



THE CITY OF KEY WEST

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August 20, 2021

Joanna Schuyler v City of Key West
2019-CA-21-K Judge Koenig
Date of Accident- 12/26/2017
Staples Ave. Bicycle/Pedestrian Bridge
Plaintiff Attorney: John Phillips
Judge: Bonnie Helms

EXECUTIVE SUMMARY

Personal

Plaintiff is a 59-year-old married mother of 2 adult children. Plaintiff and her husband Sam live in, Ocala, FL where they've lived 23. They have 2 adult children; one of whom is married to a Key West local, which is what brought the Plaintiff to Key West when this accident happened. Plaintiff was born and raised in Miami FL and holds an Associate in Science degree in Executive Secretarial. She has worked as a secretary for law firms in Ocala for the past 11 years. Prior to that, Plaintiff worked as a Child Welfare Coordinator for a year and a half.

Medical History

Plaintiff denies filing any prior worker's compensation claims. Plaintiff has no relevant medical history to this personal injury claim.

Accident History

Plaintiff and her husband came down after Christmas for a visit and were staying at their daughter's in-laws' home in new town. They had some rented some single speed beach cruisers rented for them by their host. On 12/26/17, the plan was for the entire group to ride bikes from new town to Caroline's Restaurant on Duval for dinner. At approximately

6:30 pm, the group crossed the Staples Avenue bike/pedestrian bridge. The Plaintiff was the 4th in line out of 6 in the group to go over the bridge- single file. When Plaintiff got to the top of the bridge, an unknown bicyclist was coming in the opposite direction in her lane of travel. This caused Plaintiff to depart her lane and go into the opposite lane (the lanes are not dedicated). When she came back to her lane, she was on the downside of the bridge and lost control of her bike. Her handlebar crashed into the perpendicular guardrail at the base of the bridge and then she ricocheted off and continued on her bike, in an uncontrolled fashion and then went off the edge of the concrete sidewalk, went over the handlebars, and fell down to the limestone swale approximately 2 feet below which serves as the bank to the Salt Run Canal that runs through Key West. In the process, Plaintiff fractured her left elbow and is alleging that she injured her C5-6-7. She sought medical care locally and an Open Reduction, Internal Fixation surgical procedure was performed to address her fracture in her left elbow. She reported the incident a day later to KWPD and Ofc. Sellers took a detailed report and pictures.

Plaintiff followed up in Ocala with several orthopedic doctors for her elbow and neck. Scans show that her neck has degenerative changes at these levels, spondylosis with central canal stenosis at all levels and left-sided facet hypertrophy and synovitis at C3-4 and C4-5.

She sought a second opinion at Shands UF Medical just before COVID-19 and they opined that Plaintiff needed to have her hardware removed. She was making arrangements and alleges that she had a surgical date but then her husband was involved in a car accident that delayed the surgery. She indicated that she plans to move forward with the hardware removal once he gets better.

Analysis:

For defenses, I have asserted comparative negligence, design immunity for the bridge, as well as a *Fabre* defense that alleges that all or part of the fault lies with an unknown person or entity (the unknown cyclist at the top of the bridge). Several depositions have been taken in this case: of a few members in the group cycling that day, as well as Annalisa Mannix (former city engineer that in charge of the project at the time of construction),

Marcus Davila (Community Services), Greg Veliz (then City Manager), and KWPD Ofc. Brenda Sellers. All establish that this type of freak fall was never foreseen in the planning, design, or build of the bridge. Although the bridge has a lot of guardrails, Plaintiff happened to hit a particular spot, just at the right angle, with a loss of control that caused her to go over the edge with a significant drop. All of the city representatives were asked if this had happened before, and none could recall anyone ever having any type of incident at the bridge in any way; much less this type of fall.

A design or planning level immunity defense contemplates that a city designed and built a structure that is inherently safe and built to plan. Such a defense will be challenging here because the drop off appears to have existed at the time of construction and the guard rail stops short from protecting a cyclist from going over. Since this incident, the guardrail has been extended to prevent a similar fall from happening again. Considering the mechanism of the fall under the “but for rule”, it will likely be determined by a jury that Plaintiff’s injury would not have occurred *but for* the lack of guardrail on a section of a well-used bridge, the lack of which caused her to drop off onto the embankment, thus fracturing her elbow. The competing theory is that she would not have lost control *but for* the unknown cyclist and/or her inability to control her bike. However, with a guardrail in place, even with her own actions and that of the unknown cyclist, it is very unlikely that she would have gone off the sidewalk and down the embankment.

Thus far, the billed medicals total \$80k on this file with \$40k paid; without the upcoming revision surgery. This number will go up considerably once her revision surgery is rescheduled. The parties attended a mediation on August 11, 2021 with Sandra Taylor and settled for \$120k with the attached conditional mediation agreement for your consideration.

A more detailed summary has been sent to the Mayor and Commissioners containing privileged information pursuant to F.S. 119.071(1)(d).



