

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: March 19, 2015

TO: Marina Dimitrijevic, Chairwoman, Milwaukee County Board of Supervisors

FROM: Mark A. Grady, Deputy Corporation Counsel *MAG*

SUBJECT: Request for settlement authority in *Estate of Steven Cole v. Milwaukee County*, Case No. 14-CV-740 (E.D. Wis. federal court)

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for approval of a request for settlement authority in the above matter. Authority is requested to settle this lawsuit for a payment of \$20,000, which includes any plaintiff's attorneys' fees.

This lawsuit arises out of Steven Cole's death on June 30, 2011 while he was an in-patient at BHD. Mr. Cole grabbed a discarded sandwich from a garbage can and then subsequently choked to death on it, despite efforts by staff to prevent him from getting the sandwich and to take it from him. The complaint alleges that BHD staff failed to adequately monitor and supervise him. The complaint also contains voluminous allegations of BHD deficiencies over the prior 15 years and claims that those alleged institutional failures were also a cause of Mr. Cole's death. Further details are expected to be provided in closed session.

Claims such as Mr. Cole's are excluded from the County's insurance policy with Wisconsin County Mutual. Therefore, the Office of Corporation Counsel has entered into a contract for legal representation in this case with the firms of Whyte, Hirschboeck & Dudek and Emile Banks & Associates. Both firms are also representing the County in the case of *Johnson v. Milwaukee County et al.*, 14-CV-1408 (E.D. Wis. federal court), involving a traumatic injury of a patient at BHD and also represent the County in other litigation through the County Mutual. Their attorney fees in this case and the *Johnson* case are being paid from Org. Unit 1961, Litigation Reserve.

At its meeting on February 17, 2015, the Committee on Judiciary, Safety & General Services approved the filing of an Offer of Judgment in the amount of \$10,000 (File No. 15-137). Subsequent to that Offer of Judgment being filed,

negotiations increased between Mr. Cole's counsel and the County's counsel, leading to the proposed settlement.

As noted, the County's defense costs are being paid using tax levy funds. Even assuming a successful defense of the suit through a trial (and any appeals), the costs to do so would be substantially more than this settlement proposal. The settlement concludes the litigation at the least cost to the County. The settlement will be paid using funds from Org. Unit 1961, Litigation Reserve. Our office agrees with the proposed settlement and recommends it to the County Board and Executive.

cc: Kelly Bablitch
Alexis Gassenhuber
Erica Hayden
Raisa Koltun
Patricia Schroeder