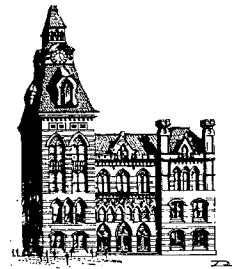


OFFICE OF THE CORPORATION COUNSEL



MEMORANDUM

AGENDA

TO: Litigation Settlement Committee Members

FROM: Nancy Pepe, Legal Assistant *N.P.*

DATE: November 17, 2011

RE: **Litigation Settlement Committee Meeting**
5:30 p.m., Tuesday, November 22, 2011
Office of the Corporation Counsel, 165 Church Street,
4th Floor Conference Room

The agenda is as follows:

1. Approval of the Minutes of the November 9, 2011 Meeting.
2. Approval of the Minutes of the November 14, 2011 Emergency Meeting

RECOMMENDATION TO COMPROMISE WORKERS' COMPENSATION CLAIMS

3. Discussion of Office No. 0046606
4. Discussion of Office No. 0012323

INFORMATIONAL ONLY

5. N/A

**MINUTES OF THE MEETING OF THE
LITIGATION SETTLEMENT COMMITTEE
Wednesday, November 9, 2011**

Committee Members Present: Mr. Robert Smuts, Acting Chairman; Alderwoman Arlene DePino; Mr. Edward Zack, Designee for Controller; and Mr. Joseph Clerkin, Designee for Management and Budget.

Corporation Counsel Staff Present: Vikki Cooper, Deputy Corporation Counsel; and Nancy Pepe, Legal Assistant.

CIRMA Care Representative: Mr. William O'Connell
Michele Trapasso, Esq.
Mr. Joseph Salcito

**Workers' Compensation
Division Representative:** Mr. Daniel Roche

Meeting Started: 5:30 p.m.

Meeting Ended: 5:45 p.m.

Mr. Smuts called the meeting to order at 5:30 p.m.

Alderwomen DePino moved approval of the minutes of the October 26, 2011 meeting. Mr. Zack seconded the motion. The motion passed.

Office No. 9891C0313 - Allyn Wright v. City of New Haven – Mr. O'Connell summarized the issues regarding this matter to the Committee Members. The Committee had no questions.

The motion to approve the recommendation passed unanimously.

Alderwoman DePino moved approval of Office No. 0017997. Mr. Clerkin seconded the motion.

Office No. 0017997 - Mark Criscio v. City of New Haven – Mr. O'Connell summarized the issues regarding this matter to the Committee Members. Alderwoman DePino asked if an individual doesn't take personal responsibility for their own health, would that affect the settlement. Mr. O'Connell stated that does not. Mr. Roche explained that the Workers' Compensation Statutes are structured so that you take the plaintiffs as you find them.

The motion to approve the recommendation passed with Mr. Smuts, Alderwoman DePino and Mr. Clerkin voting in favor of the recommendation. Mr. Zack abstained.

Alderwoman DePino moved approval of Office No. 0034972. Mr. Clerkin seconded the motion.

Office No. 0034972 - Charles Lombardi v. City of New Haven – Attorney Trapasso summarized the issues regarding this matter to the Committee Members. Mr. Clerkin asked if this individual would still be entitled to the pension offset if the matter is not settled. Attorney Trapasso stated that is correct, if not settled.

The motion to approve the recommendation passed unanimously.

Alderwoman DePino moved approval of Office No. 0059841. Mr. Clerkin seconded the motion.

Office No. 0059841 - John Lafrance v. City of New Haven - Mr. Salcito summarized the issues regarding this matter to the Committee Members. The Committee had no questions.

The motion to approve the recommendation passed unanimously.

A motion was made to adjourn the meeting. The motion was seconded and passed unanimously.

The meeting was adjourned at 5:45 p.m.

**MINUTES OF THE MEETING OF THE
EMERGENCY LITIGATION SETTLEMENT COMMITTEE
Monday, November 14, 2011**

Committee Members Present: Mr. Robert Smuts, Acting Chairman; Alderman Jorge Perez; Alderwoman Arlene DePino; and Mr. Joseph Clerkin, Designee for Management and Budget.

Corporation Counsel Staff Present: Vikki Cooper, Deputy Corporation Counsel; Audrey Kramer, Assistant Corporation Counsel; and Nancy Pepe, Legal Assistant.

Meeting Started: 5:00 p.m.

Meeting Ended: 5:12 p.m.

Mr. Smuts called the meeting to order at 5:00 p.m.

Alderman Perez moved approval of Office No. L08-0076. Alderwoman DePino seconded the motion.

Office No. L08-0076 - Shauvone Lytle v. City of New Haven, et al – Attorney Kramer summarized the issues regarding this matter to the Committee Members. Alderwoman DePino asked if there is documentation on file of a complaint. Attorney Kramer stated there is documentation on file of a complaint but there is no documentation indicating anything was done about it. Alderman Perez asked if the City paid for the medical bills. Attorney Kramer stated that she believes the bills were paid by Medicaid. Mr. Smuts asked if the City is responsible for the Medical Bills. Attorney Kramer stated if this matter is settled, it is not the City's responsibility. Alderwoman DePino asked if this individual continues to work for the City. Attorney Kramer stated yes. Mr. Smuts stated his current position does not involve the operation of any heavy equipment or driving. Alderwoman DePino stated that he never complained of head injuries when he went to the emergency room. She asked if there were any contusions to his head. Attorney Kramer stated there were no contusions to the head but there was post-concussion syndrome.

The motion to approve the recommendation passed unanimously.

A motion was made to adjourn the meeting. The motion was seconded and passed unanimously.

The meeting was adjourned at 5:12 p.m.

chiropractic treatment, he was referred to Dr. Jonas Lieponis for orthopedic evaluation. An MRI confirmed disc protrusion at L5-S1 with impingement on the right S1 nerve root. A narrow spinal canal was noted secondary to congenitally short pedicles. He was referred to Dr. Josef Wang for lumbar epidural steroid injections. After a series of 3 injections, he was released to light duty work for 4 hours/day on 1/19/06. Dr. Lieponis indicated in January 2006 that non-operative modalities were not likely to further improve his pain. If symptoms were aggravated by his work activities he would have to give strong consideration to surgical treatment. He was released to light duty work 8 hours/day in February 2006.

On 3/11/09 this officer was involved in an altercation sustaining a twisting type injury to his lower back. He developed immediate back and right leg pain. He returned to Dr. Piserchia who disabled him and began chiropractic treatment. Once again, he failed to respond to this treatment and was referred to Dr. Lieponis for evaluation. A CT scan and MRI confirmed radiculopathy as a result of disc herniation at L5-S1 with stenosis. In July 2009 Dr. Lieponis recommended surgical decompression at L5-S1 with a fusion from L5 to the sacrum. The officer was evaluated by Dr. Edward Staub, at the City's request, on 7/10/09. Dr. Staub agreed with the need for surgery. The employee opted to defer surgery and returned to work on light duty. He was provided with transitional work, 8 hours per day. After a brief period of transitional work, he reported shooting pain into his right leg had become almost incapacitating. These symptoms required narcotic medication to get him through the day.

On 11/25/09 Dr. Lieponis indicated that short of surgical treatment, this man was at maximum medical improvement with 20% permanent impairment of the lumbar spine. He further stated that his physical limitations and use of narcotic analgesics preclude him from returning to full duty police work. Dr. Staub also assessed 20% impairment with 10% attributed to his prior back injuries and 10% attributed to the injury on 3/11/09. He retired on a service-connected disability pension effective 2/26/10.

This man has yet to go forward with the recommended back surgery. He has and continues to seek authorization to treat with pain management physician, Dr. David Glassman. We have maintained a denial for treatment with Dr. Glassman. The need for pain management treatment and a period of lost time from 2/21/05 to 11/09/05 are currently being litigated.

EXPOSURE BREAKDOWN:

20% apportioned impairment currently due	51,120
TT from 2/21/05 – 11/9/05	25,819
Additional 15% (56.1 wks @ 892)	50,041
Temporary partial (130.9 wks @ 450)	58,905
Total disability (52 wks @ \$1,141)	<u>59,332</u>
	\$245,217 Total

REMARKS:

Dr. Lieponis supports total disability for the period between 2/21/05 and 11/9/05. Dr. Staub evaluated this man in June of 2005, indicating that he had a work capacity at that time.

We have maintained a denial of responsibility for Dr. Glassman's treatment. Dr. Glassman has been treating this retiree since 2010 with bills processed through Anthem BCBS. Dr. Lieponis supports the medical necessity for chronic pain management as this man will require narcotic medications for the foreseeable future. Prior to continuing litigation, we will need to schedule an exam with a pain management physician such as Dr. Gerrold Kaplan to address whether pain management is reasonable and necessary treatment.

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As an alternative to litigation, Attorney Gillooly proposed a full and final settlement for \$285,000. Ultimately it was agreed that we would recommend settlement for \$167,500. This figure acknowledges that the City will continue to provide group medical insurance as part of the police retirement package. If this claim were to remain open the medical exposure would continue for the 28 year life expectancy of this officer. Following settlement, medical expenses will be paid at the Blue Cross fee schedule which is substantially less than the workers' compensation fee schedule, and treatment will be subject to the limitations outlined in the group insurance plan. At age 65, Medicare will become the primary insurance coverage for this individual.

The City has significant exposure for future total disability payments as this retiree is 50 years old and will ultimately require back surgery due to the progression of degenerative arthritis. The proposed settlement includes \$51,200 currently due for the 20% impairment rating. Following payment for this rating, he will be entitled to supplemental wage benefits. The police pension plan does not contain an off-set provision for workers' compensation payments, thus creating an incentive to pursue further benefits. Settlement at this time will eliminate all future exposure under the workers' compensation statute.

We respectfully request that the committee consider and approve this settlement recommendation.

Approved:

Corporation Counsel

Mayor

VOUCHERED: / /

but ultimately opted for conservative treatment due to medical risks associated with his morbid obesity and multiple medical comorbidities.

This man was referred to Dr. Martin Hassenfeld for a series of facet injections and medication. He returned to work on light duty as a driver for a brief period but was unable to continue with 10-20 pound lifting restrictions. He has not worked since October 2006 and retired on a service-connected disability pension effective 2/14/08.

Dr. Gorelick continues to believe that the risks of surgery, whether neck or back, are unacceptably high and outweigh the potential benefit in terms of pain relief. Dr. Alan Waitze examined this man several times since 2006 at the City's request. He confirmed the need for surgery and agrees that without extensive weight loss the surgical risks are unacceptable. This man is 5'7" and weighs 265 pounds. Other complicating factors include diabetes, hypertension, elevated cholesterol, sleep apnea and depression. This retiree is currently under the care of pain management physician, Dr. Lloyd Saberski with treatment consisting mainly of narcotic medication. Dr. Saberski maintains that he is totally disabled with no anticipated change in the future.

EXPOSURE BREAKDOWN:

Total disability (19 years @21,752)	413,288
Future medical expenses	<u>123,134</u>
	\$536,422 Total

REMARKS:

We have maintained a denial of responsibility for Dr. Saberski's treatment since Dr. Gorelick indicated that this man had a sedentary work capacity in 2007. The issue of work capacity is currently being litigated. Attorney Gillooly has recently obtained a vocational analysis from Mr. Albert Sabella who indicates that this man is unemployable. If litigation continues, we will need to refute the vocational analysis with our own analysis to be performed by CRS Services at a cost of approximately \$10,000.00. We will also need an additional medical evaluation to refute Dr. Saberski's opinion.

This retiree is presently on early Social Security retirement benefits and not receiving Medicare. We previously requested a Medicare Set-Aside review by GENEX. They provided a projection for future medical costs for treatment of the neck and back of \$123,134.00. This settlement does not require CMS review and approval as this retiree is not receiving Medicare benefits and the settlement is less than \$250,000.00.

In addition to the settlement payment, the City will continue group medical insurance for 3 years, pursuant to 31-284b. In consideration of Medicare's interest, \$20,000.00 of the settlement proceeds will be placed in a Medicare Set-Aside account to be administered by this retiree.

If litigation continues, it is unlikely that we will successfully refute the claim for total disability. An award for total disability benefits would obligate the City to provide lifetime group medical insurance coverage.

We respectfully request that the committee consider and approve this settlement recommendation.

Approved:

Corporation Counsel

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Mayor

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