

May 9, 2002

The Honorable Common Council
of the City of Milwaukee
Room 205, City Hall
Milwaukee, WI 53202

Re: **Settlement of the Lawsuit Entitled
Estate of Clarence M. Thurman, III, et al. v. City of Milwaukee, et al.
Case No. 99-C-877; City Attorney No. 99-C-232**

Dear Council Members:

Enclosed please find a proposed resolution. We ask that it be introduced and referred to the Committee on Judiciary and Legislation, with the following recommendation:

The plaintiff, Estate of Clarence M. Thurman, III, by its special administrator, Janice Thurman, and Carmen Evans, who is the child of the deceased, Clarence Michael Thurman, III, brought suit against the City of Milwaukee, Chief Arthur Jones and former Officer Keith Miller, relative to an off-duty-police-shooting incident, which occurred on August 3, 1996. In short, former Officer Miller was at home, and off-duty, when he was informed by his stepson that his garage was being burglarized. In response to this information, former Officer Miller retrieved his service weapon, and ran outside to investigate, while wearing shorts and a T-shirt. He confronted Mr. Thurman, who was in the process of stealing former Officer Miller's lawnmower. The former officer identified himself as a Milwaukee police officer, and ordered Mr. Thurman to stop, because he was going to be arrested. Mr. Thurman engaged in a physical struggle with former Officer Miller, and ultimately escaped from him.

There were youngsters playing nearby, who observed what had occurred. One of the youngsters came forward, and explained to former Officer Miller that he knew where Mr. Thurman lived. Former Officer Miller did not call for police backup, or make any other attempt to contact police officials. Rather, he drove his own vehicle, with the youngster inside, in an attempt to find Mr. Thurman. He did find Mr. Thurman in an alleyway, a short distance

away. Former Officer Miller left the youngster in his vehicle, and began a foot chase of Mr. Thurman.

Former Officer Miller confronted Mr. Thurman once again. Another physical altercation occurred. It is undisputed that the former officer's service revolver fell to the ground, and that Mr. Thurman attempted to retrieve it. Former Officer Miller gained control of his weapon, and he maintained that Mr. Thurman attempted to grab it away from him. In any event, former Officer Miller maintains that he feared for his life, and fired his weapon at Mr. Thurman. Mr. Thurman died almost immediately as a result of his gunshot wound.

Mr. Thurman is survived by his mother, Janice Thurman, as well as his daughter, Carmen Evans. Plaintiffs claimed that the former officer used excessive and unreasonable force, in violation of Mr. Thurman's constitutional rights. They also claimed that the officer subjected Mr. Thurman to cruel and unusual punishment, in violation of the Eighth Amendment. As to the City and Chief Jones, the plaintiffs claimed that the officer was not properly trained or supervised regarding the use of force, and thus were deliberately indifferent to Mr. Thurman's constitutional rights. Finally, the plaintiffs raised state law, wrongful death and assault and battery claims, as against former Officer Miller.

The defendants brought a motion for summary judgment, seeking to dismiss all claims. The federal district court dismissed all independent claims, as against the City and Chief Jones. However, the remaining claims, which were brought specifically against Officer Miller, relative to excessive force, wrongful death and assault and battery, were allowed to proceed to trial, which was scheduled to begin on August 12.

The parties entered in settlement discussions before the federal court judge, Judge Adelman, on May 8, 2002. The plaintiffs' attorney represented to the court and counsel for the defendants that his attorneys fees, at this juncture, totaled \$100,000. However, counsel for the plaintiffs, as well as the plaintiffs themselves, agreed to settle the above-captioned matter for a total of \$150,000. This amount includes all claimed damages, as well as any costs and attorneys fees associated with this litigation.

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We have determined that it is in the best interests of the City of Milwaukee to settle this matter for this amount at this time. We have enclosed an appropriate resolution for your convenience.

Very truly yours,

GRANT F. LANGLEY
City Attorney

SUSAN E. LAPPEN
Assistant City Attorney

GFL:SEL:enm
Encs.
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