

**CITY OF SAN ANTONIO  
CITY ATTORNEY'S OFFICE  
INTERDEPARTMENTAL CORRESPONDENCE**

**CONSENT AGENDA**  
**ITEM NO. 28**

**TO:** Mayor and City Council

**FROM:** Andrew Martin, City Attorney

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES TO:** Martha Sepeda, First Assistant and Acting Litigation Division Chief; Michael Rich, Risk Manager; Janie B. Cantu, Director, Purchasing & General Services; Don Lambert, Cambridge Integrated Services Group, Inc.; File

**SUBJECT:** Settlement of Diane MacKeil Claim

**DATE:** January 29, 2004

**SUMMARY AND RECOMMENDATION**

This ordinance authorizes payment of \$95,000.00 as full and final settlement and release of the claim filed by Diane MacKeil against the City of San Antonio.

Staff recommends approval of this ordinance.

**BACKGROUND**

This claim arises from a vehicle accident that occurred on a congested area of N.E. Loop 410 on December 18, 2001. Frank Baxter, Area Fleet Maintenance Supervisor, rear-ended the vehicle driven by Ms. MacKeil. Ms. MacKeil's vehicle was a total loss. The city has settled a claim by Ms. MacKeil's insurance company for \$12,764.83, the amount her insurance company paid for property damage under Ms. MacKeil's policy.

Ms. MacKeil was thrown backwards, suffered a concussion, and injured her knee and neck. She lost consciousness and was taken to Brooke Army Hospital. Ms. MacKeil required knee surgery. She was also treated by an orthopedic surgeon for her back injury.

An MRI indicated herniated disks at levels C 5-6 and C 6-7. These disks are located in the neck area. Her neurosurgeon advises that Ms. MacKeil may need back surgery. Normal costs for this surgery run between \$20,000.00 and \$35,000.00.

The total medical bills incurred have been \$16,619.94. The claimant has lost wages of \$11,144.50, and will incur further lost wages when she has the neck surgery. She has also been seen by a plastic surgeon for the injury to the right thigh. The surgery to the depression in the posterolateral distal right thigh will cost \$8,000.00 and will not fully correct the deformity caused by the injury.

The claimant is represented by Maloney & Maloney. Their initial demand was \$250,000.00. Don Lambert with the Third Party Administrator has negotiated a settlement after review of the claim file with Risk Management.

Staff recommends settling this case for the amount of \$95,000.00.

### **POLICY ANALYSIS**

Staff believes settlement is reasonable for the following reasons:

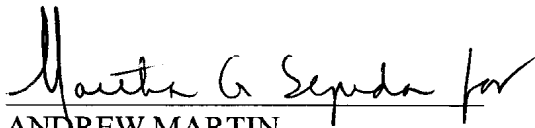
1. The Police Report shows that all contributing factors – driver inattention and failure to control speed – were attributed to the City driver. There is no contributing negligence on part of the claimant.
2. The claim would be settled at an early stage saving the expense of litigation.

### **FISCAL ANALYSIS**

If this settlement is approved, funding for the settlement is available from the City's self-insured fund.

### **COORDINATION**

This case has been reviewed with Andrew Martin, City Attorney; Martha Sepeda, Acting Litigation Division Chief; Janie B. Cantu, Director of Purchasing & General Services; and Michael Rich, Risk Manager.



ANDREW MARTIN

City Attorney

APPROVED:



TERRY M. BRECHTEL

City Manager