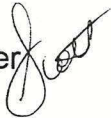




METRO

Date: March 25, 1994

To: Jennifer Sims, Director of Finance and Management Information

From: Scott Moss, Risk Manager 

Re: Metropolitan Family Service's Claim for Damages

Metropolitan Family Service (MFS) has made a claim for breach of contract against Metro due to the Council not approving the proposed lease at Metro Center. Other possible legal allegations against Metro by MFS could include errors and omissions and failure to faithfully perform public duties. Metro has excellent defenses for all of these allegations, including breach of contract.

I have not seen all the file materials nor have I interviewed the parties involved. My analysis is based on the conversations and a report prepared by Doug Butler.

If mistakes were made, they were made by both parties. MFS, of its own volition, incurred expenses in anticipation of the move to Metro Center in the absence of approval by Council.

If this case was litigated, MFS and Metro have two courses to follow, arbitration and the courts.

Under commercial arbitration, I believe there is a strong likelihood that Metro would prevail. However, if the arbitrator concluded mistakes on both sides, out-of-pocket costs associated with the anticipated move could be split by both parties. Assuming MFS could demonstrate out-of-pocket loss at \$31,347, the settlement could cost Metro slightly over \$15,000 plus legal fees and arbitration expense.

In the court system, it is likely that Metro would prevail on summary judgment. If a trial does result, legal expenses may approach \$12,000-\$15,000. It is possibly that a jury would be sympathetic to MFS and award out-of-pocket cost. The limits of the Oregon Tort Claims Act would apply.

I recommend that Metro offer \$20,000 to share out-of-pocket expenses and to avoid litigation or arbitration.

RSM:kc

c:\wp51\karen\memos\mfs.sm

cc: Doug Butler, Interim Director of Regional Facilities
✓ Dan Cooper, General Counsel