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January 6, 2016

VIA EMAIL

Shawn D. Smith
CITY ATTORNEY
CITY OF KEY WEST
3128 Flagler Ave.
Key West, Florida 33040

Re: Harmon vs. FDOT, City of Key West, Johnna A. Hammatt,
The Salisbury School and Ann R. Allen
Case No: 2012-CA-437-K
Our File No: 01112/ 33-394

Dear Shawn:

As you know, the Plaintiffs Omar P. Harmon, II, Waynette Clark-Harmon and Omar P. Harmon, Sr., and the Defendants Florida Department of Transportation, City of Key West, The Salisbury School and Ann R. Allen, as well as their respective insurers recently attended a mediation conference in the above referenced matter. Subject to approval by the Key West City Commission, an agreement to settle the case as against the Florida Department of Transportation and the City of Key West was reached at the mediation conference. A settlement was not reached between the Plaintiffs and the Defendants Salisbury School and Ann R. Allen.

The proposed settlement calls for the FDOT to pay the sum of \$10,000 and the City of Key West to pay the sum of \$100,000. If approved by the Key West City Commission, the settlement would resolve all claims against these entities by the three named Plaintiffs as well as any subrogation claims for medical expenses paid on behalf of the Plaintiffs. Since the City has excess insurance applicable to this claim, the actual net payment (amount paid following reimbursement by the City's insurer) by the City will be approximately \$40,000. In my opinion, the proposed settlement is in the best interest of the City of the Key West and I recommend City Commission approval for the reasons set forth below.

The Subject Accident

On November 3, 2010, Omar Harmon, II was struck by a City of Key West police vehicle driven by former Officer Johnna Hammatt as Harmon attempted to cross South Roosevelt Blvd. from the Sheraton Hotel property to Smathers Beach. At the time of the accident Harmon was a 17 year old student from Maryland on a school field trip to Key West. Harmon darted out into the roadway in front of a stopped minivan which obscured his view of Officer Hammatt as she proceeded inbound on South Roosevelt Blvd. At the time of the accident the City vehicle was traveling approximately 5 miles per hour above the posted speed limit. In my opinion, the primary if not the sole cause of the accident was Plaintiff Omar Harmon, II's failure to yield the right of way to the approaching police vehicle and the negligence of the driver of the mini van who stopped and waived Harmon across as the police vehicle approached in the median thru lane.

However, the fact that the City vehicle was traveling slightly in excess of the posted speed limit, coupled with the frequency of pedestrian crossings in the area and the stopped mini van in the right curb lane, would in my view necessitate a jury trial to determine which parties were negligent and how much of the negligence is attributable to each party. Future pretrial costs and trial costs including attorneys fees and expert witness fees are estimated to be in a range of between \$35,000 and \$45,000.

The Damages

Omar Harmon, II sustained a severe open tibia/fibula fracture of his left leg with significant bone loss. The accident almost resulted in a traumatic amputation of Harmon's left leg below the knee. As a result of the accident, Plaintiff Harmon and his parents incurred \$569,828.82 in medical expenses, with over \$200,000 being paid by the Harmon's group health insurer. Following the accident, Harmon was airlifted to Jackson Memorial Hospital in Miami where he underwent two surgical procedures. Following a two week stay at Jackson Memorial Hospital he returned home to Maryland where he underwent six additional surgical procedures on his left leg, extensive physical therapy and was not fully ambulatory until 9 months after the accident. Although Harmon has made a very good recovery, his left leg is a couple of centimeters shorter than his right leg and as a result he has some hip pain and a limp. The potential verdict range is estimated to be between \$500,000 and \$1,000,000.

The Proposed Settlement

If the proposed \$100,000 settlement is approved by the City Commission, the City's insurer will reimburse the City for approximately \$55,000 to \$60,000 of this amount. As a result the net payment by the City will be approximately \$40,000 to \$45,000. This amount approximates the future defense costs of trying the case and the City's insurer strongly supports the proposed settlement. Since the City is responsible for future costs of defense, the settlement approximates the economic impact of trying and winning the case.

Shawn D. Smith
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Please don't hesitate to let me know if you have any questions or comments concerning the above or if I can provide you with any additional information concerning the matter.

Very truly yours,

/s/Michael T. Burke

Michael T. Burke
For the Firm

MTB/ac