MEMORANDUM OF LAW

DATE: February 7, 1986
TO: Bruce Herring, Risk Management Director
FROM: City Attorney
SUBJECT: Long-Term Disability - Social Security Offset

By a memorandum dated January 13, 1986, you indicated that a retired City employee who was drawing Long-Term Disability (LTD) benefits filed for Social Security disability benefits and was initially denied. She then retained an attorney who successfully appealed that determination. The employee was then awarded retroactive benefits and $200 in attorney's fees. The retired employee's attorney has asked that the entire $800 he charged the employee not be offset from the employee's LTD benefit. Based on that information, you have asked us

    (1) should you offset the employee's social security payment less the awarded attorney fees? or

    (2) should you offset the employee's social security less the original attorney's lien of $800?

As we indicated to you in a Memorandum of Law dated September 19, 1985, it is in the City's best interest to discount claims for reimbursement when an employee has incurred attorney's fees and costs in achieving a settlement from a third party. The same reasoning applies in this case and The City of San Diego should consider adopting a policy whereby the City encourages Long-Term Disability Plan participants to gain awards from the Social Security Administration. This will reduce the amount of LTD benefits paid by the City of San Diego. The City could reduce from the amount of the Social Security offset an amount equal to the reasonable attorney's fees expended by the participant. If you desire to establish such a policy, we would advise you to only offset the amount the court has awarded as attorney's fees and not by the amount of money which an attorney has charged for

his or her services. Such a policy will ensure that the offset for "Other Income Benefits" as defined in Sec. 5.04 of the Plan Document will be reduced by only reasonable attorney fees.

                JOHN W. WITT, City Attorney

                By

                  John M. Kaheny
                  Deputy City Attorney

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