

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

(ITEM ) From Corporation Counsel, recommending payment in the amount of \$20,000 to Pitman, Kalkhoff, Sicula & Dentice S.C. Trust Account in settlement of Estate of Steven Cole v. Milwaukee County, Eastern District Case No. 14-CV-740, by recommending adoption of the following:

**A RESOLUTION**

WHEREAS, Steven Cole received medical and mental health services from the Milwaukee County Department of Health and Human Services—Behavioral Health Division (BHD) in the Rehabilitation Center-Central Unit from December 30, 1998, until his death on June 30, 2011; and

WHEREAS, Steven Cole was 62 years old at the time of his death; and

WHEREAS, Robert Cole, Administrator of the Estate of Steven Cole, filed suit on June 26, 2014, against Milwaukee County and its employees in the United States District Court for the Eastern District of Wisconsin, alleging negligence, violation of civil rights, and other claims with respect to the care given to Steven Cole while a patient and resident of BHD; and

WHEREAS, it is alleged in the lawsuit that Steven Cole had a history of seeking out food, stuffing food in his mouth, eating too quickly, not drinking sufficient fluids while eating, having difficulty swallowing, and choking on food; and

WHEREAS, Steven Cole died on June 30, 2011, after grabbing a discarded sandwich from the trash, stuffing it into his mouth, and choking; and

WHEREAS, Steven Cole was under one-to-one surveillance by staff at the time of his death, but he acted too quickly to be prevented from engaging in this behavior; and

WHEREAS, the claims filed by Robert Cole are excluded from the insurance coverage provided to Milwaukee County by the Wisconsin County Mutual Insurance Corporation; and

WHEREAS, Milwaukee County, through the Office of Corporation Counsel, has retained outside counsel to defend the suit using funds from Org. Unit 1961-Litigation Reserve; and

WHEREAS, the Committee on Judiciary, Safety, and General Services, at its meeting on February 17, 2015, approved the filing of an Offer of Judgment in this matter in the amount of \$10,000 as part of File No. 15-137; and

46 WHEREAS, after the filing of the Offer, negotiations occurred between counsel  
47 for the parties resulting in a settlement of the litigation for a payment of \$20,000 in  
48 return for a release of all liability; and  
49

50 WHEREAS, the tax levy costs to defend the suit, even if successful through trial,  
51 would be substantially greater than the amount of this settlement; and  
52

53 WHEREAS, with continued denial of liability by Milwaukee County, the parties  
54 wish to settle any potential claims in order to avoid further litigation, uncertainty, and  
55 costs; and  
56

57 WHEREAS, the Office of Corporation Counsel recommends this settlement; now,  
58 therefore,  
59

60 BE IT RESOLVED, Milwaukee County authorizes a payment of \$20,000 from  
61 Org. Unit 1961-Litigation Reserve to Pitman, Kalkhoff, Sicula & Dentice S.C. Trust  
62 Account, in return for a dismissal of the lawsuit and a release of all potential claims  
63 related to the care given to Steven Cole.  
64

65  
66 ag  
67 03/27/15  
68 S:\Committees\2015\April\JSGS\Resolutions\15-259.docx