



## THE CITY OF KEY WEST

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[WWW.KEYWESTCITY.COM](http://WWW.KEYWESTCITY.COM)

RE: Elizabeth Pressman v. City of Key West 2018-CA-987-K,

Judge- Bonnie Helms

Trial date- October 4, 2021

Mediation Date- September 10, 2021

Opposing Counsel- Scott Black of Vernis & Bowling (Tavernier Office)

### *Accident History*

Ms. Pressman (Plaintiff) is a 60-year-old woman from East Amherst, NY. Plaintiff has been retired for 10 years and owned a structured settlement company. She has a history of working in banking. She has a bachelor's degree in Administration and Finance from Canisius College. Plaintiff was visiting KW with her (now Ex) husband. At the time, they were living in Boynton Beach, FL. They were riding rented bikes on 11/6/2014 just after 12 noon on Wall St. They left the Mallory Square parking lot and turned left onto the Wall Street sidewalk since Wall Street is a one way in the opposite direction (not illegal to do). While riding on the sidewalk, Plaintiff's front tire caught an edge between the concrete border of a FKAA water meter and the street curb. The Concrete border appears to have been installed by FKAA. Where the concrete border meets the street curb, some of the concrete FKAA border has broken off, creating a gap or rut. Plaintiff was following behind her husband, who had no issues. The area in question is near the Wall St. garage entrance to Ocean Key House. Officer Frank Betz responded, took a police report and noted no impression of alcohol or drug consumption.

The city was served with a Complaint on 9/18/2018; about a month before the statute of limitations expired on her claim.

### *Medical Care*

Plaintiff was taken to LKMC by ambulance and was diagnosed with a bimalleolar fracture (tibia and fibula) and dislocation of her right ankle. She began seeing her family ortho, Dr. Parentis in New York, who performed an ORIF with hardware (10 screws and a plate) in her right ankle. Plaintiff followed up with extensive physical therapy and was told that she was at maximum medical improvement approximately a year and a half after her fall in Key West. Plaintiff had another fall on her stairs at home post-surgery which resulted in a sprain of her left ankle as well.

Dr. Parentis has indicated that there was nothing further to offer the Plaintiff as of May 2016. Plaintiff claims to have been active at the gym, as well as kickboxing and yoga prior to her fall, which is non-existent now. She also claimed to have entertained guests at her dinner parties and traveled extensively, which have also been severely curbed.

### *Assessment*

Initially, we had some difficulty identifying exactly where the alleged defect was that caused Plaintiff to fall. Plaintiff affirmed the location of the defect on the sidewalk as being one that is immediately adjacent to a water meter cover owned and maintained by the FL Keys Aqueduct Authority. I made a public records request to FKAA and was sent a work order from January 2000 where the water meter was replaced. It seems from the pictures that the concrete border was installed at that time. However, keep in mind that the City still has a non-delegable duty of care to keep the sidewalk free of any known defects (or defects that we should have known about) as the owner of the sidewalk. It is a heavily traveled area, so constructive notice of the defect would be easier to establish by the Plaintiff's attorney compared to a meter on our sidewalk in an obscure alley. Nevertheless, I believe that FKAA stands to share in liability. However, it will likely be in the form of a contribution claim after this claim is resolved since the Plaintiff filed this suit on the very outside edge of the Statute of Limitations for government entities and as a result, it would be too late for the City to file a third-party claim against FKAA.

Plaintiff's medicals amount to \$54,888.36, with \$18,971.05 paid for by insurance or adjustments. Plaintiff's counsel alleges that \$36,118.71 is still outstanding. Plaintiff has

made a pre-mediation demand of \$175k, then prior to a reconvene mediation that was set to take place on 9/10/2021, Plaintiff's counsel made an amended demand for \$125k. I made every effort to keep this claim under the \$100k- threshold for the excess carrier's coverage and was able to negotiate a contingent settlement of \$100k, which is within our self-insured retention. Given the medicals, I evaluate the case between \$125k to \$135k. I have received authorization from the excess carrier of up to \$140k.

*Recommendation*

It would be my recommendation to approve the \$100k settlement that is within our self-insured retention. I have already sent a letter to FKAA and had a phone call with their counsel informing them of the forthcoming contribution claim from the city, in hopes of opening a dialogue and resolution short of filing suit. Of course, I handled this case since its inception including discovery, depositions, and mediation at a substantial savings to the City. We have expended \$338.00 in costs.

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