

CITY OF RENSSELAER

IN

COMMON COUNCIL

WEDNESDAY EVENING, May 11 48

REGULAR MEETING

Tuesday

The Council convened at 8 o'clock P. M. and was called to order by Pres. Hardt.

The roll being called the following answered to their names:

- Alderman Fedigan ✓
- Hoogkamp ✓
- Distell ✓
- Buono ✓
- Pres. Hardt ✓
- Alderman McGowan ✓
- Boyd ✓
- Welsh ✓
- Bailey ✓
- Alderman Pratt ✓

Alderman moved that the minutes be adopted as printed subject to correction.

COMMUNICATIONS FROM THE MAYOR
HEADS OF DEPARTMENTS AND CITY OFFICES

The Clerk reports that the Mayor had approved of all resolutions passed at the last meeting of the Board.

TREASURER'S REPORT

PRESENTATION OF PETITIONS
REMONSTRANCES AND COMMUNICATIONS

PRESENTATION OF ACCOUNTS

~~Alderman~~ moved that all bills be referred to the auditing committee.

REPORT OF COMMITTEE

The auditing committee report the following bills correct:

~~Alderman~~ moved that the report of the auditing committee be received and all bills be allowed and ordered paid. Also the Street Payroll.

Pratt Distell agree

to open

	AYES	NOES
W. HARDT	✓	
L. FEDIGAN	✓	
W. HOOBKAMP	✓	
J. DISTELL	✓	
M. HART	✓	
J. MC GOWAN	✓	
D. BOYD	✓	
J. WELSH	✓	
K. BAILEY	✓	
W. PRATT	✓	
TOTAL		



CITY OF RENSSELAER
OFFICE OF THE CORPORATION COUNSEL

JAMES S. MILLEA
CORPORATION COUNSEL

May 5th, 1948

Board of Aldermen
City Hall
Rensselaer, New York

Re: Walter S. Malley,
vs.
City of Rensselaer

Gentlemen:

We, the undersigned law committee of the Common Council approve and recommend settlement of the above case at the figure and in accordance with the letter of M. J. Conboy, Esq., to the Corporation Counsel under date of April 8th, 1948.

We believe that the proposed settlement of this case is the most beneficial to the City that could be obtained in all the circumstances and we recommend that the Council approve same.

Joseph T. Nisley

David Boyd

BY ALDERMAN *Pratt*

WHEREAS, Walter S. Malley, East Greenbush, has obtained a judgment against the City of Rensselaer in the sum of Sixty-eight Thousand Dollars (\$68,000.00); and

WHEREAS, said case is now pending on appeal to the Court of Appeals; and

WHEREAS, The Corporation Counsel has negotiated a settlement with the attorneys for said Walter S. Malley in the amount of Fifty-three Thousand, Two Hundred and Fifty Dollars (\$53,250.00); Now, therefore, be it

RESOLVED, That the recommendation of the Corporation Counsel for the settlement of the case of Walter S. Malley against the City of Rensselaer in the sum of Fifty-three Thousand, Two Hundred and Fifty Dollars (\$53,250.00) be and the same hereby is approved and confirmed.

DATED: MAY 5, 1948

Approved as to form and sufficiency

James Smillea
Corporation Counselor

	AYES	NOES
W. HARDT	✓	
L. FEDIGAN	✓	
W. HOOBKAMP	✓	
J. DISTELL	✓	
M. HART	✓	
J. MC GOWAN	✓	
D. BOYD	✓	
J. WELSH	✓	
K. BAILEY	✓	
W. PRATT	✓	
TOTAL		

may 11



JAMES S. MILLEA
CORPORATION COUNSEL

CITY OF RENSSELAER
OFFICE OF THE CORPORATION COUNSEL

May 8th, 1948

Board of Aldermen
City Hall
Rensselaer, New York

Gentlemen:

I am enclosing herewith self-explanatory letter received by me from Mrs. Ada M. Faas of 338 East Street with reference to a condition existing on the north side of Third Avenue near her home for appropriate disposition by you.

Very truly yours,

James S. Millea

JSM gtn
Enc.

CARTER AND CONBOY
ATTORNEYS AND COUNSELORS AT LAW
74 CHAPEL ST. 94 REMSEN ST.
ALBANY, N. Y. COHOES, N. Y.

J. S. CARTER
M. JAMES CONBOY
JOHN J. DOHERTY
ARTHUR E. WALKER
JOHN W. CEBULA

April 8, 1948.

James S. Millea, Esq.,
Corporation Counsel of City of
Rensselaer,
112 State St.,
Albany, N.Y.

Re: Malley vs. City of Rensselaer.

My dear Mr. Millea:

I have your request for a review of the trial of the above entitled action and the proceedings that were taken subsequent to the trial and the advisability of settling by compromise the judgments now outstanding in favor of the plaintiff and against the City.

The trial was commenced in the Supreme Court at Troy on October 8, 1946, and was completed on October 16, 1946, and resulted in a verdict in favor of the plaintiff and against the City of Rensselaer in the sum of \$85,000.00.

On February 11, 1945, at about 10:30 P.M. the plaintiff was driving his automobile in a westerly direction on Columbia Street. The highway was icy in spots and the plaintiff claimed that he was driving his car near the northerly edge of the street because of the icy condition of the highway. The plaintiff testified that when his automobile reached the northeasterly corner of the bridge, the right front wheel went into a hole or opening, which caused him to lose control of his car which thereafter struck the northerly girder of the bridge and the plaintiff was thrown from his car and suffered serious personal injuries.

The plaintiff presented proof to the Court that the cover of the surface water drain located at the northeasterly corner of the bridge was broken in two pieces. By the testimony of the witnesses Michael, McClain and Payne, he established that the drain cover had been broken for approximately nine months prior to the happening of his accident. It was his contention that the broken drain cover was one of the proximate causes of his accident. Thereafter the City made a motion for a new trial on the ground of newly discovered evidence and this motion was presented to the Court at Special Term on December 27, 1946. By the new evidence the City sought to establish that Malley was intoxicated

at the time of the accident and that for several hours immediately preceding the accident he was at the Glue Pot Tavern in the Village of East Greenbush. Numerous affidavits were submitted by both parties. Five of the plaintiff's affidavits directly stated that the plaintiff was at the Glue Pot Tavern on the date in question. Three of these parties subsequently recanted their affidavits. The motion was argued in detail and subsequently briefs were filed by both parties. The Court at Special Term granted the defendant's motion. On appeal to the Appellate Division that Court reversed the Order and directed that judgment be entered in favor of the plaintiff.

On September 16, 1947, judgment in favor of the plaintiff and against the defendant was entered in the Rensselaer County Clerk's office in the sum of \$88,648.33, and also a separate judgment in the sum of \$951.03 for the costs and disbursements on the appeal.

The defendant appealed to the Appellate Division from the judgment and on that appeal the Appellate Division reduced the amount of the verdict to \$65,000.00, and directed that judgment be entered on the reduced verdict. The judgment, as reduced with interest to April 1, 1948, amounts to the sum of \$67,061.20. Thereafter the defendant appealed to the Court of Appeals from the judgment as modified by the Appellate Division.

During the pendency of the last mentioned appeal several conferences have been had with plaintiff's attorney and as a result of those conferences the plaintiff has agreed to accept the sum of \$53,250.00, as a basis of compromise of the judgments outstanding in his favor.

It is my opinion that the offer of compromise is a reasonable one and that it is for the best interests of the City that the same should be accepted. At the trial there was evidence presented which justified a finding by the jury that the defendant was negligent and that the plaintiff was not negligent. That is, there were issues of fact presented on both these propositions and it was exclusively for the jury to determine these factual issues between the parties. The finding by the jury on these issues in favor of the plaintiff have been approved by the Appellate Division, one Justice dissenting.

The review by the Court of Appeals is limited to questions of law. That Court does not consider the weight of the evidence or the credibility of witnesses. In the case at

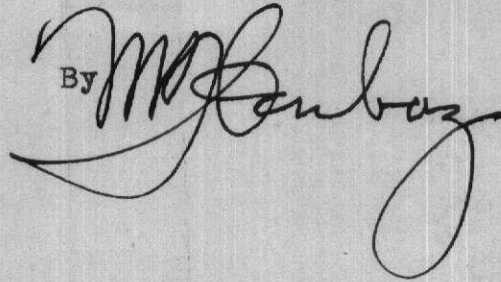
bar, as we have stated above, there is evidence to support the finding of the jury. There were no errors committed by the Trial Court in the reception or rejection of evidence or in the charge of the Court to the jury. Therefore, it is my opinion there is no reasonable prospect that the Court of Appeals would reverse the lower Courts and dismiss the plaintiff's complaint.

At the present time the amount of the two judgments outstanding in favor of the plaintiff is the sum of \$68,012.23. The offer of compromise which you have received from the plaintiff's attorney is a substantial reduction of the amount now due the plaintiff and it is my opinion that the same should be accepted.

Very truly yours,

CARTER & CONBOY

By

A handwritten signature in cursive script, appearing to read "M. J. Conboy", written over the word "By".

MJC:MP

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By Alderman Distell.

Wadmy

RESOLVED, that the City Clerk be and he hereby is authorized and directed to advertise for bids on a swimming pool at Fourth Avenue and East streets, bids to be submitted at ~~in~~ a regular meeting of the Common Council to be held wednesday evening June 2, 1948, as to plans and specifications now on file in the office of the City Engineer,

Dated May 11, 1948.

Approved as to form and sufficiency

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Comptroller

	AYES	NOES
W. HARDT	✓	
L. FEDIGAN	✓	
W. HOOGKAMP	✓	
J. DISTELL	✓	
M. HART	✓	
J. MC GOYAN	✓	
O. BOYD	✓	
J. WELSH	✓	
K. BARLEY	✓	
W. PRATT	✓	
TOTAL		