



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

Date: October 4, 2005

To: Ways & Means/Budget Committee

Subject: Xee Vang and Yue Yang v. American Family Insurance and City of Minneapolis

Recommendation: That the City Council authorize settlement of plaintiffs' case for the amount of \$15,000.00 payable to Xee Vang and Yue Yang and their attorney, Joe Rivard, 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): \$15,000.00 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 October 2, 2000, Plaintiff Xee Vang and her three children were involved in a multi-car accident at the corner of Lyndale and 27th Avenue in North Minneapolis. Plaintiff was at a stoplight waiting to make a left hand turn. City Public Works driver, Carl Carpenter (now retired) was waiting at the light directly behind her in a Ford Van owned by the City. While both drivers were stopped, a Ford Escort station wagon, driven by Ewell Britten, approached from behind at a high rate a speed. Britten slammed into Mr. Carpenter, who was then thrust into Vang's Nissan minivan. Police were called to the scene and recorded only Mr. Carpenter's version of events. Plaintiff Vang needed an interpreter and police observed Mr. Britten slurring his words and smelling of alcohol. All drivers were transported to the hospital via ambulance. At HCMC, Mr. Britten admitted to drinking but denied that he was actually driving the vehicle (even though no one else was seen in his vehicle). Mr. Britten was uninsured.

Vang brought a no-fault action against her insurance company in March, 2004. Neither the City nor Mr. Carpenter were parties. On December 2, 2004, Plaintiff Xee Vang was deposed. In describing the accident, she stated that she was hit twice while waiting to make the left turn. She stated the first impact was much worse than the second impact, that the second hit only made her "car move." She claimed her injuries were sustained during the first impact. She also stated that Mr. Carpenter was talking on a cell phone and not paying attention and he hit her *before* being hit by Britten. She stated that she was unable to convey this information to the officers on the scene because she did not have an interpreter. As a result of this testimony, the court allowed the City of Minneapolis to be joined as a party in December 2004. Plaintiff brought an action against the City on January 7, 2005¹. The parties were unable to track down Mr. Britten (who refused to acknowledge even driving the car).

Plaintiff alleges a number of injuries as a result of her accident. Immediately following the accident, she complained of neck and wrist pain. She began treating with Dr. Daniel Moore and Dr. Michael Oste, chiropractors. She also had multiple treatments with Dr. Oste, also a chiropractor. In the last four years, Plaintiff Vang has undergone three IMEs, conducted March 29, 2001, March 17, 2005 and most recently, on August 25, 2005. In the 2001 IME report, Dr. Paul Cederberg indicates that Plaintiff Vang had a resolved cervical strain with pre-existing mild degenerative disc disease and of the cervical spine. The March 2005 IME report by Dr. Call indicated that Plaintiff Vang suffered a contusion to the left wrist with a history of ganglion. He saw no evidence of enduring pathology and the contusion had resolved. A final IME was performed by Dr. Peterson on August 25, 2005, who believed that she sustained cervical and lumbar spine and wrist injuries. He believed that the spinal injuries should have resolved within eight weeks. With respect to her wrist, however, he believed she had a permanent injury due to a tear she received during the accident and would require further treatment in the future. Plaintiff's medicals in this case amounted to approximately \$16,500. These bills have been paid by American Family Insurance. Plaintiff also claims she incurred costs of approximately \$6600 for Asian medicines and healing rituals. These bills were not paid.

This case will be tried under the old joint and several liability law. Changed in 2003, the previous statute provided that if a city government were 15% at fault or less, the City could be held responsible for up to double their percentage of fault (four times for non-governmental defendants). If found to be more than 15% at fault the defendant would be responsible for the full amount of plaintiff's damages. Given the conflicting IME reports, it is likely that Vang will be awarded some amount of money for her pain and suffering and future medicals. It is uncertain the percentage of fault that a jury may apportion to the City's employee, Carl Carpenter. There is the possibility that a jury may not believe Plaintiff's version of the facts. In either case, Plaintiff Vang it is certain that she is 0% responsible. The jury will only be determining Mr. Carpenter and Mr. Britten's percentages of respective fault. If Plaintiff were to prevail, the City will liable for her attorney's fees (including an interpreter at the trial), as well.

The City must consider Plaintiff's language barrier. Issues regarding Plaintiff's credibility may be explained away by showing that Plaintiff did not always have an interpreter available at medical examinations and visits with her first set of attorneys. Most importantly, the day of the accident she was unable to speak with the police officer at the scene as there was no interpreter present. The argument will be that an interpreter was present at Plaintiff's deposition and that was the first time Plaintiff was fully able to describe what happened.

At a court ordered mediation, the Plaintiff agreed to accept \$30,000.00 for full and complete settlement of this matter, including attorney's fees. \$15,000.00 each to be contributed from American Family Insurance and the City of Minneapolis. Given that we believe the City's fault is considerably less than 50%, the City reserved its right of contribution and American Family agreed to enter into binding arbitration with the City to determine the City's actual amount of fault. The City can then recover from American Family based on an arbitrator's determination of the two defendants' percentages of fault. In this scenario, the city has the potential to recover the full \$15,000.00. It removes the unknown consequences of a full court trial and unknown jury verdict. It also puts the burden on American Family to have Plaintiff Vang available to dispute our employee's version of the accident. For the reasons set forth above, we believe this to be a prudent settlement in the best interests of the City.

¹ The action included a loss of consortium claim by her husband, Yue Yang.