

Russ Axelrod ([00:00:00](#)):

Let's get going. Okay. I'd like to open the executive session of the West Linn City Council for February 19, 2019. We'll briefly do introductions first. Russ Axelrod, Mayor.

Teri Cummings ([00:00:17](#)):

Teri Cummings, Council President.

Richard Sakelik ([00:00:20](#)):

Richard Sakelik, City Councilor.

Jules Walters ([00:00:22](#)):

Jules Walters, City Councilor.

Bill Relyea ([00:00:24](#)):

Bill Relyea, City Council.

Tim Ramis ([00:00:25](#)):

Tim Ramis, City Attorney.

Dylan Digby ([00:00:26](#)):

Dylan Digby, Assistant to City Manager.

Kathy Mollusky ([00:00:26](#)):

Kathy Mollusky, City Recorder.

Andrew Campbell ([00:00:26](#)):

Andrew Campbell, Lawyer in practice for Heltzel Williams.

Jon Stouffer ([00:00:37](#)):

Jon Stouffer, CIS.

Terry Kruger ([00:00:39](#)):

Terry Kruger, Chief of Police.

Leslie Pugmire-Hole ([00:00:41](#)):

Leslie, West Linn Tidings.

Eileen Stein ([00:00:43](#)):

Eileen Stein, City Manager.

Russ Axelrod ([00:00:45](#)):

Thank you. You want to read the script for us please?

Richard Sakelik ([00:00:48](#)):

Mayor, can I interrupt for a sec? Could you move the machine down a little bit so it's midpoint. So [inaudible 00:00:54] need to be easier to catch our voices.

Kathy Mollusky ([00:00:59](#)):

City Council now meet in the second session. Per ORS 192.660(2)(f), to consider information or records that are exempt by laws from public inspection, ORS 192.660(2)(h) to consult with legal counsel concerning the rights and duties of a public body with regard to litigation or litigation likely to be filed, and ORS 192.660(2)(i) to review and evaluate the employment-related performance of the chief executive officer of any public body, a public officers, employee or staff member who does not request an open hearing.

Kathy Mollusky ([00:01:26](#)):

Representatives of news media and designated staff shall be allowed to attend executive session. All the members in the audience are asked to leave the room. Representatives of the news media are specifically directed to not report on any of the deliberations during executive session except to state the general subject of the session as previously announced. No decision may be made in the executive session. At the end of the executive session, we will return to open session and welcome the audience back to the room.

Tim Ramis ([00:01:49](#)):

Okay. For the record, Tim Ramis. I've distributed a memo that gives a list of topics we may be discussing in the executive session today. We begin with the case of Fesser versus West Linn Police Department which is current litigation going on.

Andrew Campbell ([00:02:05](#)):

Well, good afternoon. My name's Andrew Campbell. Just by way of very brief background about myself and how I came to West Linn. I'm a litigation partner at a standalone law firm. I do a lot of these kind of cases all over the state. CIS is the insurance company that provides insurance coverage for the city, so when there's a lawsuit, it's tendered to CIS and CIS selects defense counsel. And in this case CIS has selected my firm to defend the city.

Andrew Campbell ([00:02:45](#)):

Just in case some of you haven't been through this process before, everywhere I go on these cases I like to joke around that I have a CIS risk adjuster with me. In this case, it's Jon Stouffer. I handle the litigation, the CIS risk adjuster handles any settlement discussions or drives the settlement discussion. The standing understanding I have with CIS when I'm hired to defend one of these cases is, I'm hired to try the case and win the case and if we need to go to some form of dispute resolution or something like that, Jon will drive that bus but I'll obviously be involved because it's part of litigation.

Andrew Campbell ([00:03:33](#)):

I don't know how much counsel wants to hear about my professional background, but I'll keep it very brief. I cut my teeth in the Marion County DA's office doing persons crimes and homicides. And I went to the Department of Justice and worked for the Attorney General. Worked for three different Attorneys

General doing a whole host of things including being sent down to be the interim District Attorney of Klamath County in January, which is not a fun assignment.

Andrew Campbell ([00:04:01](#)):

And I specialize in complex litigation and so I've been a partner of my current firm for a number of years now. We have four lawyers on the employment litigation team at my firm. I'm a senior partner of a partner who works with me, and two associates that work under me and some staff. So that's me in a nutshell, I'm happy to answer additional questions if you like, but I would turn directly to the Fesser case that is getting litigation in federal court.

Andrew Campbell ([00:04:31](#)):

This is a lawsuit that was filed in circuit court, state court, when we consulted initially with CIS, we made a decision to remove it to federal court. There's a number of reasons for that, most of them are our on strategy. Frankly, federal court provides a much more structured environment for litigating these sorts of cases and provides a much more structured environment for conducting discovery, which is an issue in this case. Candidly, we prefer to be in federal court when we're litigating things like motions for summary judgment and things like that. I don't want to get too far into the weeds but I'm happy to expand on any of these particular topics if you like.

Andrew Campbell ([00:05:19](#)):

In terms of where we are in the process, the way federal litigation works, if you have a complaint and the answer and then you start this long drawn-out process called discovery, it's where all the parties exchange reams of paperwork, it's where we do things like that divisions. And we are about two thirds of the way through that process in this case.

Andrew Campbell ([00:05:42](#)):

So we've conducted some ancillary depositions but we haven't deposed Mr. Fesser the plaintiff, nor have they deposed the named defendants and city employees in this case. Mr. Fesser has filed a motion to amend his complaint to add an additional named defendant, a guy named Mike Stradley who now works for the state, actually works for the Department of Public Safety Standards and Training down in Salem.

Russ Axelrod ([00:06:13](#)):

Our former Lieutenant Stradley?

Andrew Campbell ([00:06:14](#)):

Correct.

Russ Axelrod ([00:06:15](#)):

Okay.

Andrew Campbell ([00:06:17](#)):

We will assume defense of him, CIS will cover him because he'll be named in connection with his conduct here while he was working for West Linn. As soon as that complaint is formally filed and received we'll pull him under my wing and continue to defend him. There's no real sound legal basis for

objecting that motion so it's going to happen. We have filed a motion for summary judgment in this case so when I talk to clients about federal litigation I talk about it as a process. I often use the metaphor a highway.

Andrew Campbell ([00:06:56](#)):

From defense point of view, we're on this highway of federal litigation and we're constantly looking for the quickest off-ramp to get done with this. A summary judgment is one of those off-ramps. It's an opportunity to go to the judge and say, for some legal reason this case shouldn't be allowed to move forward. In this case, and you get to make more than one motion for summary judgment, it's not a one shot deal. So, in this particular case, there are some unique features that we wanted to litigate in summary judgment before we finish with discovery.

Andrew Campbell ([00:07:28](#)):

First of all, Mr. Fesser had a previous lawsuit against his former employer. And when he settled that lawsuit, he released his employer and all agents of his employer. Generalized standard release language when we deal with at least one of these things. And in this current lawsuit, he has alleged that West Linn and its police officers acted as agents of this former employer. So because he signed a settlement document releasing all agents of the former employer, because he alleged West Linn and its officers acted as agents of the former employer, we filed a motion for summary judgment. That's a fairly technical argument but I think it's one that bares meeting out before we go much further.

Andrew Campbell ([00:08:17](#)):

As you guys probably know, to sue a public body in the state of Oregon you have to comply with the Oregon Tort Claims Act, which involves timely tort claims notices. In this case, we do not believe that Mr. Fesser filed a timely tort claims notice so, we've included that in our currently motion of summary judgment as well. I think we've got a pretty good change prevailing on that point, but it's important to realize that the Oregon Tort Claims Act only applied to state law. So it will not eliminate some of the federal law claims that we would be dealing with. But it would be worth it just to knock out a bunch of the state law claims that frankly shouldn't be there anyway. Excuse me.

Andrew Campbell ([00:08:58](#)):

We do not have oral arguments set on those motions yet. I anticipate, and I always get nervous saying that, but we'll talk about thorough litigation but I anticipate getting through the current summary judgment litigation and having an oral argument in front of the judge. And then, finishing discovery, as I mentioned, we need to take the deposition of Mr. Fesser we need to take the depositions of our named defendants. And then frankly, I would anticipate moving for summary judgment again on the substantive federal law claims. But that would be a separate round of summary judgment litigation.

Bill Relyea ([00:09:39](#)):

Who is the judge hearing the case?

Andrew Campbell ([00:09:41](#)):

Judge Brown. Is the judge right now. That's who it's assigned to. I think Magistrate Russo, that's who's overseeing it.

Andrew Campbell ([00:09:48](#)):

So one thing we talked about earlier was whether or not the city would consent to magistrate judge in this case. And I think, oh I'm sorry, it's Judge Beckerman. Magistrate Beckerman, not Russo. Russo just moved off from Portland. Stacie Beckerman is a magistrate judge and I think, my recommendation to the city manager was to go ahead and consent to a magistrate judge. Again we don't have to get too far off into the role of federal courts here but essentially in federal courts, there are Article III judges, they're called that because they're appointed pursuant to Article three of the U.S. Constitution.

Andrew Campbell ([00:10:24](#)):

They're appointed by the President of the United States and they serve life tenure, but there's only so many of those within Oregon. They also have congressional authority to hire magistrate judges who get hired to be federal judges on eight year terms. So there's a group of magistrate judges to hear cases. Civil cases as well, not criminal cases.

Andrew Campbell ([00:10:47](#)):

And Judge Beckerman is the magistrate judge, and so I recommend to the city. And I think the city has agreed to consent to Judge Beckerman hear in this matter. Which makes sense, Judge Beckerman is a good judge, she has a good head on her shoulders, she has a good judicial demeanor about her. She's very bright.

Andrew Campbell ([00:11:09](#)):

I meant in the second round summary litigation, if we don't prevail there, the way the case goes is we could participate in a judicial settlement conference and the judge might require us to do that. Where we go sit in the federal courthouse with a judge and talk about the case and see if we can't resolve it in some way, or we'll go trial. And if we try this case, it'll be in the federal courthouse in downtown Portland.

Andrew Campbell ([00:11:37](#)):

Federal cases in downtown Portland pull from a wide geographical area in terms of jurors, so we don't just get Portlanders, we get folks from all the way out on the coast, all the way down on I-84 down to Woodburn I believe. But anyway, that's a 30,000 foot view of where this case is at and where I anticipate it going. I wrote up a fairly detailed assessment to CIS when I first started this case, they require that in all their cases, and when we finish discovery I'll write up a revised one.

Andrew Campbell ([00:12:17](#)):

I can tell you I'm trying to predict these cases is a notoriously dangerous thing to do for lawyers, but I think this is a fairly defensible case, I think it's a fairly strong case for the city of West Linn. When I look at it as a third party that go dropped into this thing, there's some text messages that I wish didn't exist. I've spent my entire career dealing with police officers, and we all make mistakes, but frankly I don't think any of that is really strong evidence that any of the officers did anything wrong.

Andrew Campbell ([00:12:57](#)):

The reality here, and again this is very 30,000 foot level I can go into more detail if you want, but the reality is when you're investigating a crime as a police officer or law enforcement agency, you don't have the luxury of picking who your victims are going to be. And you don't have the luxury of picking who your witnesses are going to be. So oftentimes, and the chief can probably talk to this more than I can, but oftentimes when you're a police officer or law enforcement agency and you're investigating crimes,

the person who stood on the street corner and saw the car wreck is the person who stood on the street corner and saw the car wreck. Whether they're desirable person or not.

Andrew Campbell ([00:13:32](#)):

And some of the difficult things in this case for us to deal with really turn on having some witnesses and some folks involved in the case that use some fairly colorful language. But we'll deal with that. I think jurors get that. That's always been my experience. That jurors understand that the police don't get to choose who saw the crime. The police don't get to choose who the victims were. They have to take these people as they find them. Yes sir.

Richard Sakelik ([00:14:01](#)):

So, thank you for the summary, I appreciate that. My specific question is, right now there is not action requested of our council to make any decision et cetera, it's just we're getting where we're at right now.

Andrew Campbell ([00:14:14](#)):

Correct. On every single one of these cases, because CIS picks me up and drops me all over the state, I always like to make at least one trip out to the city council or county commissioners and introduce myself so everybody can see the light in my eyes, and I'm a real person. This is what I do for a living, and explain the case and answer folks questions. So no, I don't have any specific action I have today.

Teri Cummings ([00:14:40](#)):

Well, it sounded like there was something about consent on the magistrate? What's the process there?

Andrew Campbell ([00:14:47](#)):

Yeah, I don't think that requires a council vote or anything like that. But as I said, the Federal system, their Article III judges and there are magistrate judges, and as civil litigation have to actively consent to allow the magistrate judge to preside over their trial. And it's totally voluntary, there's no rule that says you have to, there's no pressure applied. In this case, because we have Magistrate Beckerman whom I've found to be very bright and very capable and have a great judicial demeanor about her, my recommendation to the city has been to consent. And I think [inaudible 00:15:33] for that.

Russ Axelrod ([00:15:35](#)):

What's roughly the time frame anticipated going forward?

Andrew Campbell ([00:15:41](#)):

I would anticipate, well our discovery deadline is July 1st. That's when the judge wants us to be finished with this discovery.

Russ Axelrod ([00:15:52](#)):

Discovery.

Andrew Campbell ([00:15:52](#)):

Yeah. I'll tell you, usually we also would go round that. If we go to the judge and say, "Hey, can we have extra 30 days or an extra 60 days?" As long as it's a mutual request we usually get that. But then again, we've been at this for quite a bit already.

Russ Axelrod ([00:16:04](#)):

Yeah.

Andrew Campbell ([00:16:04](#)):

So, I would expect our discovery wrapped up by then.

Russ Axelrod ([00:16:09](#)):

Okay.

Richard Sakelik ([00:16:10](#)):

So I guess our next update should be somewhere like mid July, that would be helpful.

Andrew Campbell ([00:16:14](#)):

Okay.

Richard Sakelik ([00:16:15](#)):

If we can get that in our minds that we start to schedule that now, but it would be worthwhile.

Andrew Campbell ([00:16:18](#)):

Sure.

Richard Sakelik ([00:16:18](#)):

Okay. Thank you.

Andrew Campbell ([00:16:20](#)):

Yeah.

Russ Axelrod ([00:16:21](#)):

Or unless there's not really much to share with us then whatever you think is the next appropriate time. I guess.

Andrew Campbell ([00:16:27](#)):

Or what I'll probably do is I'll continue to work with Eileen and if she thinks something's important for, again, if this thing gets done for trial, that's a significant event.

Russ Axelrod ([00:16:38](#)):

Right.

Andrew Campbell ([00:16:39](#)):

But beyond that, frankly, I try to keep these little visits to one because it's very expensive. But I've never heard CIS say, "You can't go talk to a city council or county commission." So if another in-person update becomes prudent, I'm happy to work with Jon and make that happen.

Russ Axelrod ([00:17:01](#)):

Yeah. I think coming back to us when you have notable information would be the thing to do.

Andrew Campbell ([00:17:06](#)):

Okay. We'll keep that on our radar.

Russ Axelrod ([00:17:14](#)):

Good luck.

Andrew Campbell ([00:17:14](#)):

Thank you.

Russ Axelrod ([00:17:16](#)):

Thank you for representing us.

Jon Stouffer ([00:17:17](#)):

From the CIS perspective this time is the issue, I've got to make a decision finding the money. And there is no money on the table now and no plans to make any offers at this point. We'll at least get through that probably the second round into summary judgment before we even think about that. We have a good shot at getting out of this summary judgment. I liked the judges...you know... the big parts of the case are those texts. But those judges are all good at understanding what the real issue is and won't be distracted by those texts.

Jon Stouffer ([00:18:02](#)):

The jury might be, but I think even the juries will understand it as well. And I really feel very strongly with the summary judgment level.

Russ Axelrod ([00:18:11](#)):

And at the summary judgment level, we're going to have a much better idea about what kind of case we have. So at that point might be the opportunity to just settle out. And if we can and just depending on where we're at. I mean, if-

Russ Axelrod ([00:18:29](#)):

... if it's reasonable, I guess rather than going into costly litigation, I guess you have to just give that professional. That might be the time we might connect again. It sounds like.

Andrew Campbell ([00:18:40](#)):

Yeah. And I can tell you, I forgot [inaudible 00:18:43] does a different one. But one of the things I like about working with CIS on these types of cases is, these cases are not a business transaction for CIS. In other words, working for many private insurance companies, it's a very simple calculus, right? How much is it going to cost me to go defend this case and win Mr. Campbell, for something less than that. It's just a business transaction.

Russ Axelrod ([00:19:08](#)):

Sure.

Andrew Campbell ([00:19:09](#)):

We're just interested in saving money. CIS takes a little bit longer view and takes the view of traditional, I don't want to box you into a corner here, but traditionally takes the view that, if we'd get in the habit of paying out meritless cases, we're going to be in much more litigation much more frequently than if we pulled the line. Only believe in our members.

Andrew Campbell ([00:19:33](#)):

In this case, we've heard about these text messages. I'll tell you, I've read them. And the only fault I can think of for the West Linn officers is the offensive words are coming in and the West Linn officers aren't saying, "Whoa, Whoa, Whoa, that's inappropriate." The West Linn officers aren't saying things, I can't say unqualified, but for the most part, they're not volunteering inappropriate things. For the most part, they're dealing with a witness who has a colorful vocabulary, but they're continuing to deal with the witness. And sometimes when you deal with a witness, you get colorful vocabulary, but they are continuing to deal with the witness.

Andrew Campbell ([00:20:14](#)):

And sometimes when you deal with the witness, you get colorful vocabulary. And if you as a police officer say, "You can't talk like that to me." Guess what? That witness is not going to work with you anymore. It's going to become a very difficult relationship. It's going to come up very difficult criminal investigation. So yes, the texts were there, we will deal with them. But I don't think it's enough to go seeking out a settlement.

Andrew Campbell ([00:20:37](#)):

I really think this was a legitimate criminal investigation. And I'm excited about it selfishly because as you heard, I used to be a prosecutor, so trying this case will be a little mini criminal trial within a civil trial. It's going to be returning to my roots a little bit. If I have to try and move along. You have questions for us?

Russ Axelrod ([00:21:01](#)):

Nope.

Terry Kruger ([00:21:03](#)):

And I think it's just important to get it on the record that the staff over at West Linn Police Department have provided everything that they've been asked for. There's nothing to be hidden here. Anything that the Fessler's team has requested we have provided openly and they're just using it a lot there for them to discover it is what it is. That it was a legitimate criminal investigation where real criminal conduct was uncovered and it was submitted in the Multnomah County District attorney's office and ultimately it was indicted on five counts of theft one.

Terry Kruger ([00:21:43](#)):

Things proceeded but their charges dropped. Civil litigation, all of that. But as far as a law enforcement team doing their job, they were doing their job.

Andrew Campbell ([00:21:57](#)):

The charges are aren't just dropped. The DA didn't throw up his or her hand and said, "I'm finished with this." There was a civil compromise. So, in the role of a criminal justice for property crime. Somebody steals my bicycle and they get prosecuted for stealing my bicycle. And then come to me later and say, "Hey Campbell, I'm going to be prosecuted for theft for stealing your bicycle. If I just pay you back \$300 we you go tell the DA that we're even more square, maybe done." That's called a civil compromise. There are statutes about it to control it. It's not some side back alley deal. It's all codified in the criminal code. And that's what happened in this case.

Andrew Campbell ([00:22:34](#)):

The victims got together. The offender reached a civil compromise and they signed on the dotted line that pursuant to, I don't remember the statutes, but there was a civil compromise in this criminal case and the DA said that's good enough for him. When we say the case was dismissed, it wasn't a dismiss for want a prosecutor hold on to them. It was a simple compromise. And I think that's important. And yes, the police department has been great with my office. We can be very frustrating asking for information. All right.

Russ Axelrod ([00:23:09](#)):

Thank you.

Andrew Campbell ([00:23:09](#)):

Thanks for the time.

Richard Sakelik ([00:23:10](#)):

Thanks.

Jules Walters ([00:23:11](#)):

Thank you.

Russ Axelrod ([00:23:11](#)):

Thank you.

Andrew Campbell ([00:23:11](#)):

Have you seen [inaudible 00:23:11]. We'll be in touch. (silence)

Terry Kruger ([00:23:11](#)):

Can I stay and check [inaudible 00:23:11]?

Jules Walters ([00:23:11](#)):

Okay.

Terry Kruger ([00:23:11](#)):

Going to check [inaudible 00:23:11].

Jules Walters ([00:23:11](#)):

Yeah.

Terry Kruger ([00:23:11](#)):

I better hit the check in.

Teri Cummings ([00:23:11](#)):

They're sharing.

Jules Walters ([00:23:11](#)):

Because you [inaudible 00:23:11]. They'll be back.

Terry Kruger ([00:23:53](#)):

[inaudible 00:23:53] chair.

Russ Axelrod ([00:23:58](#)):

Did we lose Eileen?

Russ Axelrod ([00:24:02](#)):

What happened to Eileen? She's in the-

Russ Axelrod ([00:24:05](#)):

Well.

Russ Axelrod ([00:24:06](#)):

Should we give her a minute?

Dylan Digby ([00:24:07](#)):

Okay. Yeah.

Russ Axelrod ([00:24:09](#)):

Shall we for the tape acknowledge that Ed Campbell and was it Jon Stouffer?

Kathy Mollusky ([00:24:16](#)):

And Andrew Campbell.

Russ Axelrod ([00:24:17](#)):

Andrew Campbell.

Teri Cummings ([00:24:17](#)):

Yeah.

Kathy Mollusky ([00:24:17](#)):

Jon stated that.

Russ Axelrod ([00:24:18](#)):

Ed Campbell. Andrew? Was it Andrew Campbell? Sorry.

Teri Cummings ([00:24:21](#)):

Andrew.

REDACT TO END

Russ Axelrod ([01:45:43](#)):

We're adjourned.