

**GRANT F. LANGLEY**  
City Attorney

**RUDOLPH M. KONRAD**  
**LINDA ULISS BURKE**  
**VINCENT D. MOSCHELLA**  
Deputy City Attorneys

**CITY OF  
MILWAUKEE**  
**Office of the City Attorney**

February 14, 2007

Ald. Michael J. Murphy  
10<sup>th</sup> Aldermanic District  
Room 205, City Hall  
200 East Wells Street  
Milwaukee, WI 53202

**Re: Use of Damages & Claims Fund Special Purpose Account**

Dear Alderman Murphy:

We are writing in response to your letter of February 8, 2007, in which you ask about a resolution introduced at the February 6, 2007, Common Council meeting to reserve and appropriate \$332,000.00 from the 2007 Special Purpose Account—Damages and Claims Fund to fund an additional police officer recruit class and conflict resolution training for Milwaukee Public School safety personnel. You ask for our advice concerning the effect of the resolution, if adopted, on the ability of the City to meet its liability obligations.

The 2007 budget appropriation with carryover for the Damages and Claims Fund is \$5,598,411.00. The amount of the appropriation is higher than in the previous year, which was \$2,936,569.00. The purpose of the increase was to assist the City in paying when due the \$4,167,684.00 judgment in *Alexander, et al v. City of Milwaukee*.

The *Alexander* judgment consisted of an award of \$464,500.00 in compensatory damages, \$1,540,483.00 in economic damages, \$1,734,000.00 punitive damages, and \$427,701.00, in attorney's fees and costs. The City appealed the *Alexander* judgment to the United States Court of Appeals for the Seventh Circuit, which on January 18, 2007, upheld the judgment of liability but reversed the damages judgment, and instructed the District Court to conduct further proceeding to resolve the damages claims.

The Court of Appeals held that the District Court, in calculating a lieutenant's probability of promotion, should take into account the entire pool of lieutenants, not just those who

THOMAS O. GARTNER  
BRUCE D. SCHRIMPF  
ROXANE L. CRAWFORD  
SUSAN D. BICKERT  
STUART S. MUKAMAL  
THOMAS J. BEAMISH  
MAURITA F. HOUREN  
JOHN J. HEINEN  
MICHAEL G. TOBIN  
DAVID J. STANOSZ  
SUSAN E. LAPPEN  
JAN A. SMOKOWICZ  
PATRICIA A. FRICKER  
HEIDI WICK SPOERL  
KURT A. BEHLING  
GREGG C. HAGOPIAN  
ELLEN H. TANGEN  
MELANIE R. SWANK  
JAY A. UNORA  
DONALD L. SCHRIEFER  
EDWARD M. EHRlich  
LEONARD A. TOKUS  
VINCENT J. BOBOT  
MIRIAM R. HORWITZ  
MARYNELL REGAN  
G. O'SULLIVAN-CROWLEY  
KATHRYN M. ZALEWSKI  
MEGAN T. CRUMP  
ELOISA DE LEÓN  
ADAM B. STEPHENS  
KEVIN P. SULLIVAN  
BETH CONRADSON CLEARY  
THOMAS D. MILLER  
Assistant City Attorneys

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sued. This holding will reduce the likelihood and percentage probability that the 17 individual lieutenants who are plaintiffs in the *Alexander* case would have been promoted in the absence of discrimination. Thus, the percentages found by the first jury (ranging from zero to 80%) will likely be less once viewed in the context of the entire pool of lieutenants on the department at the times the promotions in question were approved. The Court of Appeals also held that the probability of promotion percentage once determined should be applied to both economic and compensatory damages. The District Court had applied those percentages to economic damages only. The Court of Appeals also held that the plaintiffs were not entitled to front pay indefinitely and that the District Court should have ended front pay at the point in time that the lieutenants had unhindered opportunities to compete for promotion to captain. Finally, the Court of Appeals vacated the punitive damages judgment and directed the District Court to more clearly instruct the jury that the amount of punitive damages awarded should be related to the conduct of the individual defendants.

Applying the new damages rules to the case probably will result in lower economic and compensatory damages. Punitive damages, however, might be awarded in a greater or lesser amount than in the first trial. In addition to the *Alexander* case, the City is also being sued in two additional cases by eleven lieutenants who also claim that they were denied the opportunity for promotion to captain. Those cases will have to be resolved in addition to the *Alexander* case. We believe it likely that the *Alexander* case and the two add on cases will come to a conclusion this year.

Finally, the City has other cases pending against it that might result in large damage awards or settlements. Accordingly, we advise you that we believe that the Damages and Claims Fund as currently funded will be needed to meet the City's liability obligations.

Very truly yours,

  
GRANT E. LANGLEY  
City Attorney

  
RUDOLPH M. KONRAD  
Deputy City Attorney

GFL/RMK/dj

c: Ronald D. Leonhardt ✓

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