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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

December 7, 2010

HONORABLE CITY COUNCIL
Oakland, California

Subject: Biringer v. City of Oakland, et al.
Alameda County Superior Court No. RG10508411
Our File No. 27224 (PUBLIC WORKS AGENCY – TRIP AND FALL)

President Brunner and Members of the City Council:

Pursuant to Section 401 of the Charter, the City Attorney has prepared and requests your approval of a resolution authorizing compromise and settlement of the above-entitled action for the sum of Fifteen Thousand Dollars and No Cents (\$15,000.00) payable to Plaintiff John Biringer and his attorney, Terry D. Buller.

This action arises out of a trip and fall on a cracked and uneven sidewalk in front of 6468 Benvenue Avenue on November 25, 2008. This matter was heard on the consent calendar on December 7, 2010.

Respectfully submitted,

A handwritten signature in black ink that reads "John A. Russo".

JOHN A. RUSSO
City Attorney

Attorney Assigned:
Arlene Rosen

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CITY OF OAKLAND



ONE FRANK OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
Arlene M. Rosen
Deputy City Attorney

December 7, 2010

(510) 238-3601
FAX: (510) 238-6500
DD: (510) 238-6392

HONORABLE CITY COUNCIL – CONSENT CALENDAR Oakland, California

Subject: John Biringer v. City of Oakland, et. al., and Related Cross-Actions, Alameda County Superior Court No. RG10508411 Our File No. 27224 (PUBLIC WORKS AGENCY – TRIP AND FALL)

President Brunner and Members of the City Council:

The Office of the City Attorney recommends settlement of the claims of Plaintiff John Biringer in the above-referenced lawsuit in the total amount of Fifteen Thousand Dollars and No Cents (\$15,000.00) made payable to Plaintiff John Biringer and Terry D. Buller, Esq., his attorney.

FACTS

At 10:00 a.m. November 25, 2008, Plaintiff John Biringer, 80, tripped on a cracked and uneven sidewalk fronting 6468 Benvenue Avenue. He fell forward, striking his face and shoulder on the pavement. A neighborhood resident who witnessed the fall gave him first aid before Mr. Biringer sought medical attention at the Alta Bates emergency room.

DAMAGES

Mr. Biringer received treatment for a laceration on his right brow, a right shoulder contusion with rotator cuff strain and a sprained right wrist at the emergency room. His medical specials, including CT scans of the head, six weeks of physical therapy, and replacement of his glasses total \$7,374.

Mr. Biringer suffered from headaches and dizziness and needed a cane for his regular walks. His injuries restricted his daily activities, including his ability to dress without difficulty and perform household chores without assistance. These symptoms persisted for six months. A retired industrial designer, Mr. Biringer claims no lost earnings.

LIABILITY

A credible eyewitness who has lived on that block for twenty years testified at deposition that the subject sidewalk had been cracked and uneven for three to five years and that he and others had tripped there. Although the witness did not report the condition to the City, and records do not reflect other complaints, the dangerous condition was present long enough to provide the City with constructive notice.

Because the tree whose roots damaged the sidewalk was not City-owned, the property owners of 6468 Benvenue, who had lived there only two months, paid \$1,500 for sidewalk repair following this incident. The City and the property owners have agreed to dismiss their mutual cross-complaints, with each side to bear its own costs. The property owners have also agreed to contribute \$5,000.00 toward the settlement, for a total combined settlement of \$20,000.

POTENTIAL JURY VERDICT

Because of Mr. Biringer's age and injuries and the eyewitness' account of the fall and knowledge of how long the dangerous condition was present, we believe a jury could return a verdict for Mr. Biringer in the range of \$ 20,000-\$ 35,000.

PROS AND CONS

PROS:

- The sidewalk had been in a dangerous condition long enough to provide constructive notice to the City.
- There is a credible eyewitness to Mr. Biringer's fall.
- The adjacent property owner has agreed to contribute to the settlement, a contribution that might not happen at trial.
- The probable jury verdict will likely exceed the recommended settlement amount.

CONS:

- The jury could attribute some comparative fault to Mr. Biringer for not seeing and avoiding the sidewalk defects.
- The damage to the sidewalk was caused by the adjacent property owner's tree, creating the possibility of some allocation of fault.

RECOMMENDATION

The Office of the City Attorney recommends settlement of plaintiff's claims in the above-referenced lawsuit in the total amount of Fifteen Thousand Dollars and No Cents (\$15,000.00) payable to John Biringer and Terry D. Buller, Esq., his attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randolph W. Hall".

JOHN A. RUSSO
City Attorney

Attorney Assigned:
Arlene Rosen

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OFFICE OF THE CITY CLERK
OAKLAND

2010 NOV 23 PM 3:35

Approved as to form RLH

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE CASE OF BIRINGER V. CITY OF OAKLAND, ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG10508411 IN THE AMOUNT OF \$15,000.00 (PUBLIC WORKS AGENCY – TRIP AND FALL)

WHEREAS: The City has determined to compromise and settle Plaintiff John Biringer's claim against it for the sum of Fifteen Thousand Dollars and no Cents (\$15,000.00);

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the case of Biringer v. City of Oakland, Alameda County Superior Court No. RG10508411, City Attorney's File No. 272224, for a sum not to exceed Fifteen Thousand Dollars and no Cents (\$15,000.00), payable by the City of Oakland.

FURTHER RESOLVED: That the City Attorney is further authorized and directed to take whatever steps as may be necessary to effect said settlement; and be it

FURTHER RESOLVED: That the sum of Fifteen Thousand Dollars and no Cents (\$15,000.00), be paid to John Biringer and Terry D. Buller, his attorney.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, DE LA FUENTE and
PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS

CITY CLERK AND CLERK OF THE
COUNCIL OF THE CITY OF OAKLAND