

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

CONSENT AGENDA

ITEM NO. 25

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; Malcolm Matthews, Director, Parks and Recreation; Don Lambert, Cambridge Integrated Services Group, Inc.; File

SUBJECT: Settlement of lawsuit styled Paul Taormina vs. Mario Blas Moreno and City of San Antonio 1054-20031240

DATE: February 19, 2004

SUMMARY AND RECOMMENDATION

This ordinance authorizes payment of \$120,000.00 as full and final settlement in the lawsuit styled Paul Taormina v. Mario Blas Moreno and City of San Antonio, et al, Cause No. 2003-CI-00900.

Staff recommends approval of this ordinance.

BACKGROUND

On the morning of January 23, 2002, City employee, Mario Blas Moreno, driving a City 1994 GMC 3500 bucket truck, collided into the back of Plaintiff's 1990 Ford pick-up truck. He was traveling behind the Plaintiff, eastbound on the access road of IH-35. Both vehicles turned right (south) onto North Walters. Plaintiff, a 45-year-old San Antonio Independent School District police officer, traveled a short distance on Walters and stopped to turn left into a McDonald's parking lot. The City driver had just completed his turn onto North Walters and drove into the rear of the Plaintiff's vehicle.

San Antonio Police Department was called to the scene. Although he didn't issue any citations, the police officer identified City employee's driver inattention as a factor in the accident.. The City Parks and Recreation Department reviewed the accident and determined it was "preventable" by the City driver and verbally counseled the driver. The City of San Antonio paid \$1,618.60 for the property damage to the Plaintiff's vehicle.

At the scene, neither driver reported injuries. One week later, the Plaintiff saw Dr. Dennis Gutzman, M.D. complaining of neck, left shoulder, arm pain, low back pain and bilateral leg pain. MRIs revealed degenerative changes and other nerve problems. Conservative treatment was prescribed and partially effective for the upper body. Dr. Gutzman recommended surgery to correct the low back injury.

Cambridge ISG, the City's third-party administrator, hired Dr. Frank J. Garcia, M.D. to perform an independent medical examination of the Plaintiff. Dr. Garcia concluded that because the Plaintiff had no prior history of symptoms before the accident, the accident was the likely cause of his current difficulties. Further, because the Plaintiff's symptoms did not improve with conservative treatment, Dr. Garcia

concurred with Dr. Gutzman's recommended surgical intervention. These physicians are both certified orthopaedic surgeons.

The Plaintiff claims economic damages of approximately \$93,000. To date he has incurred \$7,879.31 in medical expenses and \$9,850.88 in lost wages. The projected cost of the surgery and treatment is \$50,000. The Plaintiff claims \$25,000 for future lost wages because his doctor anticipates he will be unable to work for six months after surgery.

Before filing the lawsuit, the Plaintiff's demand was \$125,000. The City offered several settlement options which were rejected. After filing suit and receiving Dr. Garcia's independent medical examination report, the Plaintiff's demand increased to \$150,000. The parties attempted mediation but were unsuccessful- the Plaintiff started at \$200,000, and his final demand was for \$130,000. Following mediation, the parties continued negotiations and Plaintiff has agreed to settle for \$120,000.

Staff recommends settling this case for the amount of \$120,000.00.

POLICY ANALYSIS

Staff recommends settlement for \$120,000.00 because a jury may likely determine the City driver was negligent and responsible for the accident. In addition, the Plaintiff is a likable and credible witness with a documented good work history and ethic. The jury may identify with him because of these factors and his injuries. The medical injuries are documented and verified through both his treating physician and an independent physician. The estimated medical expenses are \$60,000. Lost wages are also a factor and may total about \$35,000. The usual verdict for a back injury requiring surgery can range from \$150,000 - \$300,000. A jury could include damages for pain and suffering. In addition, if Plaintiff prevails, the City would pay court costs and pre-judgment interests. However, any such verdict against us would be capped at \$250,000 under the Texas Tort Claims Act. Accordingly, based on the injuries and facts of the accident, a settlement of \$120,000 is reasonable and appropriate to limit the City's liability exposure in this case.

FISCAL ANALYSIS

If this settlement is approved, funding for the settlement is available from the City's self-insured fund. The settlement amount should be payable to Paul Taormina and his attorney, Howard E. Davis.

COORDINATION

This case has been reviewed with Andrew Martin, City Attorney; Martha Sepeda, Acting Deputy Chief, Litigation; Malcolm Matthews, Director, Parks and Recreation Department; and Michael Rich, Risk Manager.



ANDREW MARTIN
City Attorney

APPROVED:



TERRY M. BRECHTEL
City Manager