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Injured woman to get \$375K from city

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Ending five years of topsy-turvy litigation that went all the way to the state Supreme Court, the city has announced a \$375,000 settlement with a pedestrian seriously injured when struck by a speeding police car on Liberty Street.

The settlement for Linda Jones came just one week after the state Court of Appeals ruled that she had grounds to pursue a gross-negligence claim against the city, and that she could sue the city for allegedly obstructing justice by misplacing or destroying a police videotape of the accident.

The Supreme Court, giving the appeals court its cue, had said the same thing about the gross-negligence issue six months ago.

But appellate judges decided against Jones on another point last week. They said the city was not being unconstitutionally arbitrary when it refused to pay Jones earlier, even though it honored personal-injury claims from various others around that time.

The \$375,000 settlement was revealed at Thursday's City Council meeting.

Of the total, \$117,752 will come directly from the city. The rest will be paid by North River Insurance Co., the city's liability carrier.

"Thank goodness," Councilman Howard Clement told City Attorney Henry Blinder upon hearing the news. "Thank you, Mr. Attorney. You've served your purpose."

Lawyer **Carlos Mahoney**, representing Jones, said Thursday his client was "very excited with finally getting some resolution to this case.

"We're very happy that the city eventually did the right thing," he added. "It's been a hard-fought battle."

Mahoney said the city is dealing more fairly with injured claimants than it did when Jones filed her lawsuit in 2002.

He cited a December 2004 policy in which city officials agreed, at least on a limited basis, to waive government immunity against lawsuits up to \$500,000 in many cases. The limited waiver allows plaintiffs to collect for medical expenses, property damage and some lost wages.

"It's not perfect," said **Mahoney**. "But at least it's better than what the city had before, which was nothing."

Jones was struck by a car driven by Durham Police Officer Joseph Kelly as she walked along Liberty Street in September 2000. Her left leg was crushed below the knee, leaving her with a limp, back problems, permanent scarring and some \$250,000 in medical bills.

According to reports, Kelly was driving up to 74 mph in a 35-mph zone as he attempted to reach another officer in distress.

Reginald Gillespie, a private attorney representing the city in the case, had no comment on the settlement Thursday.

However, he recently said Jones "made a sudden, unexpected and irrational maneuver" before Kelly struck her.

"She was crossing the street and had almost completely crossed it and had nearly reached the curb, when she abruptly changed course," according to Gillespie. "She tried to go back across the street and ran into the path of Officer Kelly's car. She ran from a position of safety into danger. Officer Kelly tried to avoid her, and unfortunately he was unable to do so."

Under the circumstances, holding the city liable for gross negligence could have a chilling effect on police work, Gillespie added.

"We expect police officers to act quickly and decisively," he said. "Whether it is responding to criminal conduct or a natural disaster, police play a critical role in protecting the public. When we call for help, we expect the police to be there. We need them to be there. . . . We must not put our police officers in a situation in which they believe that, in order to avoid being sued, it is best not to act."

-- Staff writer Ray Gronberg contributed to this article.

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Durham settles injury lawsuit

Author(s): Matt Dees Staff Writer **Date:** May 11, 2007 **Section:** News

DURHAM -- It began in September 2000, when a speeding Durham police cruiser struck Linda Jones and sent her flying.

It ended May 2007 when the city finally surrendered in its legal fight and agreed to pay Jones \$375,000. City attorney Henry Blinder announced the settlement Thursday at a City Council work session.

Though Jones, 45, still has to walk with a cane, her attorney said Thursday that she was glad to have the issue resolved.

"She's looking forward to getting on with her life," defense attorney **Carlos Mahoney** said of his client, who he said did not want to comment.

Mahoney wouldn't say how much of the \$375,000 he would receive, but he did say that Medicaid, which paid for Jones' extensive medical treatments, received \$70,000 of the settlement.

Durham spent five years contesting her claim that Officer Joseph Kelly was grossly negligent when he slammed into her. City attorneys convinced a series of judges in various state courts that the case should be sent to a jury.

The city argued that Kelly was acting responsibly and within his capacity as a police officer when he struck Jones. He had sirens blaring as he raced to the scene of a domestic disturbance after a second distress call.

He struck Jones as she crossed Liberty Street on foot, heading to her job at a bakery. The impact sent her flying six feet in the air and 76 feet down the street.

The city argued that Jones could have avoided the collision. They claimed in court that she was near the other side of the street when Kelly was driving toward her, but she was moving back to the middle of the road at impact.

The city's case suffered the ultimately fatal blow in December, when the state Supreme Court reversed itself and said Jones could take the case to a jury.

Blinder said Thursday the city decided it wasn't worth continuing to mount legal fees and risk losing the

suit, which could have been much more expensive.

"We just felt [a settlement] was the most prudent use of city resources," Blinder said, adding that the city also felt "a certain sympathy for her situation."

Blinder said \$117,752 of the settlement will be paid by the city. The remaining \$257,248 will come from Durham's liability insurance provider. The city's legal fees, which Mahoney said he believed were more than \$200,000, also were covered by insurance.

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