



## THE CITY OF KEY WEST

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### Memorandum

To: The City Commission for the City of Key West  
From: Ronald Ramsingh, Assistant City Attorney  
Date: February 24, 2011  
RE: Settlement of Humberto Bustillo vs. The City of Key West worker's comp case

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Dear Mr. Mayor and Commissioners:

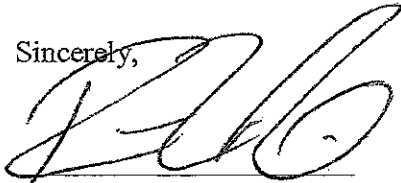
This worker's compensation case involves a compensable right ankle injury that the Claimant sustained while on duty as a janitor at the ferry terminal that occurred on September 24, 2009. The Claimant was being chased by a dog and struck his ankle while entering a van in his attempt to evade the dog. The Claimant received medical treatment from Key West Urgent Care (Dr. VanTuyt) and Dr. Torregrossa who is an orthopedic. He also underwent 2 MRI's, injections and physical therapy. Eventually, the Claimant underwent a fusion in his right foot and was placed at Maximum Medical Improvement on November 19, 2010 with a 4% impairment rating to his whole body. The Claimant is now 66 years old and is a Medicare recipient. Since the negotiated settlement before you for approval is less than \$25,000.00, a Medicare Set Aside will not be required.

The city's adjuster with EMI has attached a report as well as a summary of what has been expended thus far. The Claimant has received \$83,766.44 in medical treatment and \$6,086.11 in indemnity; or lost wages. Due to the Claimant's age and nature of an ankle fusion, there is a substantial likelihood that the Claimant will need a revision surgery within his lifetime. The medical cost of such a surgery in addition to his anticipated temporary total disability entitlement is estimated at \$50,000.00 to \$75,000.00. The

Claimant was terminated for cause unrelated to the job injury on October 23, 2009. This case was mediated today and settled for \$20,000.00 contingent upon your approval.

I recommend that the City Commission approve this Mediation Settlement Agreement and authorize the City Manager to execute the final settlement documents accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Ramsingh', written over a horizontal line.

Ron Ramsingh  
Assistant City Attorney

## Workers' Compensation Status Report

Employer:	City of Key West	Date of Hire:	9/24/2007
Employee:	Humberto Bustillo	AWW:	\$ 438.80
Claim No.:	359-003937-WC-01	C/R:	\$ 292.55
D/A:	9/24/2009	SIR:	\$ 325,000.00

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### Description of Accident:

Mr. Bustillo is a 64 yr old former employee with the City of Key West. While running from a dog, the claimant got into his work van and closed the door on his right ankle.

### Injuries/Treatment:

Right Ankle

Initial treatment was rendered at Lower Keys Medical Center. Dr. Van Tuyl diagnosed the injured worker with an ankle sprain. On 10/21/09 a MRI of the right ankle was ordered and the claimant was referred to an orthopedic specialist, Dr. Torregrosa. MRI showed bone edema, and a possible occult fracture or ATF tear. The claimant was prescribed a cam walker.

Follow up MRI ordered due to the claimants continued pain.

Results: MRI of the right ankle 3/30/10 Impression: Advanced degenerative arthrosis at the posterior subtalar joint. Possible small stress fracture at the lateral process of the talus. Partial sprains of the anterior talofibular and calcaneofibular ligaments. Tenosynovitis of the posterior tibial tendon. Chronic central cord or fasciitis, without acute inflammatory changes. 5 mm plantar calcaneal spur.

Surgery was recommended and scheduled for 06/29/10. The claimant required home health care for 2 weeks following the surgery due to complications.

He was placed at MMI 11/19/10 with a 4% PI.  
Dr. Torregorra remains the authroized physician.

The file is litigated. Additional surgery is possible, due to prior complications. The claimant has permanent physical limitation.

### Work Status:

MMI 11/19/10 with a 4% PI  
Terminated on 10/23/2009, for miss conduct.

**Attorneys:**

Defense: Ron Ramsingh / Plaintiff: Rick Morales

Judge: District:

Issues: TPD, not paid, as claimant was terminated for cause, which remains an outstanding issue.

TTD benefits due, have been paid with penalties and interest.

**Theories of Liability:**

Claim has been found compensable as injury was within course and scope of employment.

**Negotiations/Subrogation:**

No subrogation.

**Reserves:**

The medical paid to date is \$83,766.00. As discussed in last claim review, the file requires additional reserves for future exposure.

However, the increase will be limited if approval for settlement of 20,000. inclusive is approved. An additional reserve of 12,000. is needed

If settlement is not approved the file will need a much greater increase to include follow up care, possible future surgery, indemnity for pending litigation issue of TPD, and attorney fees and cost.

**Plan of Action:**

Follow up with Ron for settlement approval. Once approval determine, the reserves will be increased for exposure. If settlement is approved, once checks are issue the file will be closed.

02/24/11