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May 25: Minneapolis pays \$3 million in police misconduct case

Article by: [RANDY FURST](#), Star Tribune // Updated: June 1, 2013 - 9:40 PM

The payout to the family of David Smith was the second-largest for police misconduct in Minneapolis history.

[VIDEO HERE] (Video above was produced on Feb. 6, 2012.)

The city of [Minneapolis](#) will pay \$3 million to the family of a man who died after a struggle with two Minneapolis police officers. It is the second-largest payout for a police misconduct lawsuit in the history of Minneapolis.

The Minneapolis City Council approved the \$3.075 million settlement on Friday, resolving a federal lawsuit filed by the family of David Smith, a 28-year-old man who died about a week after the struggle at the downtown Minneapolis YMCA in 2010.

The city will pay the Smith family \$1.1 million and will pay \$1.975 million in attorneys' fees to the Minneapolis law firm of Gaskins Bennett Birrell Schupp. The settlement is second only to the \$4.5 million paid out in 2007 to a Minneapolis officer shot by another officer.

The death of Smith, who was mentally ill, raised questions about "prone restraint" — a highly controversial police technique for restraining suspects.

To subdue Smith, the officers forced Smith onto his stomach, then placed a knee in his back and held him down for about four minutes, which the family attorneys said made it impossible for him to breathe.

The Hennepin County medical examiner's office said Smith died of "mechanical asphyxia" caused by prone restraint. He ruled Smith's death a homicide.

Susan Segal, Minneapolis city attorney, said in a statement that the settlement was "a responsible way to bring this to a close in the face of mounting legal costs that would continue to grow significantly through a trial."

Police Chief Janeé Harteau called it "a tragic and traumatic situation for the family of Mr. Smith and the officers" and expressed her "deep sympathy for his family, who I am sure, still grieves his loss."

Robert Bennett, the lead attorney for the family, said, "I'm glad David Smith and his family finally got some justice." Bennett said that as part of the settlement, the city's police officers will receive additional training on how to restrain suspects, although he said many officers had already gotten the training that would have prevented Smith's death.

The officers, Timothy Gorman and Timothy Callahan, had been called to the YMCA on Sept. 9, 2010, because Smith was acting bizarrely, tossing a basketball around and frightening youths on the sixth floor. When the officers approached him, he grew fierce. They used a Taser to stun him, forced him to the floor and held him

face down. Most of the incident was captured on two videos — one on a small camera pinned to Callahan's uniform, the other on the Taser device.

Once he realized Smith had no pulse, Callahan began giving him CPR. After paramedics arrived to take over resuscitation, Callahan can be heard calling his wife and saying, "I think me and Jimmy killed a guy."

Paramedics were able to restart Smith's heart, but he died a week later at Hennepin County Medical Center.

Bennett said Friday the officers made two mistakes in failing to follow accepted police protocols that could have prevented Smith's death. First, after securing him in the prone restraint position, they failed to roll him on his side so he could breathe, Bennett said. Then, while they held him face down, they did not monitor his breathing and were unaware that it had stopped.

"I'm not saying the officers meant to do this," Bennett said.

Said Harteau: "These two officers have been upstanding examples who do their jobs with professionalism, and I know this had been very hard on them and their families."

Larry Smith, David Smith's uncle, hired Bennett to pursue the suit on behalf of the Smith family. Smith, an attorney in Chicago, could not be reached for comment on Friday afternoon.

Had the case gone to trial, both sides would have presented witnesses to argue the cause of Smith's death.

[Minneapolis](#) has seen very large payouts over police misconduct in some recent years. It paid out \$4.2 million in 2011, although only \$814,093 in 2012.

Bennett and his law firm have represented the majority of the litigants who have won the largest payouts in lawsuits claiming Minneapolis police misconduct.

Those cases include the \$4.5 million payout to Duy Ngo, who was mistakenly shot by a fellow officer in an incident in 2003.

In the Smith suit, the nearly \$2 million awarded to Bennett's law firm covered the thousands of hours of work by lawyers and staff as well as other expenses, Bennett said.

He said three attorneys primarily worked on the case — himself, Jeff Storms and Kathryn Bennett, his daughter — while four or five other attorneys did some work. His rate was \$650 an hour; other lawyers' rates were lower.

He said that the city did not pay all the charges that his firm submitted and that the final amount was negotiated.

In an e-mail on Friday, Mayor [R.T. Rybak](#) called the death "a tragic event that led to a complicated, protracted legal situation. "We made a difficult decision, not to incur even more costly legal fees," he wrote, "which would only continue to mount. My heart goes out to the victim's family. I also stand strongly with good police officers who were protecting innocent people who were at risk."