

GRANT F. LANGLEY
City Attorney

LINDA ULISS BURKE
VINGENT D. MOSCHELLA
DANIELLE M. BERGNER
MIRIAM R. HORWITZ
Deputy City Attorneys



Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551
Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

THOMAS O. GARTNER
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
JAY A. UNORA
DONALD L. SCHRIEFER
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
ADAM B. STEPHENS
KEVIN P. SULLIVAN
THOMAS D. MILLER
JARELY M. RUIZ
ROBIN A. PEDERSON
MARGARET C. DAUN
JEREMY R. MCKENZIE
MARY L. SCHANNING
PETER J. BLOCK
NICHOLAS P. DESIATO
JOANNA GIBELEV
JENNY YUAN
T.C. MAKAYA
KAIL J. DECKER
ALLISON N. FLANAGAN
LA KEISHA W. BUTLER
Assistant City Attorneys

February 13, 2015

To the Honorable
Common Council of the
City of Milwaukee
Room 205 – City Hall

RE: *Carter v. Merrill*
Case No. 10-cv-00396

Dear Council Members:

Enclosed is a proposed resolution and fiscal note authorizing payment of a settlement amount regarding the above-referenced matter. We request that the enclosed documents be referred to the appropriate committee for review.

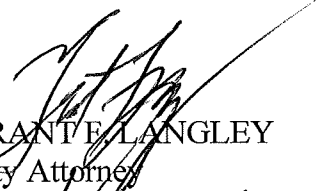
Mr. Carter brought suit regarding events which occurred on October 8, 2009. On that night, Mr. Carter was observed entering the home garage of Police Officer Joseph Merrill. While attempting to prevent Mr. Carter from leaving the scene before on-duty officers arrived, Officer Merrill found himself being dragged by Mr. Carter's car as Mr. Carter was attempting to flee. Officer Merrill fired his gun at Mr. Carter, causing injury to his hand. Mr. Carter claimed that Officer Merrill's use of deadly force was unreasonable, and sought compensatory damages, pain and suffering damages, and punitive damages. Officer Merrill maintained that he only used deadly force because of the threat he perceived of death or great bodily harm to himself by Mr. Carter's actions. The case was tried before a jury in federal court in January, 2014. The jury hung. The parties subsequently entered into mediation. In the context of mediation statements, counsel for Mr. Carter claimed over \$90,000 in out-of-pocket litigation expenses, and approximately \$350,000 in attorney's fees. Mr. Carter also sustained approximately \$77,000 in medical bills. As a result of mediation, plaintiff's counsel indicated that plaintiff would settle this case for the total amount of \$190,000.

Because of the unpredictability of trial, the fact that the case already went to trial, which resulted in a hung jury, and the City's risk for exposure to not only compensatory damages, but also to punitive damages and attorney's fees in the context of a second trial, we recommend

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Common Council of the
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that this matter be settled for that amount. Consistent with our recommendation, we have enclosed an appropriate resolution for your consideration.

Very truly yours,



GRANT E. LANGLEY
City Attorney



SUSAN E. LAPPEN
Assistant City Attorney

Enclosures

1032-2010-2387:212316