



THE CITY OF KEY WEST

POST OFFICE BOX 1409
KEY WEST, FL 33041-1409
WWW.KEYWESTCITY.COM

EXECUTIVE SUMMARY

To: The City Commission for the City of Key West
From: Ron Ramsingh, Chief Assistant City Attorney
Date: April 15, 2016
Re: Settlement of Mingo v City of Key West 2014-CA-1043-K

Background:

The medical summary is abbreviated due to HIPAA protections. A closed session was held with the Commission on March 3, 2016 where more specific and detailed information was discussed about Mr. Mingo's medical condition.

Mr. Mingo has filed a negligence lawsuit against the City of Key West alleging personal injuries that he sustained while he was walking on the south side of the 300 block of Amelia St on 1/17/14. Mr. Mingo tripped and fell onto the sidewalk shortly after sunset. He grabbed onto what he thought was a fence to break his fall, but turned out to be a gate that swung open when he grabbed on to it. The sidewalk was heavily damaged and cracked with numerous voids. Mr. Mingo was treated for significant lumbar injuries that ultimately resulted in a laminectomy and fusion in his lumbar spine. Mr. Mingo had incurred documented medical expenses totaling \$162,000.00 with \$23,000.00 in Medicare liens.

One of the City's defenses was that the homeowner immediately adjacent to the sidewalk defect, Mr. Habberstad, was responsible for creating the defects in the sidewalk when he built his home several years prior. Specifically, the City has information that Mr. Habberstad's contractors used heavy equipment over the sidewalk such as Bobcats and forklifts that cracked the sidewalk. The Plaintiff's attorney put Mr. Habberstad on notice of its intent to file a claim in this regard as a co-defendant with the City of Key West. The parties agreed to allow Mr. Habberstad's attorney participate in discovery and mediation as an interested non-party. After several depositions, a mediation took place on January 15, 2016, however, the parties could not reach an agreement and an impasse was declared.

The City cannot dispute that there was a significant defect in the sidewalk, or that the City was put on notice of said defect, or that Mr. Mingo fell as a result of said defect. Further, although the City believes that Mr. Habberstad caused the defect to the City's sidewalk, there are a host of cases that indicate that the City would have a non-delegable duty of care to make the sidewalk safe and the amount of time that had passed from the time of construction to the time of the fall can create a good argument that the City was put on considerable notice of the defect for several years. I believe that the City does have a colorable defense in the fact that Mr. Mingo is from Bahama Village and is, or should be familiar with the defect in the sidewalk, that there was adequate lighting at the time of his fall, and that the majority of his damages are the result of pre-existing medical conditions, however, these types of defenses serve to possibly mitigate a jury award through comparative negligence. In the likely event that Mr. Mingo were to be successful at trial in establishing negligence on behalf of the City, the issue would primarily be how much damages that the City and possibly Mr. Habberstad would be responsible for.

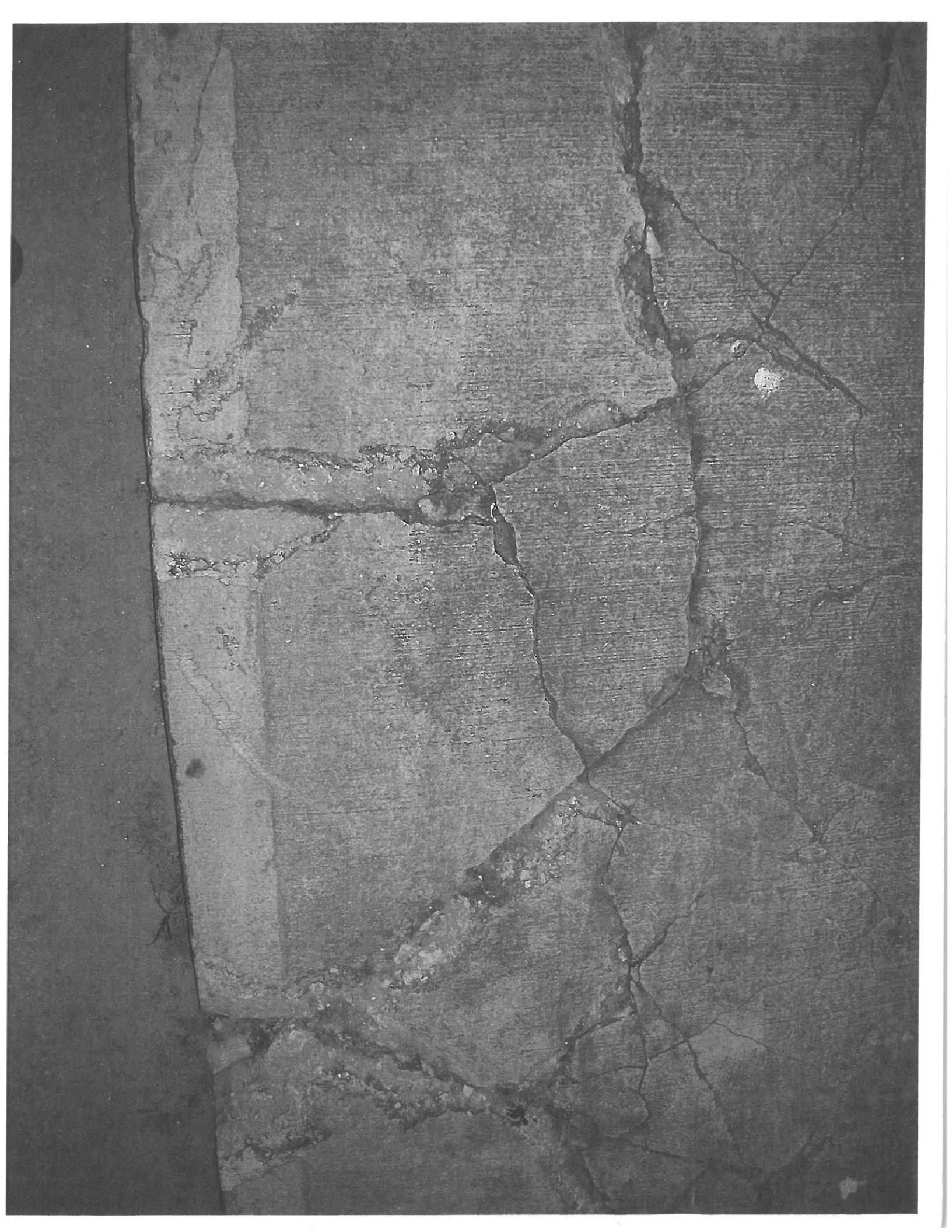
After the failed mediation, the undersigned as well as the attorney for Mr. Habberstad and the Plaintiff's attorney continued settlement negotiations. The parties were finally able to come to a settlement that is now before you for consideration and approval. The proposed settlement contemplates that the City will pay \$75,000.00 and Mr. Habberstad's insurance company will pay \$175,000.00 for a total settlement of \$250,000.00. This is a proposed settlement that was reached after months of negotiations where the initial demand was \$650,000.00. Of course, since the City's liability is capped at \$200,000.00, the bulk of that demand was directed at Habberstad. If a jury was to render a verdict in favor of Mr. Mingo, the verdict can expected to be upwards of 486,000.00 (multiplier of 3 of the medical expenses). That award will then need to be apportioned between the Mingo and the defendants under the doctrine of comparative negligence. Further, any award would be subject to said statutory caps of \$200,000.00. Therefore, considering the facts of this case, the medical expenses and the defenses, it is likely that the City could face a jury award that comes close to, if not reach the statutory cap.

Options:

1. To accept the terms of the proposed settlement agreement where the City will pay \$75,000.00 to Mr. Mingo and Habberstad will pay \$175,000.00 for a total of \$250,000.00.
2. To reject the proposed settlement and the case will proceed to trial. The risks of that decision are explained above.

Recommendation:

To accept the terms of the settlement agreement





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DEFENDANT'S
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