

CITY COUNCIL REPORT



Meeting Date: February 4, 2014
General Plan Element: *Provide for the orderly administration of the affairs of the City*
General Plan Goal: *Fiscal management*

ACTION

Adopting Resolution No. 9645 authorizing settlement. Adopt Resolution No. 9645 authorizing the Mayor to enter into Contract No. 2014-017-COS on behalf of the City, contingent upon all necessary future Court approvals and the City Attorney's future approval of all settlement agreement language, terms and signatures and specifically authorizing the Treasurer to take all future actions necessary including possibly depositing any remaining self-insured retention funds in a trust account pending all necessary future approvals and a fully executed settlement agreement in order to settle the lawsuit entitled *Hulstedt v. City of Scottsdale, et al.*, Case No. CV09-01258-PHX-GMS currently pending in the United States District Court.

Background

This case involves the police shooting of David Hulstedt on November 7, 2008, after the Scottsdale Police Department was called to his house after receiving a 911 call. Events unfolded after the Police arrived, which resulted in the shooting of Mr. Hulstedt.

Hulstedt and his family members have made claims and filed suit against the City and several former and current Scottsdale Police Department officers in United States District Court seeking attorney's fees and damages in an unspecified amount. Before filing the case, the Claimants filed a Notice of Claim with the City seeking Forty Million dollars (\$40 Million) to settle their claims.

The City retained private counsel to litigate this case and the case is currently in discovery at this time.

The City is self-insured for this matter up to \$2,000,000. In the payment of fees and expenses related to the litigation, the City has exhausted nearly all of the self-insured retention. It is estimated that less than \$30,000 will be remaining at the time of Council's consideration of this issue. Any additional expenses or costs related to this case will be paid for by the City's private insurance carrier.

ANALYSIS & ASSESSMENT

Recent Staff Action

The Parties recently participated in settlement discussions, along with the City's private insurance carriers. Following litigation and settlement negotiation, the Plaintiffs and the City's excess insurance carrier agreed to settle the case for \$9,999,900.00, contingent upon the City Council's approval. The City is obligated to cooperate with its excess insurance carrier.

Plaintiffs are currently seeking Court approval of this settlement and until Court approval is obtained, the parties cannot agree to the wording of a final settlement agreement. However, the settlement agreement will have the major terms set forth in the attached draft tentative settlement agreement, as approved by the City Attorney.

RESOURCE IMPACTS

Available funding

The settlement will be funded by the Risk Management operating budget and the City's insurance carriers. The City Treasurer may possibly deposit the limited balance of its self-insured retention (the amount remaining after all outstanding defense costs and fees have been satisfied) to a trust account pending all necessary future approvals.

The balance due to satisfy the settlement agreement will be paid by the City's excess insurance carrier.

Staffing, Workload Impact

Settlement will eliminate expenditure of staff resources from the City Attorney's Office, Risk Management and Police Department on this complex and large case and eliminates the risk and uncertainty of trial.

Future Budget Implications

The Risk Management Department reserved the City's self-insured retention for the defense and indemnity on this case. That amount has been nearly depleted and the vast majority of the settlement will be paid by the City's insurance carrier.

Cost Recovery Options

The City's tort defense and settlement expenses may be recovered in the primary property tax rate for the next year.

Excess insurance will provide coverage beyond the City's self-insured retention.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution no. 9645.

Proposed Next Steps

Possibly transfer the remainder of the City's self-insured retention amount to a trust account pending all necessary further approvals. Finalize the wording of the draft settlement agreement, subject to the future approval of the Court and City Attorney. The primary terms, including the total settlement amount will not change.

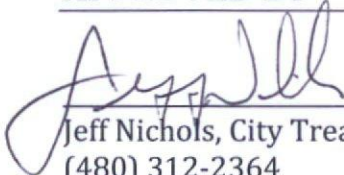
RESPONSIBLE DEPARTMENT(S)

Risk Management
City Attorney's Office

STAFF CONTACTS (S)

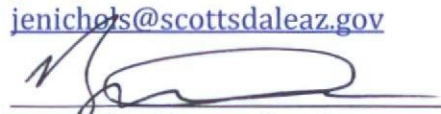
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APPROVED BY



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1/21/14
Date



Bruce Washburn, City Attorney
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1/21/14
Date

ATTACHMENTS

1. Resolution No. 9645
2. Tentative Settlement Agreement

RESOLUTION NO. 9645

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE SETTLEMENT OF *HULSTEDT V. CITY OF SCOTTSDALE, ET AL.*, CURRENTLY PENDING IN UNITED STATES DISTRICT COURT AND AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2014-017-COS CONTINGENT UPON ALL NECESSARY FUTURE COURT APPROVALS AND SUBJECT TO THE CITY ATTORNEY'S FUTURE APPROVAL OF THE FINAL SETTLEMENT AGREEMENT FORM AND TERMS.

WHEREAS, the City has determined that it is in its best interest to enter into a settlement with the Plaintiffs and claimants in *HULSTEDT V. CITY OF SCOTTSDALE, ET AL.*

NOW, THEREFORE, BE IT RESOLVED by the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The Mayor is authorized to execute Contract No. 2014-017-COS on behalf of the City for the settlement of *HULSTEDT V. CITY OF SCOTTSDALE, ET AL.*, contingent upon and subject to all necessary future Court approvals and the City Attorney's future approval of the final settlement agreement form, language, terms and necessary signatures in order to fully settle the lawsuit entitled *Hulstedt v. City of Scottsdale, et al.*, Case No. CV09-01258-PHX-GMS currently pending in the United States District Court.

Section 2. That the City Manager, City Attorney and City Treasurer and their respective staffs are authorized and directed to execute such documents and take such other actions as are necessary to carry out the purpose of this Resolution and that the City Treasurer and his respective staff are specifically authorized to make a possible future deposit and/or payment of the City's remaining self-insured retention amount to an outside trust account pending all necessary approvals and a fully executed settlement agreement.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 2014.

CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Carolyn Jagger, City Clerk

W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

Bruce Washburn, City Attorney

PRELIMINARY SETTLEMENT AGREEMENT

HULSTEDT v. CITY OF SCOTTSDALE, et al.

Arizona Federal District Court

Case No: CV09-01258-PHX-GMS

After attending a mediation/settlement conference before C. Lewis Ross, Ninth Circuit Mediator, on December 16 and 17, 2013, and engaging in continued settlement negotiations following the mediation/settlement conference, the Parties, by and through their counsel undersigned, agree that this case/dispute has been settled this date in accordance with the following terms and conditions:

1. Payment will be made on behalf of the defendants to the plaintiffs in the sum of \$9,999,900.00 in full and final satisfaction of all claims in this matter.

2. This is a "global" settlement. That means that this settlement addresses all claims of all plaintiffs, including any claims for attorneys' fees, costs, guardian ad litem's (Richard Gerry or Eric Hulstedt) fees, and all other costs and fees.

3. The plaintiffs will be obligated to resolve/satisfy all Medicare liens/conditional payment obligations, healthcare provider liens and any other applicable liens from the settlement proceeds.

4. The plaintiffs agree to provide an analysis concerning an amount for the "Medicare Set Aside" which will address David Hulstedt's future care needs and related obligations. The plaintiffs further agree to fund the amount necessary to protect Medicare's interest.

5. The two structured settlement specialists (Sarah Van Fleet for the plaintiffs, and Jeff Brooks for the defendants) will work together should any portion of this settlement be structured. In working together Jeff Brooks will be the "broker of record." Further, any portion of the settlement which is structured will be done so using an Everest Insurance Company approved life company (any AM Best A+ carrier). Additionally, the parties agree that American General may be used as the life company for the portion of this settlement that is structured. The parties further agree that the plaintiffs' attorneys may structure a portion of their fees.

6. Plaintiffs must obtain approval for the portion of this settlement which is designated as D.H.'s from a court of competent jurisdiction. Similarly, plaintiffs must

obtain approval for the portion of this settlement that is designated as David Hulstedt's from the Maricopa County Superior Court, Probate Division.


7. Payment of the settlement amount will be made only after all three of the following conditions precedent have been met:


- a. The settlement has been approved by the Scottsdale City Council.
- b. D.H.'s settlement has been approved by a court of competent jurisdiction.
- c. David Hulstedt's settlement has been approved by the Maricopa County Superior Court, Probate Division.

8. The plaintiffs will dismiss this litigation with prejudice and will execute a release of all claims in favor of defendants, their subsidiaries, affiliates, agents, employees and insurers.

9. The parties and counsel signatory hereto agree to prepare and sign such other documents as are reasonably necessary to effectuate the terms and conditions set forth herein.

Signed this 10th day of January, 2014.



Alan M. Simpson, Esq.
Counsel for Plaintiffs

Peter C. Kelly, Esq.
Counsel for Defendants