


MEMORANDUM

Date: November 9, 2023

To: Honorable Mayor and City Commissioners

Via: Albert P. Childress 
City Manager

From: Ronald Ramsingh
City Attorney

Subject: **Settlement Approval of Kriegel v. City of Key West, et. al. / 20-CA-707-K**

Introduction

The purpose of this memorandum is to summarize the facts, liability, damages, and settlement request in the above-styled claim so that the Mayor and City Commission can make an informed decision concerning approval or disapproval of the current settlement request.

Background

The City and Santa Maria Resort was previously sued for damages by Barry Kriegel as a result of a bicycle accident involving Kriegel at the Santa Maria Resort, adjacent to South Street. On the date of the incident, December 23, 2019, Kriegel had rented a bicycle with his daughter to ride around town. Although the bicycles were rented from Santa Maria Resort, the waiver of liability was never signed by Kriegel himself. Kriegel exited the parking lot at Santa Maria Resort and rode over the area where he later fell, without incident. Upon returning to the subject parking lot at the Santa Maria Resort adjacent to South Street, Kriegel attempted to re-enter the parking lot through the concrete driveway apron he had previously used. Kriegel testified that he struck a portion of the driveway where the concrete had chipped away and it “locked” his front tire and stopped his forward momentum. He then fell off his bicycle to the side of the driveway, severely injuring his right lower leg and ankle.

The City will likely be found at least partially responsible for the condition of the driveway apron since it was the City’s maintenance responsibility and existed within the City’s right-of-way.

However, a jury would also likely apportion fault to the co-Defendant, Santa Maria Resort, for failing to alert the City to the condition, and failing to correct the condition that Kriegel alleges caused him to fall off his bicycle. Finally, Kriegel himself would also likely be found to have contributed to this incident since he failed to properly operate his bicycle with enough speed and momentum to ride up the concrete driveway.

As a result of the incident, Kriegel sustained a severe right lower leg and ankle injury that required surgical intervention to repair with hardware. The full extent of Kriegel's injuries were discussed with the City Commission in detail during the City's closed-door session on October 12, 2023. Kriegel incurred \$87,478.43 in medical charges related to this incident. Kriegel's health insurance carrier has asserted a lien totaling \$18,166.77.

Settlement agreement pending approval

Counsel for the City was able to reach a conditional settlement agreement with Kriegel totaling **\$85,000.00**. The City's total exposure for this claim is \$200,000.00 based on the per-person sovereign immunity limits. Based on the City's insurance policy, these settlement funds will be paid by the City since the City's policy dictates that the first \$100,000.00 of any settlement or judgment is the City's responsibility. Any figure in excess of that amount would be the City's insurance carrier's responsibility.

Recommendation

Counsel for the City recommends this settlement resolution and amount as the liability and damages for this claim are valued in excess of the amount of the sovereign immunity cap, even with apportionment of fault, and a jury verdict would likely exceed the negotiated settlement amount herein.