



Staff Summary Report

Council Meeting Date: 06/11/2009

Agenda Item Number: _____

SUBJECT: Request approval of the settlement of Barker, et al., v. City of Tempe, CV2006-012711

DOCUMENT NAME: 20090611cacc02 **LITIGATION SETTLEMENTS (0501-04)**

SUPPORTING DOCS: No

COMMENTS: Plaintiffs have agreed to dismiss with prejudice all claims against the City of Tempe in exchange for a settlement amount of one million, three hundred fifty thousand dollars (\$1,350,000).

PREPARED BY: Andrew B. Ching, City Attorney (350-8575)

REVIEWED BY: N/A

LEGAL REVIEW BY: N/A

FISCAL NOTE: Sufficient funds from Risk Management's Self insured retention fund have been appropriated.

RECOMMENDATION: Approve the settlement.

ADDITIONAL INFO: A copy of the settlement agreement is attached.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is between James Barker and Kelly Wilcott, parents of Kyle Barker, deceased (together, "Plaintiff") and William Cullins and the City of Tempe, Arizona (together, "Defendants"). Plaintiff sued Defendants in CV2006-012711, a civil matter pending in the Superior Court of Maricopa County, Arizona. Plaintiff and Defendants enter into this Agreement on the following terms:

1. **Parties.** The parties to this settlement are Plaintiff, Defendants, and their respective employees, principals, directors, officers, shareholders, agents, any parent company, subsidiary, predecessor, successor, heirs and assigns. The parties' signators below agree that by executing this Agreement, they are binding their respective employees, principals, directors, officers, shareholders, agents, any parent company, subsidiary, predecessor, successor, heirs and assigns.
2. **Consideration.** The parties, in recognition of the costs and uncertainties of any civil lawsuit, agree to forgo any further claim against each other. In exchange for payment of ONE MILLION THREE HUNDRED FIFTY THOUSAND DOLLARS (\$1,350,000.00) by Defendants, Plaintiff agrees to release all past, existing or future claims which it did or could have asserted against Defendants in CV2006-012711. Likewise, Defendants agree to release all past, existing or future claims which were or could have been asserted against Plaintiff in CV2006-012711.
3. **Representations.** The parties hereby represent that they each (a) have full legal capacity to execute this Agreement; (b) enter this Agreement voluntarily without any threats, coercions, or representations; and (c) have received independent advice by counsel of its choosing and are satisfied with that representation.
4. **Matters Released.** The parties to this Agreement hereby mutually release all past, existing or future claims they have against each other arising out of or in any way related to the matters which are the subject of CV2006-012711, including but not limited to any claims for damages, costs, fees, interest, or any other claim that was or could have been asserted in CV2006-012711, whether known to the parties at the time of execution of this Agreement or not.
5. **Damages.** The parties mutually agree that this Agreement constitutes a release of all of their alleged damages claimed against each other arising from CV2006-012711, or arising from any past, existing or future claim that was or could have been asserted by them in CV2006-012711.

6. **Persons Released and Persons Releasing.** The parties mutually agree that this Agreement releases Plaintiff, Defendants, and their respective employees, agents, attorneys, and insurers, any parent company, subsidiary, predecessors, successors, officers, heirs, executors and assigns.
7. **Dismissal of Claims.** The parties shall file a stipulation of dismissal with prejudice of all of Plaintiff's claims against Defendants in CV2006-012711, with each party to pay their respective attorneys' fees and costs.
8. **Compromise.** Plaintiff has colorable claims and Defendants raise meritorious defenses, which the parties agree to compromise and set aside in order to avoid further time, expense, and litigation.
9. **Liens and Subrogated Interests.** The parties are aware of no valid liens or additional subrogated interests arising from the claims made in CV2006-012711. Notwithstanding this, Plaintiff hereby agrees to indemnify and hold harmless Defendants and their insurer from any lien claim or additional subrogated interest claim in the event one arises.
10. **Costs and Fees.** Each party is to pay its own fees and costs.
11. **Full and Final Release.** This is a full and final release of all past, existing or future claims by Plaintiff or Defendants.
12. **Governing Law.** This Agreement shall be governed by the laws of Arizona. If any provision of this Agreement is held to be invalid, void or unenforceable for whatever reason, the remaining provisions shall continue in effect.
13. **Integration.** This Agreement constitutes the entire agreement between Plaintiff and Defendants, and supersedes any prior agreements.
14. **Construction.** This Agreement shall be deemed drafted equally by Plaintiff and Defendants. The language of this Agreement shall be construed as a whole, according to its fair meaning, and any presumption that the language is to be construed against any party shall not apply.
15. **Assignments.** The parties represent that they have not heretofore assigned or transferred, or purported to assign or transfer to any person or entity any claim or portion thereof or interest therein which is released in this Agreement.

IMPORTANT:

**THIS IS A FULL AND FINAL RELEASE OF ALL CLAIMS.
READ BEFORE SIGNING.**

JAMES BARKER

James Barker 5/28/09
Date

KELLY WILCOTT

Kelly Wilcott May 28, 09
Date

@PFDesktop\::ODMA/MHODMA/IMANAGE;RCD_PHX;522233;1