in this present claim. Fire Motor Operator Hinery Ocampo was driving Engine 17 on Lyndale Avenue South in response to a medical call. At the same time, Mary Kubik (a private citizen) was driving her personal vehicle on 36th Street towards the

Lyndale intersection. Ms. Kubik entered the intersection on a green light but failed to yield the right-of-way to Engine 17 in its capacity as an emergency vehicle. The ensuing collision caused Engine 17 to veer into several parked vehicles, including a parked vehicle owned by Auto-Owners insured Barbara Dryden. Auto-Owners Insurance Company has sought recovery of \$9,500.62 in documented damages to their insured's vehicle from both Ms. Kubik and the City.

Previously, in a separate case arising out of the same accident involving the damage caused to one of the other parked vehicles struck by Engine 17, the City brought a motion to dismiss asserting official immunity in front of Judge Kaman in Hennepin County District Court. Judge Kaman denied the motion, holding that Fire Motor Operator Ocampo's statutory duty to "slow down as necessary for safety" per Minn. Stat. § 169.03 prevented dismissal based upon official immunity. Based on (1) discussions with then Fire Chief Forte' as well as current Interim Chief Bleskachek, (2) a review of the department's detailed investigation of FMO Ocampo's actions in this incident, and (3) the recommendation of the City Attorney's Litigation Committee, it was decided to pursue settlement in all cases. The previous case settled in May of this year with the City and Ms. Kubik each paying half of the Plaintiff's damages. The same settlement arrangement has been negotiated in this case (as well as the other cases), with the City and Ms. Kubik each paying one-half of Auto-Owners Insurance Company's \$9,500.62 in damages in exchange for a release of all claims.

The City Attorney recommends that the finance officer be authorized to issue a settlement check to Auto-Owners Insurance Company in the amount of \$4,750.31 payable from Fund/Org. 6900 150 1500 2800 and further recommends that the City Attorney's Office be authorized to execute any documents necessary to finalize the settlement.