



MEETING OF: January 20, 2015

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TITLE: Offer of Judgment Papst v. TUSD

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ITEM #: 17

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Information:

Study:

Action: X

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PURPOSE:

To seek board approval of an offer of judgment to be filed in an attempt to resolve a personal injury claim that is presently pending in litigation against the District.

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DESCRIPTION AND JUSTIFICATION:

On March 26, 2012, TUSD fourth-grader Brianna Papst suffered an apparent concussion in a playground incident. The family has filed litigation seeking to recover damages associated with claims of physical injury and allegations of permanent impairment. The nature and extent of the injuries is in substantial dispute.

Under ARCP 68, a party may make a formal "Offer of Judgment" which is filed with the court and, if accepted, is binding. Accordingly, this commitment of monies requires governing board approval. If the offer is NOT accepted, the litigation continues. However, if the case were to proceed to trial and the District were to obtain an outcome better than the offer made, all costs incurred after the Offer of Judgment would be assessed against the plaintiffs' recovery. That is, plaintiffs bear the risk of proceeding to trial in the face of a reasonable offer of judgment.

This matter will be discussed in executive session so that counsel may advise the board regarding offers of judgment and obtain direction regarding settlement. A sum certain, based on recommendation of counsel, will then be presented for vote in open session.

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BOARD POLICY CONSIDERATIONS:

This claim arose during the time that the District's self-insured retention for liability claims was \$500,000.

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LEGAL CONSIDERATIONS:

Rule 68. Offer of judgment.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment exclusive of interest from the date of offer finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability. For purposes of this rule, the term "costs" is defined as reasonable litigation expenses,

