



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

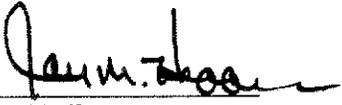
Date: June 1, 2004
To: Ways and Means/Budget Committee

Subject: Richard Weltzin v. City of Minneapolis, et al

Recommendation: That the City Council approve settlement of the personal injury claim of Richard Weltzin for the payment of \$30,000.00 to Richard Weltzin and his attorney Paul Godlewski from Fund/Org 6900 150 6750, and also approve the settlement of the subrogation claim for property damage of State Farm Insurance Company and its attorney, Nicole M. Kusterman, for \$1000.00 from Fund/Org. 6900 150 1500 6750.

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
 Other financial impact (Explain): Fund/Org 6900 150 1500 6750
 Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

City Goals: Build Community

Background/Supporting Information

This case involves the claims for personal injury by Richard Weltzin against the City of Minneapolis, Wild, Wild West trucking and its owner Cordell Roth, and State Farm insurance for an unidentified vehicle (herein after phantom vehicle) which is legally assumed to be uninsured. State Farm, through another attorney, also has a subrogation interest for the amount it paid to Mr. Weltzin for his pickup truck that was considered totally destroyed.

On June 25, 2002, a City dump truck operated by Juan Malave was being driven to Monticello on I-94. One lane of westbound traffic had been shut down because of road construction, therefore traffic was restricted to two lanes. Mr. Malave was driving in the left in the left lane proceeding with traffic which was moving at the speed limit of 55 miles-per-hour or more. Not long after passing the I94 and I694 junction, he

approached an entrance ramp for traffic coming onto the westbound right lane of the freeway. At that time Mr. Malave saw a vehicle and Plaintiff to come down this ramp at a speed well above the 55-mile per hour speed limit and cut over into the left west bound lane. Because of its excessive speed, this vehicle had to make a sudden stop in order to avoid a collision with the vehicles in front of it in the left lane. The vehicle in front of Weltzin and Weltzin's vehicle suddenly stopped in response to the phantom car's stop. In response to this Weltzin slammed on his brakes. The City truck attempted to stop and turned to the left to avoid Weltzin's vehicle. The dump truck struck the left back of the Plaintiff's vehicle and then continued on sideswiping the Plaintiff's vehicle. The truck was nearly stopped next to Plaintiff's vehicle. At that time a semi truck and trailer that was behind the City dump truck also attempted to stop. Cordell Roth, one of the other defendants, was driving it. Mr. Roth's semi did not strike the City truck but did forcefully impact the back of Weltzin's vehicle, pushing it ahead of the City truck.

The second impact caused Weltzin to fly backward, causing his head to break the rear window of his pickup truck and the window in his topper. At the time of the accident he reported that he could not breathe. Weltzin alleges that as a result of the accident he received torn rotator cuffs in both shoulders, as well as back and neck injuries.

Weltzin was 64 years old at the time of the accident. He worked for a year at his job as a machinist after the accident, but reported significant pain and problems with both shoulders. As a result he had shoulder surgery on his right shoulder on June 27, 2003. His left shoulder was inoperable. Because of restrictions placed on plaintiff by his surgeon, Dr. Buss, plaintiff has not worked since the surgery. Dr. Buss believes the accident resulted in permanent injury to both shoulders. Plaintiff claims he planned to work until he was seventy. Plaintiff also claims to have done independent piecework as a machinist and that he has also lost this source of income. Plaintiff claimed \$252, 585 in lost past and future earnings.

An independent medical examination of the plaintiff was done. The IME doctor states that plaintiff must have had tears in the rotator cuff s in both shoulders prior to the accident, but that the accident exacerbated these problems.

The case was mediated on May 28, 2004. The plaintiff's attorney demanded \$410,000 to settle the case prior to mediation. At the mediation Cordell Roth agreed to settle with the plaintiff for \$185,000.00. The City, represented by Assistant City Attorney Ed Backstrom and Prab Rao of the Public Works equipment division, agreed to settle with the plaintiff for \$30,000, subject to City Council approval. The plaintiff will continue to proceed against State Farm since it did not settle at the mediation. The plaintiff had indicated that he would need over \$300,000 in order to effectuate a global settlement. The City and Mr. Roth will be entering into Pierringer releases. The litigation committee of the City Attorney's office would recommend the \$30,000.00 settlement.

The City truck did strike the plaintiff's vehicle and it could be argued that he was following too closely. The City driver was given a traffic citation, which he paid. The trooper who gave the City driver the citation also stated that the City driver admitted driving 65 miles-per-hour at the time of the accident, although Mr. Malave denies that and states he was moving with traffic. It is clear that because the City truck struck Weltzin's vehicle, the City will be found to have some liability. This was a serious accident and the plaintiff is very sympathetic. Therefore settlement in the amount of \$30,000.00 would seem to be appropriate in this matter. The City Attorney's office litigation committee has also recommended settlement for this amount.

There is also a claim by State Farm for its payment of the property damage in this case. It was also agreed at the mediation that the City would pay \$1000.00 and Cordell Roth would pay \$2,409.88 to settle the property damage claim. The impact from the City truck alone would have caused damage in excess of the \$1,000.00 since the City truck damaged the entire left side of plaintiff's vehicle.