



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: *Michael Colvin and Mary Beth
Majors v. Becknall, et al.
(1-09-CV-159895); USAA as
Subrogee for Mary Elizabeth
Majors v. Becknall, et al. (1-10-
CV-172368)*

DATE: October 7, 2010

RECOMMENDATION

Approve settlement and authorize the City Attorney to execute Settlement Agreements with Michael Colvin and Mary Beth Majors, and their attorneys in the amount of \$70,000, and to USAA in the amount of \$18,361.01.

OUTCOME

To resolve a lawsuit against the City of San Jose and James Becknall for alleged personal injuries resulting from an automobile accident, and a claim for property damage to the vehicle made by the insurer.

BACKGROUND

On January 22, 2009, at approximately 8:15 AM, Mr. Becknall was driving a Ford Taurus, registered to the City Of San Jose, northbound on Almaden Expressway near Redmond Ave. when he was involved in a five vehicle accident. The police report lists major damage to four of the five vehicles. Plaintiff Colvin was travelling in an adjacent lane at approximately 45 miles per hour; Plaintiff Majors was a passenger in the vehicle. The cause of the accident is alleged to be Mr. Becknall's unsafe lane change.

Plaintiff Colvin, who was 24 years old at the time, and Ms. Majors (23 years old) were taken by ambulance to VMC for treatment of traumatic injuries and released that day. Their injuries are healing, but both Plaintiffs continue to experience symptoms from their injuries for which they have sought further medical treatment. The damages claimed by Plaintiffs include approximately \$18,000 each for medical care and wage losses of approximately \$2,000 each. In addition to the personal injury claim, we received a separate claim from Ms. Majors' insurer, USAA, for vehicle damage.

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ANALYSIS

It appears that Mr. Becknall most likely would be found liable for this accident which occurred while he was operating a City vehicle. The facts of the incident raise legal issues with respect to indemnification of a permissive user of a City vehicle. The risks of further litigation and a potential result unfavorable to the City make a settlement at this time reasonable. The parties agreed to participate in an early settlement conference with attorney Charles Deyer as the neutral. A proposed settlement was reached with Plaintiffs Colvin and Majors, pending Council approval, in the amount of \$70,000, conditioned upon proof that Mr. Becknall's personal automobile insurance had denied coverage for this accident. That proof has been provided to Plaintiffs. A separate proposed settlement was reached with USAA for the property damage in the amount of \$18,361.01.

PUBLIC OUTREACH/INTEREST

This memorandum and settlement agreement are posted on the City's website for the October 19, 2010 agenda.

COORDINATION

This settlement has been coordinated with the City Manager's Office and the Police Department.

BUDGET REFERENCE

The settlement will be paid out of the City's General Liability Claims reserve fund, Appropriation 0018.

CEQA

Not a Project; PP10-066(h), Settlement Agreement.

RICHARD DOYLE
City Attorney

By 
ROBERT B. BURCHFIEL
Sr. Deputy City Attorney

cc: Debra Figone, City Manager

For questions please contact RICHARD DOYLE, City Attorney, at (408) 535-1900