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March 31, 2005

**Via Hand Delivery**

Judiciary and Legislation Committee  
City of Milwaukee Common Council  
c/o Ronald D. Leonhardt, City Clerk  
205 City Hall  
200 East Wells Street  
Milwaukee, Wisconsin 53202

Re: Bulah M. Brimmer vs. City of Milwaukee  
Agenda Hearing Notice for April 4, 2005  
Item No. 04-1574

Dear Committee Members:

I am Bulah Brimmer's attorney in the above claim. I have just received notice that a resolution regarding this matter will be considered by your Committee the morning of April 4, 2005. Apparently the Notice of Hearing on this resolution was sent personally to Bulah Brimmer rather than to me even though I am identified as her attorney in both the Claim and the Notice of Circumstances of Claim filed in this matter. I am scheduled to be out of the city on April 4, 2005 and cannot attend the hearing. I am therefore submitting the following information and I request that it be considered at the time the resolution regarding this matter is addressed by the Committee:

The Notice of Circumstances of Claim filed herein sets forth, in detail, evidence establishing that the sidewalk defect causing Bulah Brimmer to fall was clearly a dangerous hazard, and that it had caused persons other than Ms. Brimmer to fall. While, according to the Notice of Hearing, the Infrastructure Services Division has no records of complaints regarding this sidewalk area, there is, in fact, evidence the City had both actual and constructive notice of the defect. A representative of Brett Funeral Home, which is adjacent to the sidewalk area, contacted the City of Milwaukee office responsible for sidewalk maintenance well in advance of the injury date complaining that earlier sidewalk repair work had stopped short of repairing the defect in question, thus leaving a condition likely to endanger persons walking in that area,

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including persons visiting the funeral home. Further, from the photographs attached to the notice of circumstances of claim, it appears quite certain that when earlier repair work was done at and near the southwest corner of the intersection of North 20<sup>th</sup> Street and Wisconsin Avenue, the remaining defects just south of that area (the defects that caused this accident) were plainly visible to the persons doing the repair work. If they did not see these additional defects, they clearly should have.

Statutory and common law imposes upon the City the duty to maintain the public sidewalk involved in this accident. That duty has been construed by the courts to include the duty to inspect for and repair defects. With all due respect, in this instance, there was a failure in that duty.

This is a legitimate meritorious claim. Bulah Brimmer, an elderly lady accompanying her great-grandchildren at the time, was an innocent victim. She sustained fractures and other injuries requiring hospital treatment, therapy and other care for which substantial expenses were incurred. Significant portions of these expenses were uninsured, and she remains without means to pay for needed treatment. Under the circumstances, she should not be required to incur the expense, stress and delay of litigation. Because of the seriousness of her injuries, the maximum allowable amount has been claimed in this matter. However, as an alternative to litigation, Ms. Brimmer would be willing to consider a reasonable compromise on the claim for the statutory amount. Rather than denying the claim and forcing the matter into litigation, I request that your Committee resolve that the City Attorney's office or such other representative as may be designated, be directed to attempt to negotiate a compromise settlement in this matter. I can assure you that both Ms. Brimmer and I would be reasonable in any such negotiations.

Thank you for considering our position in this matter.

Sincerely,

KERSTEN & McKINNON, S.C.,  
Attorneys for Bulah M. Brimmer



Kenan J. Kersten

KJK/mss

cc: Ms. Bulah M. Brimmer