

Commission Letter # 248-10  
Commission Meeting: 8/16/2010

RE: General Release and Settlement Agreement, Bertrand v City of Royal Oak

August 11, 2010

The Honorable Mayor  
and  
Members of City Commission

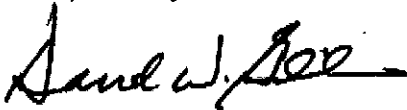
This lawsuit, which arose out of a trip-and-fall in the area of Third Street and Main Street, was tried by insurance counsel in Oakland County Circuit Court earlier this year. After six days of trial, the jury returned a verdict in favor of the Plaintiff in the amount of \$575,000. The present value of the award was approximately \$340,000; coupled with case evaluation sanctions and statutory interest, the City's total exposure was nearly \$545,000.

Insurance counsel was subsequently able to negotiate a settlement of \$375,000 in full and final settlement of all claims related to this case. A proposed General Settlement and Release Agreement is attached for the Commission's approval. Rather than incur additional legal fees on an appeal, we would recommend that the City Commission approve this settlement.

If the Commission agrees with this recommendation, the following resolution would be appropriate:

BE IT RESOLVED, that the City Commission hereby approves the proposed General Release and Settlement Agreement in Bertrand v City of Royal Oak, Oakland County Circuit Court Case No. 2007-087971-NO.

Respectfully submitted,



David W. Gillam  
City Attorney

cc: Donald E. Johnson, City Manager  
Melanie Halas, City Clerk  
Elden Danielson, City Engineer

**GENERAL RELEASE AND SETTLEMENT AGREEMENT**

**WHEREAS**, NICOLE BERTRAND (hereinafter referred to as "Plaintiff"), has brought a civil cause of action in the Oakland County Circuit Court, naming the CITY OF ROYAL OAK as Defendant (hereinafter referred to as "Defendant"), being Civil Action No. 07-087971 NO; and

**WHEREAS**, Defendant has filed responsive pleadings denying the allegations of any wrongdoing or breach of duty; and

**WHEREAS**, the parties to this Agreement and to the above-referred litigation have agreed that the pending litigation shall be dismissed, with prejudice and without costs to any party, upon such terms as are reflected in this General Release and Settlement Agreement; and

**WHEREAS**, Plaintiff understands and agrees that this General Release and Settlement Agreement is not an admission of liability on the part of Defendant, and that Defendant specifically denies any and all liability and intends merely to avoid further disputes and expenditures of costs and attorney fees and to buy its peace; and

**WHEREAS**, Plaintiff agrees that if contacted by a local media outlet other than Lawyers Weekly or Michigan Jury Verdict Reporters regarding the terms of this settlement, Plaintiff agrees to respond that she has no comment.

**WHEREAS**, Defendant shall and does agree to make such payment as is hereinafter stated in an effort to preserve good will, avoid continued litigation, and

make financial compromise to the Plaintiff, Defendant does hereby agree with Plaintiff as follows:

**NOW, THEREFORE, IT IS AGREED**, that in consideration of the mutual promises herein recited and other valuable consideration, the receipt of which is hereby acknowledged, the Plaintiff hereby agrees to dismiss the cause of action filed in the Oakland County Circuit Court, being Civil Action 07-087971 NO, the allegations of said Complaint and all amendments filed thereto being incorporated herein by reference and made part hereof, with prejudice and without costs to any party thereto.

**IT IS FURTHER AGREED**, that the Plaintiff, on behalf of herself, her heirs, executors, agents, administrators, assigns, and all other persons claiming through her, does forever release and discharge the CITY OF ROYAL OAK and its administrators, agents, employees, directors, officers and assigns, none of whom admit any liability to the undersigned, but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever and particularly on account of all injuries, known and unknown, both to persons and property, which have resulted or may in the future develop from an accident/incident which occurred on or about August 30, 2007, at Main and Third Streets in the City of Royal Oak, Oakland County, Michigan, and contained in said Court Case No. 07-087971 NO.

**IT IS FURTHER AGREED**, that the Release shall forever settle, adjust, and discharge any and all claims, demands, or liability of any kind or character whatsoever that the Plaintiff may have against said Defendant with respect to the allegations contained in the above referred to cause of action, which cause shall be dismissed, with prejudice and without costs to any party thereto.

**IT IS FURTHER AGREED**, that Defendant shall pay to the Plaintiff the sum of THREE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$375,000.00) and that the payment of said sum in the amount of \$375,000.00 shall be in full and complete settlement of all such claims, causes of action, and damages, and, upon such payment, shall be a discharge of Defendant from any and all liability of all claims and damages, both known and unknown.

**IT IS FURTHER AGREED**, that Plaintiff, NICOLE BERTRAND, and her attorneys represent and affirm that there are no pending Federal Medicare, ERISA and/or Medicaid liens or amounts due and owing to any governmental entity claimed or resulting from any health or medical care or payments made on behalf of or for NICOLE BERTRAND arising out of the events giving rise to this litigation. Furthermore, NICOLE BERTRAND agrees to indemnify and hold harmless the CITY OF ROYAL OAK, its insurers and any affiliate, director, officer, employee and/or agent of the CITY OF ROYAL OAK, from and against all costs, including the amounts of any judgments (including interest thereof), settlement, fines or penalties, expenses and damages incurred by the CITY OF ROYAL OAK, or its insurers or attorneys in connection with any action or threatened action, suit or claim arising out

