



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** September 3, 2020

Staff Contact: Nancy Paulson, City Manager

Agenda Title: For Possible Action: Discussion and possible action regarding a proposed settlement offer in the amount of \$375,000, payable to Plaintiff Yvonne Anderson, to settle all claims arising from a work incident resulting in the death of Carson City employee Brian Anderson, and whether to authorize the City Manager to proceed, in consultation with the District Attorney's Office and the City's retained worker's compensation attorney, with all necessary legal action in the defense of the City against the claim, including administrative appeal and litigation, if the offer is not acceptable. (Nancy Paulson, npaulson@carson.org)

Staff Summary: This agenda item is for the Board of Supervisors to consider a settlement offer by the Plaintiff, who has filed a worker's compensation claim against the City based on a workplace incident resulting in the death of her husband, Brian Anderson, who was employed by the City at the time of his death. If the Board of Supervisors accepts the settlement offer, the worker's compensation attorney retained by the City to defend against claims may proceed with all necessary action to finalize the settlement. If, however, the Board chooses not to accept the settlement offer, staff requests that the Board authorize the City Manager to proceed, in consultation with the District Attorney's Office and its worker's compensation counsel, with all necessary legal action to defend the City against the claim until final disposition.

Agenda Action: Formal Action / Motion **Time Requested:** 5 Minutes

Proposed Motion

Depends on the Board of Supervisors' decision to accept or reject the settlement offer. If the offer is rejected, the Board may also consider whether to authorize the City Manager to proceed, in consultation with the District Attorney's Office and the City's worker's compensation attorney, with all necessary legal action to defend the City against the claim until final disposition.

Board's Strategic Goal

Efficient Government

Previous Action

N/A

Background/Issues & Analysis

Brian Anderson was employed by the City in its Department of Public Works as a Water Meter Technician. On July 30, 2018 - his first day of employment - Mr. Anderson was stung by a wasp which led to certain complications resulting in his death. His widow, Plaintiff Yvonne Anderson ("claimant"), filed a claim for benefits under Nevada's worker's compensation laws. That claim was denied by the City's third-party administrator for such claims, Cannon Cochran Management Services, Inc. (CCMSI) based on a number of various factors, including the unsettled status of state law concerning employer liability for circumstances of deaths similar to

that of Mr. Anderson's. Subsequently, the claimant and the City agreed to waive the initial hearing before a Hearing Officer with the Hearings Division of the Nevada Department of Administration ("Department"), which is ordinarily the first step for a claimant to appeal an insurer's decision to deny a claim for benefits, and to instead proceed directly to an appeal with an Appeals Officer with the Department. That appeal, which was previously continued from its original hearing date due to the COVID-19 pandemic, is currently scheduled for October 1, 2020. Claimant's counsel and the City's attorney, Lisa Wiltshire-Alstead with the law firm of McDonald Carano, have engaged in a series of communications regarding the possibility of a settlement to resolve all claims against the City. On October 27, 2019, claimant's counsel proposed a settlement offer of \$1,200,000, in addition to \$10,000 in funeral expenses and \$34,144.95 plus a daily rate of \$74.78 for each day until the matter settles. After further settlement negotiations with the involvement of Ms. Wiltshire-Alstead, the City Manager and the District Attorney's Office, claimant's counsel proposed on August 17, 2020 a "best and final" offer of \$375,000 as a lump sum payment and with the understanding that any "acceptance" by the City would be tentative in nature and subject to final approval by the Board of Supervisors. Although a significantly lower amount than what was initially offered, the last offer of \$375,000 was not tentatively accepted by the City Manager but is being presented to the Board for its consideration. The City's last tentative counteroffer was \$225,000, plus medical expenses.

If the Board does not accept the settlement offer of \$375,000, Ms. Wiltshire-Alstead will proceed to the administrative hearing before the Appeals Officer on October 1, 2020. NRS 241.0357, a provision of Nevada's Open Meeting Law, authorizes a public body such as the Board of Supervisors to "delegate authority to the chair or the executive director of the public body, or an equivalent position, to make any decision regarding litigation concerning any action or proceeding in which the public body or any member or employee of the public body is a party in an official capacity or participates or intervenes in an official capacity." For purposes of efficiency and to avoid any unnecessary delays in relation to time-sensitive administrative or court filings that may have to be made in the event the Appeals Officer issues a decision adverse to the City's interests, this agenda item also requests that the Board authorize the City Manager, in consultation with the District Attorney's Office and the City's worker's compensation counsel, to prepare and file all necessary legal documents in defense against the claim, up to and including an appeal before the Nevada Supreme Court.

Applicable Statute, Code, Policy, Rule or Regulation

N/A

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Workers' Compensation Insurance Fund - 5800704-500413

Is it currently budgeted? No

Explanation of Fiscal Impact: If settled, the Workers Compensation Fund would be reduced by \$375,000. The current FY 21 available budget is \$777,682.37.

Alternatives

Accept the settlement offer or do not accept the settlement offer, and/or provide direction to staff and the City's worker's compensation counsel.

Attachments:

[Anderson Settlement Proposal 8-14-20.doc](#)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

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August 25, 2020

SENT VIA E-MAIL ONLY
lwiltshire@macdonaldcarano.com

RE: BRIAN ANDERSON (Deceased)

Claim No: 18C83F693731
Appeal No: 1902452-JL
MY CLIENT: Yvonne Anderson

Dear Lisa:

The following is Ms. Anderson's counter-proposal to your client's August 12th counter-offer. Your client offered \$225,000.00 plus medical bills to settle this matter.

Ms. Anderson's counter-proposal is \$375,000.00 plus medical bills. Therefore, if accepted by Carson City, Ms. Anderson would be paid a lump-sum of \$358,000.00 with the amount of \$17,000.00 being held back for bill payment by the insurer. Once the billings are paid, the remaining sum would be sent to Ms. Anderson as mentioned in the August 7, 2020 offer by Ms. Anderson. The settlement must be paid to Ms. Anderson in accordance with the time limits set forth in chapter NRS 616C and 616D.

It is my understanding that this matter will be set to be presented to the Board of Supervisors either if there is, or is not, a settlement at the September 3, 2020 Board meeting.

Please give this matter your utmost consideration. If your client wishes to propose a counteroffer, please do not hesitate to do so. If you have any questions or concerns, please contact my office immediately. We look forward to your response.

Mark A. Marsh, Esq.

The offer(s) contained in this communication are intended for negotiation purposes only, are not an admission of any error or liability, fact or law applicable to this case and may not be used in any legal hearing, Appeals Officer Hearing, legal process or appeal.

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