



THE CITY OF KEY WEST

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Executive summary

July 18, 2017

RE: Settlement of Pam Berklich & Anthony Berklich vs. City of Key West and Perfect Pedicabs

Upcoming Dates:

Pre-Trial Conference- August 1, 2017

Trial- August 14, 2017- Judge Helms

Background

Ms. Berklich is a 60-year old grandmother originally from Michigan. She has lived in Highland Beach, FL since 2014 with her husband and co-plaintiff, Anthony Berklich. Ms. Berklich had worked as an employment recruiter for 35 years and had retired when she moved to FL in 2014. She holds a master's degree in guidance and counseling. She has an adult daughter who lives in MI and an adult son who lives in NYC.

Injury

Ms. Berklich and her husband were visiting Key West for the 1st time for 3 days. They arrived on May 17, 2015, checked into The Reach Resort, and walked to dinner at Blackfin Bistro on Duval St. After dinner, they walked and browsed stores on Duval St. and eventually hailed a Perfect Pedicab at approximately 10:00 p.m. back to The Reach for the night. The pedicab

turned south on to Simonton, then made a u-turn and stopped in front of the driveway to The Reach. Ms. Berklich stepped out of the pedicab first with her right foot, and then her left. She testified that both of her feet landed in a considerable crack and opening/pothole that was on the Simonton St. asphalt, where it meets the concrete driveway of The Reach. She lost her footing in the uneven pothole and fell over. The fall was witnessed by the porter at The Reach, who came over to assist Ms. Berklich from the ground, as well as the unknown pedicab driver, and Mr. Berklich. The porter assisted her into her hotel room using a resort wheelchair. Once at her room, she was given ice to apply to her right ankle, which was swollen. The security manager then went to her room and had her fill out an incident report.

The next morning, she went to Lower Keys Medical Center, where they diagnosed her with an ankle fracture in 2 places. Hospital staff stabilized her ankle, and referred her to an orthopedic surgeon. The Plaintiffs then left that day and drove back to Highlands Beach. She followed up with her orthopedic surgeon, Dr. Stuken¹. She reports not being able to exercise as frequently as she had prior to her injury.

Prior Health History

Plaintiff has no significant prior medical issues that are directly related to this claim.

¹ Due to federal privacy laws regarding health information, I cannot go into further detail in this public summary regarding the medical care that plaintiff received. I will brief each city commissioner privately on same.

Issues

Discovery has established that it was in fact Perfect Pedicab that was the company involved. As a commercial carrier, Perfect has a higher duty of care than the city. While it is very difficult to estimate in advance, I estimate liability being 45% city, 45% Perfect, and at best, 10% on plaintiff. She has boarded \$73,632.66 in medical expenses. Typically, a 3.5 multiplier is used in Monroe County personal injury cases for pain and suffering. That calculates a likely award in the amount of \$257,714.43. When that number is apportioned between the parties, it works out to be \$115,971.43 to each defendant, and \$25,771.44 to plaintiff. Obviously, plaintiff's counsel's estimation of the case is far higher. At mediation, they represented confidence in getting a verdict of \$785k.

Recommendation

There is no dispute that the city owns the street where this pothole is located. City staff were deposed and testified that the pothole has developed over time, with interaction with salt water tides, rain, and vehicles. Given the documented medical expenses, the expected testimony, the fact that the pothole had been there for quite some time, the motivation of plaintiffs to get the city out of this case, I think that the \$60k is a good, guaranteed result for a case like this. I have handled this extensively litigated case from the inception and I estimate that the city has saved approximately \$40k to \$50k in attorney fees and costs.