

COMMITTEE OF THE WHOLE

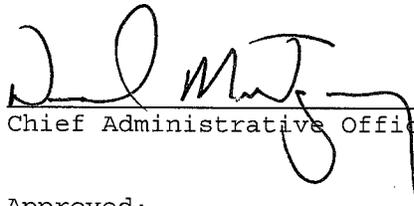
14-0153R

RESOLUTION APPROVING SETTLEMENT OF THE CLAIM OF PROGRESSIVE INSURANCE COMPANY (AS SUBROGEE: PARRISH SILBERNAGEL) IN THE AMOUNT OF \$12,832.76.

CITY PROPOSAL:

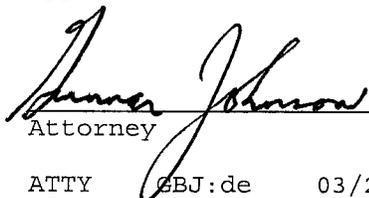
RESOLVED, that the proper city officials are authorized to pay Progressive Insurance Company (as subrogee: Parrish Silvernagel) the sum of \$12,832.76 in full and final settlement of the claim which arose out of a vehicle accident occurring near 27th Avenue West and Superior Street, September 17, 2013; payment to be made from Self Insurance Fund No. 610-036-1651-5842 (self-insurance - liability, insurance accounting, general city, damage/loss expense).

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

ATTY GBJ:de 03/26/2014

STATEMENT OF PURPOSE: On September 17, 2013, an accident occurred at or near 27th Avenue West and Superior Street in the City of Duluth between Parrish

McCullough pulled out from the Subway restaurant parking lot into the path of a motorcycle driven by Parrish Silbernagel causing the motorcycle to fall over onto the roadway and striking the police vehicle.

The city's liability is based upon the legal principle that an employee is liable for the negligence of its employees. Here, sufficient evidence exists to conclude that the city's employee was negligent, that his negligence was a direct cause of the damage sustained by Silbernagel's vehicle, and that the employee's negligence was greater than any negligence which a jury may attribute to Parrish Silbernagel.

RELEASE OF PROPERTY DAMAGE CLAIM

PART A

For and in consideration of the payment to us of the sum of TWELVE THOUSAND EIGHT HUNDRED THIRTY-TWO DOLLARS AND SEVENTY-SIX CENTS (\$12,832.76), the receipt of which is hereby acknowledged, we, being of lawful age do hereby release and discharge the CITY OF DULUTH, MINNESOTA, its agents, officers and employees, and their assigns and legal representatives, of and from any and all causes of action, claims, demands, damages, consequential damages, costs, loss of services, expenses, and compensation, including any claim presented as arising pursuant to Federal law, and including any insurance policy deductible or co-pay paid by claimant which is in any way related to any and all property damage resulting or to result from, or in any way arising out of, an accident or incident that occurred on or about the 17th day of September, 2013, at or near Superior Street and 27th Avenue West for property damage due to a vehicle accident.

PART B

It is further understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment is not to be construed as an admission of liability on the part of the City of Duluth, its agents, employees, by whom liability is expressly denied.

PART C

And in further consideration of said payment, we hereby subrogate, set over and assign to City of Duluth all our right, title, and interest in any and all claims for damages we may have against any persons or corporations that arise out of said incident or accident. We assign the City full right and authority to demand and receive from other parties any sums of money in settlement of said claims, in its own name or in our name, but without financial cost to us. We further agree to verify all proper pleadings, attend and testify at all hearings, aid said City of Duluth in securing evidence, and generally do all things necessary and proper as a party plaintiff.

PART D

It is our intention that, except for payment to us provided for in this agreement, the City shall not be required to make any payment to any party as a result of the damages we sustained in the accident described in Part A. Should any party, other than the City, its agents or employees, that is concurrently or jointly liable to us, or is a subrogee of ours, for any damages arising out of the accident described in Part A become entitled, by way of judgment, arbitration award, settlement, or otherwise, to receive, on account of or directly resulting from said accident, any payment from the City of Duluth, its agents or employees, then I will indemnify the City, its agents, or employees for any such payment they may be required to make.

PART E

We agree that this settlement becomes binding upon the City of Duluth at the time this agreement is accepted and approved by the proper City officials, as required by law.

PART F

This release contains the entire agreement between the parties hereto, and the terms of this release are contractual and not a mere recital.

We hereby authorize and direct the proper City officers to draw an order payable to us from Self-Insurance Fund.

We further state that we have carefully read the foregoing release, and know the contents thereof, and we sign the same as our own free act.

WITNESS our hand this _____ day of March, 2014.

IN PRESENCE OF:

Signature of Witness

✓

Progressive Insurance, Claimant

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Title:

APPROVAL BY CITY ATTORNEY'S OFFICE

Approved as to form and execution this
____ day of March, 2013.

City Attorney