

A RESOLUTION BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION
COMMITTEE:

03-R -1135

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SETTLE THE CASE OF *HOPE and JAMES CALDWELL, Sr., Individually and as Parents and Natural Guardians of JAMES D. CALDWELL, JR., v. THE CITY OF ATLANTA, ET AL.*, CIVIL ACTION FILE NO. 2001 CV 39750, IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA, AND FOR OTHER PURPOSES.

WHEREAS, on November 26, 2000, a seven-year old child named J.J. Caldwell, who had been attending a play at the Atlanta Civic Center with his grandparents, ventured into the orchestra pit after the conclusion of the play in order to visit his uncle, who was a member of the pit orchestra; and

WHEREAS, J.J. Caldwell, while in the orchestra pit, leaned against a curtain at the back of the pit and fell through a void at the back of the pit to the bottom of the pit some distance below; and

WHEREAS, as a result of the fall, young J.J Caldwell suffered serious brain injuries and remained in a persistent vegetative state for two-and-one-half years in the care of his parents, until he died on April 23, 2003, as the result of his injuries; and

WHEREAS, the parents of J.J. Caldwell have brought suit in the Superior Court of Fulton County seeking damages for medical expenses, funeral expenses, pain and suffering and the full value of the life of J.J. Caldwell, naming as defendants the City of Atlanta, Anne Marie Moraitakis, as Director of the Civic Center, as well as the producers of the show and the security companies under contract with the City to provide security at the Civic Center; and

WHEREAS, although it appears in the opinion of the City Attorney that although there is little or no risk of exposure on the part of Ms. Moraitakis, there is the significant



possibility of exposure to risk of substantial damages being assessed against the City on a theory of creating and maintaining a nuisance at the Civic Center by the presence of a hidden void behind the orchestra pit, which void has now been corrected by the addition of a permanent screen; and

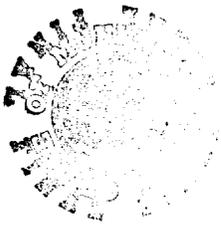
WHEREAS, on July 1, 2003, as the result of a twelve-hour mediation effort by Mediator Art Glaser of the Henning Mediation Services group, all defending parties to the suit other than Ms. Moraitakis and another defendant in default (not a City defendant) have agreed, subject to the approval of this Council, to share in a proposed settlement of all claims for a total as to which some defendants have insisted should not be made public; and

WHEREAS, the City of Atlanta's portion of the settlement package as proposed is the sum of One Million, Six Hundred Twenty-Five Thousand (\$1.625 million) Dollars, with the remainder of the settlement cost being paid by insurance obtained on behalf of the producers and security companies as to which the City is in majority part an additional named insured; and

WHEREAS, in the opinion of the City Attorney the proposed settlement is in the best interests of the City:

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA:

Section 1: THAT the City Attorney is hereby authorized on behalf of the City of Atlanta to settle the case of *HOPE and JAMES CALDWELL, Sr., Individually and as Parents and Natural Guardians of JAMES D.*



CALDWELL, JR., v. THE CITY OF ATLANTA, ET AL., CIVIL ACTION FILE NO. 2001 CV 39750, in the Superior Court of Fulton County, Georgia, by entering into a Settlement Agreement with the Caldwells and their counsel, under the terms of which Settlement Agreement the City of Atlanta will pay to Hope and James Caldwell and their attorneys Finch McCranie, LLP, and Diana McDonald, Esq., the sum of One Million, Six Hundred Twenty-Five Thousand (\$1.625 million) Dollars, conditioned upon the payment of the remaining amount of the total settlement by the other party defendants through their insurance companies.

Section 2: THAT the Settlement Agreement shall provide that in exchange for the payments made above, Hope and James Caldwell and the Estate of J.J. Caldwell (James Caldwell, Jr.) release the City and its employees and officers, including Anne Marie Moraitakis, from any claims which were, or which could have been, raised in his complaint in the court action, whether originally, by amendment, or by supplementation, as to facts occurring up to and including the date of the execution of the Settlement Agreement, or from any claims which could have been raised by the Estate of J.J. Caldwell, whether action was brought thereon or not.

Section 3: THAT the Settlement Agreement shall further provide that all parties to the action release each other from all claims which were, or which could have been, raised in his complaint in the court action, whether originally,



by amendment, or by supplementation, as to facts occurring up to and including the date of the execution of the Settlement Agreement, and from any and all claims which could have been raised prior to the execution of the Settlement Agreement or subsequent to the execution of the Settlement Agreement by any of parties against any other of the parties, whether on theories of contribution or indemnity or otherwise, with the exception of one defendant in default as provided below.

Section 4: THAT the Settlement Agreement shall provide that the Plaintiffs (Hope and James Caldwell) may continue to pursue their claim against any defendant in default, and that such defendant in default is not released by any party thereto, provided that in the Settlement Agreement the Plaintiffs agree to hold all other parties participating in the Settlement Agreement harmless from any claims made over against them by the defaulted defendant as the result of Plaintiffs' continuing their action against said defaulting defendant.

Section 5: THAT the Settlement Agreement further shall provide that the settlement herein authorized shall not be deemed an admission of liability or wrongdoing on the part of the City of Atlanta or of any of its officers or employees, and that Anne Marie Moraitakis shall be dismissed from the case with prejudice.



Section 6: THAT the City Attorney is authorized to approve as to form and to execute the Settlement Agreement on behalf of the City of Atlanta, including the releases of the other parties other than the defaulting defendant

Section 7: THAT the Chief Financial Officer is further authorized and directed on behalf of the City of Atlanta issue a check on the voucher of the City Attorney in the sum of One Million, Six Hundred Twenty-Five Thousand (\$1.625 million) Dollars payable as the City Attorney directs in conformity with the Settlement Agreement, and to charge such sum to Account No. 1A01-529017-T31001, "Settlement of Suits and Claims."

A true copy,

A handwritten signature in black ink, appearing to be "K. Williams", written over the text "A true copy," and "Deputy Clerk".

Deputy Clerk

ADOPTED by the Council
APPROVED by the Mayor

JULY 21, 2003
JULY 29, 2003

RCS# 4940
7/21/03
6:41 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I PGS. 1-11, EXCEPT:03-O-1034
03-R-1110, 03-R-1137, 03-O-1116
ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 1
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Mitchell
E Starnes	Y Fauver	NV Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	B Woolard

CONSENT I

RCS# 4939
7/21/03
6:40 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I PGS. 1-11, EXCEPT:03-O-1034
03-R-1110, 03-R-1137
RECONSIDER

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 1
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Mitchell
E Starnes	Y Fauver	NV Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	B Woolard

CONSENT I

RCS# 4896
7/21/03
2:12 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I PGS. 1-11, EXCEPT:03-O-1034
03-R-1110, 03-R-1137
ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 1

NV Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	NV Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	B Woolard

CONSENT I

		7/21/03 Full Council Meeting
ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 02-O-1259	26. 03-R-1039	51. 03-R-1064
2. 03-O-0148	27. 03-R-1040	52. 03-R-1065
3. 03-O-0826	28. 03-R-1041	53. 03-R-1066
4. 03-O-1114	29. 03-R-1042	54. 03-R-1067
5. 03-O-1122	30. 03-R-1043	55. 03-R-1068
6. 03-O-0939	31. 03-R-1044	56. 03-R-1069
7. 03-O-0974	32. 03-R-1045	57. 03-R-1070
8. 03-O-1120	33. 03-R-1046	58. 03-R-1071
9. 03-O-0964	34. 03-R-1047	59. 03-R-1072
10. 03-O-1115	35. 03-R-1048	60. 03-R-1073
11. 03-O-1117	36. 03-R-1049	61. 03-R-1074
12. 03-R-0896	37. 03-R-1050	
13. 03-R-1103	38. 03-R-1051	
14. 03-R-1126	39. 03-R-1052	
15. 03-R-1136	40. 03-R-1053	
16. 03-R-1124	41. 03-R-1054	
17. 03-R-1102	42. 03-R-1055	
18. 03-R-1129	43. 03-R-1056	
19. 03-R-1135	44. 03-R-1057	
20. 03-R-1088	45. 03-R-1058	
21. 03-R-1104	46. 03-R-1059	
22. 03-R-1111	47. 03-R-1060	
23. 03-R-1036	48. 03-R-1061	
24. 03-R-1037	49. 03-R-1062	
25. 03-R-1038	50. 03-R-1063	

Consent I Vote: 13 Yeas; 0Nays: (See RCS #4940)

Items Removed from the Consent Agenda: 03-O-1034; 03-O-1116; 03-R-1110; 03-R-1137;

03 Write in this Line

A RESOLUTION BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SETTLE THE CASE OF HOPE AND JAMES CALDWELL, SR., INDIVIDUALLY AND AS PARENTS AND NATURAL GUARDIANS OF JAMES D. CALDWELL, JR., V. THE CITY OF ATLANTA, ET AL., CIVIL ACTION FILED NO. 2001 CV 39750, IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA, AND FOR OTHER PURPOSES.

APPROVED BY: *Linda K. Disantis*
LINDA K. DISANTIS
CITY ATTORNEY

JUL 21 2003

COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred to _____

Committee
PSLA

Date
7-15-03

Chair
[Signature]

Action:
 Fav, Adv, Hold (see rev. side)

Other:
[Signature]

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

FINAL COUNCIL ACTION

2nd 1st & 2nd 3rd

Readings

Consent V Vote RC Vote

CERTIFIED

CERTIFIED
JUL 21 2003
Sheri A. Moore
COUNCIL PRESIDENT PROTEM

CERTIFIED
JUL 21 2003

[Signature]

DEPUTY MUNICIPAL CLERK

MAYOR'S ACTION

[Signature]