



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

Date: September 26, 2005  
To: Ways & Means/Budget Committee  
Referral to: None

Subject: Thomas Oscar Stimack v. City of Minneapolis, et al.  
U.S. District Court file no. 03-5521 ADM/AJB

**Recommendation:** That the City Council approve settlement of the lawsuit filed by Thomas Oscar Stimack United States District Court file no. 03-5521, in the amount of \$35,000.00, payable to Thomas Oscar Stimack and his attorneys, Albert T. Goins, Sr. and Manley A. Zimmerman, and authorize the payment of costs and attorneys' fees in an amount negotiated between the parties to be \$34,618.83 and authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of claims payable from Fund/Org. 6900 150 1500 4000.

**Previous Directives:** None.

Prepared by: Timothy S. Skarda, Assistant City Attorney, 673-2553

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): Payment from Fund/Org. 6900 150 1500 4000
- Request provided to the Budget Office when provided to the Committee Coordinator

**Community Impact:** Build Community

**Background/Supporting Information**

The present case arises out of an incident in which the Plaintiff, Thomas Oscar Stimack, was injured during a traffic stop. The Plaintiff has brought a lawsuit alleging violations of 42 U.S.C. § 1983 for the use of excessive force, conspiracy and a variety of state tort violations.

On October 16, 2002, Mr. Stimack was stopped by Minneapolis police officers for having a headlight out. The Plaintiff initially stopped, then fled at low speed in his vehicle. After several blocks, the Plaintiff abandoned his vehicle and fled on foot.

The police indicate that while being pursued the Plaintiff fell and struck his face on the sidewalk. A struggle took place during which additional force was used to subdue the Plaintiff; none of which was directed to the Plaintiff's face.

The Plaintiff asserts that he was knocked to the ground or tackled from behind. He asserts that while he was on the ground he was struck in the eye with an implement, such as a flashlight or baton.

The Plaintiff suffered a fractured orbital socket to his right eye. The Plaintiff underwent reconstructive surgery. According to City experts his condition is stable and he has minimal permanent consequences; will need periodic examines; has some blurred vision; and will need further corrective surgery to correct scar tissue. The Plaintiff alleges continuing and ongoing problems related to his eye, as well as, his back and neck. The Plaintiff alleges that he has not been able to work as a locksmith since the incident. The Plaintiff has incurred approximately \$25,000.00 in medical expenses. The City's expert witnesses indicate that the eye injury could not have occurred by falling onto the sidewalk.

A settlement conference was held on July 13, 2005, before Magistrate Judge Arthur Boylan. The settlement conference was adjourned without the parties being able to reach a settlement, but with an agreement that the City Council consider the stalled negotiations.

The case was considered by a closed session of the City Council on July 22, 2005. A Rule 68 Offer of Judgment was authorized in the amount of \$35,000.00, plus reasonable attorney's fees. The Plaintiff accepted the Offer of Judgment on September 16, 2005. The Plaintiff submitted a request for costs and fees in the amount of \$45,523.83. As part of a negotiated settlement of the fees claim, the Plaintiff reduced the demand to \$34,618.83, the amount recommended to this Committee as reasonable attorney's fees payable under the terms of the Rule 68 Offer of Judgment.