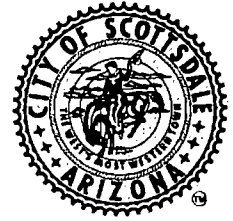


CITY COUNCIL REPORT



Meeting Date: January 6, 2015
 General Plan Element: *Provide for the orderly administration of the affairs of the City*
 General Plan Goal: *Fiscal management*

ACTION

Adopting Resolution No. 10001 authorizing settlement of Clark/Clanton v. City of Scottsdale. Consider adopting Resolution No. 10001 authorizing settlement in the amount of \$855,000 of Plaintiffs Cody Clark, Todd Clark, and Sandra Clantons' negligence lawsuit against the City styled *Clark, et al. v. City of Scottsdale*, Case No. CV13-001476, currently pending in the Maricopa County Superior Court.

Background

This case involves a pedicab accident on January 4, 2013. Cody A. Clark and Michael D. Tysver were passengers in a pedicab travelling north on Scottsdale Road approaching Rose Lane when a motor vehicle driven by Joseph Paul Spano collided with the rear of the pedicab. Mr. Clark and Mr. Tysver were injured in the accident. Notices of Claim were filed with the City seeking damages in the amount of forty million dollars (\$40,000,000) for Cody Clark, three million dollars (\$3,000,000) for Sandra Clanton, three million dollars (\$3,000,000) for Todd Clark, and five million dollars (\$5,000,000) for Michael Tysver. The law firm of Struck Wieneke & Love is defending the City in this case, with the assistance of the City Attorney's Office.

This Council approved settlement of Plaintiff Tysver's claims by Resolution No. 9988 on December 2, 2014. The City has now reached a tentative settlement with the remaining Plaintiffs, Cody Clark and his parents, Todd Clark and Sandra Clanton, subject to the approval of the City Council, and subject to Probate Court approval. The recommended settlement is in the aggregate amount of eight hundred fifty-five thousand dollars (\$855,000) and will lead to the dismissal of all remaining claims against the City in this litigation.

ANALYSIS & ASSESSMENT

Recent Staff Action

The case is being defended by Struck Wieneke and Love, with assistance from the City Attorney's Office. The City has been involved in this litigation for almost one year and extensive discovery has taken place. On December 5, 2014, representatives of Risk Management and the City Attorney's Office, along with outside counsel, attended a mediation with the remaining Plaintiffs in this litigation. Cody Clark was the Plaintiff involved in the accident and suffered a traumatic brain injury as a result. Plaintiffs Todd Clark and Sandra

Clanton are Cody Clark's parents and asserted derivative claims from Cody Clark. After a lengthy mediation, Plaintiffs Cody Clark, Todd Clark and Sandra Clanton agreed to settle all claims against the City for the aggregate amount of eight hundred fifty-five thousand dollars (\$855,000), contingent upon the City Council's and the Probate Court's approval.

Policy Implications

None.

Significant Issues to be Addressed

Given the risk of litigation and the additional costs of moving forward to a jury trial, the City Attorney's Office and Risk Management Department believe a settlement amount of \$855,000 is in the best interests of the City. Settlement with these Plaintiffs will resolve the uncertainty and risk associated with further litigation and is in the best interests of the City.

Community Involvement

No community involvement is necessary on this item as this matter is in litigation.

RESOURCE IMPACTS

Available funding

Funding is available in the Risk Management operating budget up to the City's self-insured retention amount of \$2,000,000 (including costs and attorney's fees).

Staffing, Workload Impact

Approval of the proposed settlement brings this litigation to a conclusion and will eliminate the need for staff resources from the City Attorney's Office, Risk Management, outside counsel, and other Departments to be spent on this case, as well as eliminating the risk and uncertainty of litigation.

Future Budget Implications

The proposed settlement may be included in the City's primary property tax rate for the next year. The eligibility of settlement and judgment payments for possible inclusion in the City's primary property tax rate is based upon an Arizona Attorney General opinion. The City of Scottsdale has a long-standing practice of including paid tort settlements equal to or greater than \$20,000.00 in the City's primary tax rate to reimburse the Self-Insured Fund for payment of the claim.

Cost Recovery Options

None.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 10001 and authorize settlement of this litigation in the amount of \$855,000.00 as proposed.

Proposed Next Steps

If the settlement is approved, City representative(s) will execute settlement documents as proposed and the City will pay the settlement amount within a reasonable time thereafter.

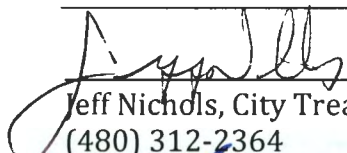
RESPONSIBLE DEPARTMENT(S)

General Government, City Attorney's Office - Civil Division
Risk Management

STAFF CONTACTS (S)

Bruce Washburn, City Attorney, bwashburn@scottsdaleaz.gov
Katie Callaway, Director, Risk Management, kcallaway@scottsdaleaz.gov

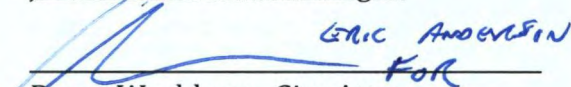
APPROVED BY



Jeff Nichols, City Treasurer
(480) 312-2364
jenichols@scottsdaleaz.gov

12/11/14

Date



Bruce Washburn, City Attorney
(480) 312-2405
bwashburn@scottsdaleaz.gov

12/11/14

Date

ATTACHMENTS

1. Resolution No. 10001

RESOLUTION NO. 10001

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, CONCERNING CLARK/CLANTON V. CITY OF SCOTTSDALE, CASE NO. CV2013-001476 CURRENTLY PENDING IN THE SUPERIOR COURT IN AND FOR MARICOPA COUNTY, ARIZONA.

WHEREAS, Cody Clark, Todd Clark and Sandra Clanton brought suit against the City of Scottsdale seeking to recover monetary damages for injuries Cody Clark sustained allegedly resulting from a motor vehicle/pedicab accident which occurred on January 4, 2013 in Scottsdale; and

WHEREAS, the City has decided to resolve the disputed issues and compromise the claims by settling with Cody Clark, Todd Clark and Sandra Clanton herein; and

WHEREAS, it is in the best interest of the City to effectuate a settlement of the matter of CLARK/CLANTON V. CITY OF SCOTTSDALE, Maricopa County Superior Court Case No. CV 2013-001476.

NOW, THEREFORE, BE IT RESOLVED by the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That the City Council hereby authorizes \$855,000.00 to be paid from the City's Risk Management Operating Budget (710-23740-52483) for settlement of CODY CLARK, TODD CLARK AND SANDRA CLANTON V. CITY OF SCOTTSDALE, Maricopa County Superior Court Case No. CV 2013-001476.

Section 2. That the City Manager, the City Treasurer, the City Attorney, and their respective staff are authorized and directed to execute such documents and take such other actions as are necessary to carry out the purpose of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 6th day of January, 2015.

CITY OF SCOTTSDALE, an Arizona
Municipal Corporation

ATTEST:

Carolyn Jagger, City Clerk

W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

Bruce Washburn, City Attorney
By Eric Anderson, Senior Assistant City Attorney