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March 4, 2016

**VIA EMAIL**

Shawn D. Smith, Esq.  
City of Key West  
3128 Flagler Ave.  
Key West, FL 33040

Re: Marty Murphy et al vs. City of Key West and Marc Siracuse  
Our File No: 35-182/01112

Dear Shawn:

As you know, the parties and the City's insurer recently attended a court ordered mediation conference in the above referenced matter. The discussions resulted in proposed agreements to settle both the claim asserted on behalf of Matthew Shaun Murphy (Murphy), and the separate claim asserted on behalf of his five year old minor son. In my opinion, both settlement agreements are in the best interests of the City of Key West, and I recommend City Commission approval of both agreements.

On April 16, 2011 at approximately 3:30 a.m., a then 27 year old Murphy became involved in a verbal altercation with a man and woman in the 300 block of Duval Street. The altercation began after the woman made racially derogatory statements about Murphy and his Haitian American fiancé, Marie Annulyse. The police emergency number was called and a Key West police officer on bicycle patrol was dispatched to the scene. Upon arrival, the Key West police officer observed a shirtless Murphy squared off with another man, and almost immediately, Murphy struck the other man with a closed fist in the face and nose area. After witnessing the battery committed by Murphy, the officer deployed his taser in dart mode and Murphy fell to the ground. Unfortunately Murphy began to exhibit medical problems almost immediately and he was taken by ambulance to Lower Keys Medical Center where a CT scan revealed that he had a subdural hematoma. He was then airlifted to Ryder Trauma Center in Miami for neurosurgical care.

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Murphy was hospitalized at Jackson Memorial Hospital for approximately two months and was then transferred to Jackson's long term care facility where he remains to this day. Murphy sustained a traumatic brain injury and as a result is unable to breathe on his own, eat on his own or move his arms or legs. During the past five years he has incurred well in excess of \$1,000,000 in medical expenses and many hundreds of thousands of dollars of those expenses have been paid by Florida Medicaid and Medicare. He will require 24 hour intensive care for the rest of his life, and one expert has opined that this future care can be expected to cost between \$18,000,000 and \$26,000,000.

The pending lawsuit asserts that in deploying the taser, the Key West officer used excessive force under the circumstances. Damages and attorneys fees are sought against the City and officer under the Federal Civil Rights Act, and a tort claim has also been asserted against the officer on behalf of Murphy's son who was six months old at the time of the incident. Florida statutory law provides a cause of action in favor of a minor child whose parent is permanently and totally injured by the act of another.

In my opinion, the Officer's use of the taser was reasonable under the totality of the circumstances and did not violate Murphy's Fourth Amendment right to be free from an unreasonable seizure. While the use of the taser was reasonable, the injury which resulted was neither expected nor intended. Detailed motions for summary judgment have been filed on behalf of both the officer and the City, and while in my opinion there is a substantial likelihood that these motions should be granted, an adverse outcome is possible.

I recommend City Commission approval of the settlement agreements for the following reasons:

- 1) All of the settlement proceeds will be paid by the City's insurer and the City of Key West and the officer will not have to pay anything to resolve the case.
- 2) The City's liability insurer has coverage limits of \$1,000,000, and if the settlement is not approved, and if one or both of the Plaintiff's obtain a judgment in excess of \$1,000,000 the City and or the officer will have to pay the resulting judgment without the benefit of any insurance to protect them. Although it is my opinion that there is a substantial likelihood that the both the City and officer will prevail, an adverse outcome coupled with a substantial eight figure judgment is possible.

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Please don't hesitate to let me know if you have any questions or comments concerning the above or if I can provide any further information to you in this matter.

Very truly yours,

*/s/Michael T. Burke*

Michael T. Burke  
For the Firm

MTB/ac