

LRB-RESEARCH AND ANALYSIS SECTION

JUDICIARY & LEGISLATION COMMITTEE

ITEM 6, FILE # 061245

JANUARY 29, 2007

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File 061245 is a communication from the City Attorney transmitting a semi-annual report as to the determination and disposition of all claims pending and closed through December 31, 2006.

Background

1. The Office of the City Attorney is required, pursuant to s. 304-7-2-f of the Code, to submit semiannual reports to the Common Council as to settlement of claims during the preceding period, as well as other reports as may be requested by the Common Council.
2. Settled claims, settled litigation and judgments against the City are paid from the Damages and Claims Special Purpose Account. The amounts authorized for payment may vary from the amount actually reported by the Comptroller to have been paid due to the time between submission for payment and the issuance of a check. The total amount contained in the semiannual reports of the Office of the City Attorney is the amount authorized for payment.
3. The following 3 tables compare the status of claims and damages between the first 6-month period and the last 6-month period of 2006 and include annual totals where applicable.

Table 1. Claims Pending, Closed and Denied with Amounts Paid

	Claims Pending	Claims Closed	Claims Denied	Claims Paid \$ Amount
1/1-6/30	1,330	316	120	184,046
7/1-12/31	1,333	274	136	208,625
% Change	0	-13.3%	+13.3%	-13.4%
2006 Total	NA	590	256	392,671

Table 2. Litigation Pending, Closed, Settled, Amounts Paid, and Closed Without Payment

	Litigation Pending	Cases Closed	Cases Settled	Settlement \$ Amount	Closed w/o Payment
1/1-6/30	475	162	28	528,007	119
7/1-12/31	451	248	17	166,346	234
% Change	- 5.1%	+ 40.0%	- 39.3%	- 68.5%	+ 96.6%
2006 Total	NA	410	45	694,353	353

Table 3. Judgments for and against the City with Total Amounts

	Judgments for City*	Judgment \$ amount	Judgments against City	Judgment \$ amount
1/1-6/30	1	10,297	2	250
7/1-12/31	4	19,938	0	0
% Change	+ \$300%	+ 93.6%	-	-
2006 Total	5	30,235	2	250

* These figures are taken from correspondence provided by the City Attorney. The itemized spreadsheet reporting judgments for the City in the period 7/1 to 12/31 list 3 judgments amounting to a total of \$17,616 in awards.

4. The numbers of pending claims and the numbers of pending cases in litigation at the close of each 6-month period in 2006 were substantially equivalent. The number of claims pending on December 31, 2005 was 1,215 and the number of cases pending was 423. The claim-load and caseload of the Office of City Attorney at the end of 2006 was approximately 9% greater than the caseload at the end of 2005.

Discussion

1. The total in settlements, judgments and claims payable by the City in 2006 was \$1,087,274. The amount budgeted for the 2006 Damages and Claims Special Purpose Account (SPA) was \$1.875,000. The Common Council may determine that any balance in the SPA at the close of the year be carried over.
2. Settlements of claims and cases plus judgments against the City in the first half of 2006 totaled \$712,303. Settlements and judgments in the second half of 2006 totaled \$374,971, a 47.4% reduction. The difference appears largely due to litigation settled in the first half of 2006 and not to settled claims or court judgments.
 - In the period 1/1/06 to 6/30/06 settlement of the Board of Zoning Appeals litigation in the case of *Options for Community Growth, Inc, et al. v. City of Milwaukee* amounted to \$194,000. Eight settlements in litigation involving the Police Department totaled nearly \$180,000. Taken together, these settlements amounted to \$374,000.
 - Settlements of litigation involving the Police Department in the second half of 2006 amounted to less than \$22,000. The largest settlement in the second half of 2006 was for \$47,169 in the Infrastructure Services Division matter of *Michaels Pipeline Construction v. City of Milwaukee*.
3. The Damages and Claims SPA was increased by \$2 million in the 2007 budget to \$3.875 million due to damages and claims awarded by the U.S. District Court for the Eastern District of Wisconsin in the case of *Alexander, et al v. City of Milwaukee, et al.* This matter was pending on appeal to the U.S. 7th Circuit Court of Appeals through the 6-month period ending December 31, 2006. Evaluation of the status of the Damages and Claims SPA requires analysis of the potential risks presented by the *Alexander* case. The appeal was concluded by a decision of the Circuit Court on January 18, 2007, and, although this development occurred following the conclusion of the reporting period, it is timely to address its potential impact. The status of matters on appeal has not been included in the bi-annual reports from the Office of the City Attorney

Following a jury trial in March 2005, the plaintiffs were awarded \$2,198,500 in compensatory and punitive damages against the City. In addition, the court awarded \$1,540,483 in economic damages. On August, 29, 2005 the Court entered judgments totaling \$3,738,983. On February 3, 2006, the Court awarded attorney fees and costs to plaintiffs in the sum of \$427,701. The total of all damages, punitive awards, attorney fees and costs was \$4,167,684. These amounts were subject to interest.

The Circuit Court of Appeals affirmed the judgment of the district court with respect to liability, but reversed the judgment of the District Court with regard to damages. The Circuit Court declined to award attorney fees or other costs of the appeal to any party.

Unless appealed further or settled, the issue of damages will be reheard by the District Court. The Court will likely take new evidence on compensatory damages related to the probability that police lieutenants would have been promoted to captain absent

discrimination. The Court has been instructed to include calculations of the value of lost flextime and overtime in calculating compensatory damages; such calculations were not considered in the initial award. The Court of Appeals also instructed the District Court to consider the frequency of new captain position vacancies in determining when each of the 17 plaintiffs would have a promotional opportunity unimpeded by discrimination.

Recalculations of the probability of promotion and the likely date of an unimpeded chance at promotion will likely reduce the award of compensatory damages. Calculations that include lost flextime and overtime opportunities will likely increase the compensatory damages.

The Court of Appeals noted that the amount of punitive damages may have been affected by erroneous instructions to the jury on compensatory damages. The Court of Appeals also directed reconsideration of the apportionment of punitive damages to take into account the culpability of each individual defendant; the initial award of punitive damages was equally apportioned among the Fire and Police Commissioners and the Chief of Police. It is not clear whether reconsideration of punitive damages will result in a change in the actual damages. In fact, the Circuit Court opined that the punitive damages were low in comparison to other awards and, if the punitive damage issue is completely retried to a jury, then the amount of exposure is unknown.

Assuming that the District Court recalculates an award of damages, the Court may also include additional attorney fees as well as interest on the new judgment that could be retroactive to the time of the initial award.

Conclusion: recalculations of compensatory and punitive damages in *Alexander* appear to provide an opportunity for reducing the amount ultimately paid by the City. However, exposure to a potential new award for attorney fees, punitive damages and interest has the potential for maintaining or even increasing the amount of the initial award.

4. Exposure of the Damages and Claims SPA and the City is affected by litigation on appeal and the amount of new claims and cases filed but not yet acted upon. The most recent comprehensive summary of major matters in litigation or threatened are contained in a letter dated May 15, 2006 from the City Attorney to auditors. Subsequently, a case has been brought in federal court in the matter of *Jude v. City of Milwaukee*.

Summary of Fiscal Impact

1. The total amount of settlements and judgments payable from the Damages and Claims SPA for the 6-month period ending December 31, 2006 was \$374,971, and was 47.4% less than the previous 6-month period.
2. The caseload was substantially the same at the end of each period.
3. Exposure of the Damages and Claims SPA and the City is also affected by cases on appeal and by the amount sought in new claims and cases filed.

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