

June 25, 2003

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

Re: Partial Settlement of Lawsuit Entitled
Gregory Thornton, et al. v. Lamont Hodnett, et al.
Case No. 00-CV-000152

Dear Council Members:

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

The above-noted lawsuit arises out of an off-duty shooting by former Police Officer Lamont Hodnett of the plaintiff, Gregory Thornton, during the early morning hours of May 16, 1998. The shooting occurred after Hodnett had followed Thornton's cousin for a short distance on City streets and the expressway as the result of the cousin's erratic and dangerous driving. Hodnett has consistently maintained that he followed this individual to Thornton's home, identified himself as a police officer to this individual once he had parked his vehicle in front of Thornton's home, and sought to simply warn him not to engage in such driving.

Thornton's cousin, on the other hand, maintained that Hodnett was loud, belligerent, and swearing at him during this confrontation, and both this cousin and Thornton insisted that Hodnett never identified himself as a law enforcement officer to either of them. The confrontation ended when both Thornton and his cousin noticed that Hodnett was armed and then moved quickly away from Hodnett. Hodnett has consistently maintained that he saw what he believed was a pistol in Thornton's hand and believed that the quick movement constituted a threat that Thornton would raise the firearm and shoot Hodnett. Hodnett acted first and shot Thornton.

This incident has been the subject of a civil lawsuit by Thornton against the City and Hodnett. It resulted in a trial without a jury to Judge Michael P. Sullivan in January, 2002. At the conclusion of the trial, Judge Sullivan issued findings of fact and conclusions of law. He determined that Hodnett had violated Thornton's civil rights by using excessive force in shooting him. That conclusion is the subject of a pending appeal before the court of appeals. We have argued that the trial court erred in reaching this conclusion given federal case law establishing that a law enforcement officer does not violate an individual's civil rights when an individual's threatening and furtive movements caused an apparent risk of harm to the officer, even when it turns out that the individual, as this case, is not found to have been armed with a firearm.

Judge Sullivan also found, however, that Hodnett was acting within the scope of his employment at the time of this incident. He specifically found as fact that Thornton's cousin was engaged in dangerous and erratic driving, and that Hodnett acted as a police officer, identifying himself to the cousin, and giving him a verbal warning about his driving.

Because those factual findings cannot be set aside in an appeal unless they are "clearly erroneous," and because Judge Sullivan had Hodnett's testimony upon which to base these findings, we have concluded that it would not be likely that the appellate court would reverse such findings. We therefore chose not to argue the merits of those findings in the appeal.

Because of the factual issue as to Hodnett's scope of employment, our office had a conflict of interest, and could not represent Hodnett in the trial of the case. He was represented by Attorney Jonathan Cermele.

Attorney Cermele sought to recover attorneys fees in the trial court and with the scope of employment finding, was awarded attorney fees and costs by the trial court in the amount of \$42,603.43. Attorney Cermele has requested payment of those fees and costs pending the outcome of the appeal on the merits of the civil rights action.

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Because settlement of this attorney's fees claim only at this time is in the best interests of the City, we recommend payment of the these attorneys fees and costs incurred in the defense of Mr. Hodnett by Attorney Cermele. We have enclosed an appropriate resolution for your convenience.

Very truly yours,

GRANT F. LANGLEY
City Attorney

JAN A. SMOKOWICZ
Assistant City Attorney

GFL:JAS:enm
Enclosure

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