



THE CITY OF KEY WEST

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To: The City Commission for the City of Key West
From: Ron Ramsingh, Chief Assistant City Attorney
Date: August 14, 2020
RE: Approval of Mediation Agreement in Geraldine Bergman-Falcon v. City of Key West
2016-CA-289-K Judge Mark Jones

**A MORE DETAILED SUMMARY IS PROVIDED TO THE CITY COMMISSION
THAT IS PRIVILEGED AND CONFIDENTIAL WORK PRODUCT/
ATTORNEY TRIAL NOTES/IMPRESSIONS PURSUANT TO F.S.119.071(1)(d)
THAT IS NOT FOR PUBLIC DISCLOSURE.**

Accident History

Ms. Falcon (Plaintiff) is an 83-year-old married grandmother from Iowa, who lives in Casa Grande, AZ and Packwood, WA. Plaintiff is an at-home bookkeeper who was visiting KW on a day trip from Weston on 11/12/2014. Plaintiff was walking on Lazy Way and approached the stores that are closer to the Elizabeth Street section. Plaintiff had just eaten lunch at Conch Republic Seafood and was heading to harbor to look at the boats. Plaintiff lost her footing and fell onto the ground on her left side, but her husband broke her fall somewhat. Plaintiff fell in front of the Dragonfly Store. Plaintiff stepped onto an old, previously filled trench that ran parallel to the store fronts. The trench had since settled and was lower than the rest of the road- not a "pothole" but more of a recessed bowl. There is also a significantly cracked up section of pavement in the same area. Plaintiff suffered a nondisplaced impacted sub-capital femoral neck fracture. Plaintiff was helped up by vendors in the area. Plaintiff was transported to LKMC via ambulance where she was admitted and seen by Dr. Perry, who performed an open reduction, internal fixation on her fractured left hip (ORIF). She stayed at LKMC for 3 days. Plaintiff eventually returned to AZ and sought orthopedic care including surgery.

Personal History

Plaintiff worked as a hairdresser in Tacoma, WA. Plaintiff had started her own salon named Red Falcon Salon. Plaintiff also practices Rake and gives lessons at 65.00/hr but says she can no longer perform. Plaintiff has been married to husband Ed for 20 years, who is a retired forensic mental health examiner. Plaintiff has 2 adult kids.

Procedural History

The city received timely notice of this suit on 2/10/2015 from the Wolfson firm in Miami. A Complaint was filed against both the city and FKAA, who was believed to have performed some infrastructure work underground in the area with an improper asphalt repair. This city and FKAA was initially defending the case together, but FKAA was dropped as a party after showing proof satisfactory to the Plaintiff that it was a city project. This case was mediated by Sandra Taylor on 6/30/2020. A mediation was attempted on 04/30/2018, but the Plaintiff did not appear, nor did she get leave to appear telephonically and neither the city or FKAA agreed to same. A subsequent mediation was conducted via Zoom by Sandra Taylor on 6/30/2020 where the parties agreed to settle for \$90k; contingent on approval by the City Commission.

Prior Medicals

Nothing relevant to her current injury.

Assessment/ Recommendation

The City of Key West owns Lazy Way. Although it was initially unclear whether FKAA indeed performed a job at the site of the fall, it was determined through discovery that the job they had performed was not related to the defect in question. Given the exposure of \$200k plus costs and the facts of this case, I recommend that the City Commission approve the mediation agreement.