



## THE CITY OF KEY WEST

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# EXECUTIVE SUMMARY

To: The City Commission for the City of Key West  
From: Ron Ramsingh, Assistant City Attorney  
Date: February 10, 2014  
RE: Settlement of worker's compensation case 12-9695-RDM Mitchell Andrews v. The City of Key West.

### **Action Statement:**

A proposed settlement to resolve all outstanding worker's compensation issues regarding former employee Mitchell Andrews.

### **Background:**

Andrews was hired by the City on 1/24/11 and has worked in Community Services until his termination date of 3/1/12. On 12/20/11, Andrews was lifting garbage liners out of their containers at the southernmost point. One canister contained a large amount of opened coconuts. When the liner was raised in the air, Andrews experienced an industrial accident involving a partial tear of his left rotator cuff.

Andrews was seen by numerous physicians and is a surgical candidate.

On 3/1/12, Mitchell's job was terminated since he was not able to work with his then restrictions. Andrews began working at Charlie Mac's as the head smoker in October, 2012. A Petition for Benefits was filed for Permanent Total Disability (PTD), however, since his subsequent employment was secured, that claim was significantly affected. PTD can be obtained one of 3

ways within worker's compensation: 1. An authorized treating physician indicates that the Claimant is not able to work in *any* capacity due to the industrial accident; 2. The Claimant cannot find appropriate employment within his or her given medical and work restrictions within a 50 mile radius of the place or residence; or 3. The Claimant received Temporary Partial Disability because the employer cannot accommodate the restrictions, and the 104 weeks of indemnity payments have been exhausted. The Claimant is still employed by Charlie Mac's. If the case proceeds to surgery, the City would be responsible for paying the medicals, which are estimated to me approximately \$50,000.00 (surgery on fee schedule, plus rehabilitation). Additionally, Andrews' lost wages while recovering (indemnity) is estimated at estimated at \$4,773.72 (397.81 weekly compensation rate x 12 weeks of no work status). The total minimum exposure to the City in Andrews' surgery would be approximately \$55,000.00; assuming that there are no other complications in treatment or recovery that requires further procedures, and/or further time on a no work status.

In sum, the Indemnity exposure is \$41,372.24 (of which, \$15, 896.31 was paid), Approximately \$50,000.00 in *further* medical care at a minimum, including the surgery, post op follow up, physical therapy, and medications (\$16,216.02 has been paid thus far), opposing counsel attorney fees estimated to be \$30,000.00 and a savings of city attorney fees of \$19,000.00 to date. Worst case scenario would be \$115,000.00 in exposure. Since Andrews was able to find employment, his PTD claim is compromised. However, if that claim proceeded to trial and in the unlikely event that the city was not successful in that claim, there would be further exposure of \$330,997.92 (Compensation Rate until 75 years old).

After a lengthy mediation on 1/21/14, we have reached an agreement to resolve any and all claims with the City of Key west concerning this, and any other past injuries for \$25,000.00 inclusive of all Claimant's attorney's fees and costs. This was handled by the City Attorney's Office in house at a cost of \$1,000.00 resulting in a savings to the City of outside counsel fees of approximately \$19,000.00.

Therefore, if Tyler was successful at trial on the PTD issue, the City would be responsible for paying the future and past medicals to include the surgery covered by the VA, which are estimated to me approximately \$200,000.00. Additionally, Tyler's remaining indemnity entitlement of PTD is \$405,000.00 over the next 16 years (Compensation Rate until 75 years old). Additionally, opposing counsel attorney fees estimated to be \$ 60,000.00 and a savings of city attorney fees of \$19,000.00 to date. Worst case scenario would be a grand total of \$665,000.00 in exposure. The initial demand received by OC was for \$350,000.00.

After a lengthy mediation on 1/21/14, we have reached an agreement to resolve any and all claims with the City of Key west concerning this, and any other past injuries for \$125,000.00 inclusive of all Claimant's attorney's fees and costs. This was handled by the City Attorney's Office in house at a cost of \$1,003.00 resulting in a savings to the City of outside counsel fees of an additional \$19,000.00.

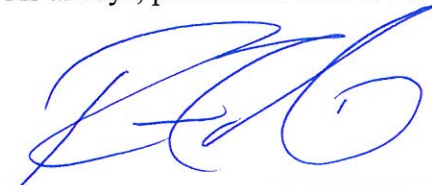
**Options:**

1. To pass the proposed Resolution authorizing the City Manager to enter into settlement papers ratifying said settlement of this worker's compensation claim.
2. To deny passage of the Resolution authorizing settlement of this worker's compensation case and the City faces the possibility of exposure to further medical care and indemnity.

**Recommendation:**

To pass the attached Resolution authorizing settlement in this matter

As always, please feel free to contact me with any questions or concerns.



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Ronald J. Ramsingh, Esq.  
Assistant City Attorney