

October 24, 2003

To the Honorable
Committee on Judiciary and Legislation
Common Council
City of Milwaukee
City Hall – Room 205

Re: Thornton v. City of Milwaukee
Common Council File No. 030881

Dear Members of the Committee:

Enclosed please find a proposed substitute resolution. We submit it to the Committee on Judiciary and Legislation with the following recommendation.

In bringing this lawsuit in the year 2000, the plaintiff, Gregory Thornton, asserted various claims, including that his civil rights had been violated by his shooting by an off-duty Milwaukee police officer, Lamont Hodnett. The incident giving rise to this lawsuit occurred during the early morning hours of May 16, 1998.

After leaving a restaurant in the vicinity of North 15th Street and West North Avenue, an individual driving erratically and dangerously came to Hodnett's attention. Hodnett attempted to avoid this driver, and took a couple of turns, but this driver eventually proceeded onto the expressway with Hodnett. At this point, Hodnett chose to react to this individual's driving.

Hodnett pursued this individual at high speeds on the expressway, attempting to pull even with the person's car in order to identify himself as a police officer and to warn him about his driving. Before Hodnett could do this, however, the individual swerved and exited from the freeway. Hodnett followed.

This individual ultimately turned out to be the plaintiff Thornton's cousin, and this individual drove to Thornton's home and parked in front of it. Hodnett stopped next to this individual, and had an exchange with him. There is a dispute as to whether Hodnett ever identified himself as a police officer, however, the trial judge in hearing this case determined that Hodnett had identified himself as a police officer and had acted as an officer to warn this individual about his unlawful driving.

Thornton was on the porch of his home at the time that his cousin and Hodnett drove up to the property. He observed the exchange, but did not immediately recognize his cousin. At some point after recognizing his cousin, Hodnett approached the vehicles and was ultimately involved in the verbal exchange.

Although one of the treating physicians subsequently indicated that Thornton was highly intoxicated that night, the trial court chose to believe Thornton's account of events. Thornton approached his cousin and the stranger, that is, Hodnett, without his Rottweiler, and, as Thornton claimed, without any type of weapon. At some point during the exchange, Thornton noted that Hodnett had a firearm, and warned his cousin about this, and the two of them began to turn away. At this point, Hodnett shot Thornton two times. Hodnett claimed that he saw Thornton with a firearm in his hand, but the trial court chose not to believe that testimony, given that a subsequent police investigation found no weapon at the scene and given that Hodnett drove several blocks away after the shooting and did nothing to secure the scene for further police investigation. Hodnett also refused to speak to investigating officers that evening for quite some time, and then spoke to police only after consulting with his attorneys.

In a trial that took place in early January, 2002 to a trial judge without a jury, the judge concluded that Hodnett had acted to violate Thornton's civil rights by shooting him. The trial court also resolved the issue of whether Hodnett was acting in his scope of employment at the time of the shooting, concluding that he was motivated to act as a law enforcement officer. The trial court concluded that Thornton had established medical expense damages in the amount of \$41,885.54, \$250,000.00 in past pain and suffering, and \$200,000.00 in future pain and suffering. Because of the scope of employment issue, Thornton had retained separate counsel in this case. By prior resolution, the Common Council has approved payment of those attorneys fees to a trial of this matter, but has not paid any interest on those fees nor any of the fees associated with the appeal of this matter.

Both the City and Hodnett appealed the trial court's determinations, however, the court of appeals in a decision dated July 22, 2003 affirmed the trial court's judgment. The City and Hodnett then filed a petition for review seeking the Wisconsin Supreme Court's consideration of this matter. The supreme court, however, denied that petition for review on October 1, 2003.

Including the reasonable attorneys fees of \$87,755.00 to which Thornton's attorneys are entitled under 42 U.S.C. § 1988 and pre-judgment interest of \$29,592.93, the total of the judgment against the City of Milwaukee in this case entered on August 6, 2002 is \$657,174.20. As noted above, a portion of the judgment related to attorneys fees for representation of Mr. Hodnett, and the City had previously paid that amount, the total of \$42,603.43. Under Wisconsin law, simple interest at the rate of 12% per year is added to this amount. The accumulated interest on that amount, properly reduced for the earlier payment to Officer Hodnett's counsel, is \$23,437.90.

In addition, Thornton and Hodnett are entitled to reasonable attorneys fees for their participation in post-trial motions and the appeal. The total of reasonable fees incurred by Hodnett in that regard is \$23,159.63. The total amount of Thornton's fees incurred in that regard is \$35,183.76. The total of all the aforementioned items of damage, interest and attorneys fees is \$766,404.92.

Given the particular circumstances of this incident, we deem it unlikely that the United States Supreme Court would ever grant review of the decision of the Wisconsin Court of Appeals. Under all of these circumstances, we recommend payment of this judgment at this time in the aforementioned amount. Payment at this time will avoid any further accumulation of interest. We have prepared an appropriate resolution for your convenience.

Very truly yours,

GRANT F. LANGLEY
City Attorney

JAN A. SMOKOWICZ
Assistant City Attorney

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Enclosure
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