



THE CITY OF KEY WEST

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To: The City Commission for the City of Key West

From: Ron Ramsingh, Chief Assistant City Attorney

Date: August 9, 2021

RE: Executive Summary regarding settlement of McElwee v City of Key West 2019-CA-73-K

Facts:

Judy McElwee and her husband were visiting Key West in October, 2016 from Oregon. They were staying at the Casa Marina when on October 15th they decided to walk down to a sports bar on Duval St to watch college football. While walking on the east side of Reynolds St., approaching the intersection of Seminary St. Plaintiff tripped and fell onto the sidewalk and landed on her jaw/nose area. Plaintiff was transported to Lower Keys Medical Center where she was stabilized and told to follow up with an orthopedic doctor. Once Plaintiff returned, they saw several physicians, which ultimately led to 3 surgical procedures to her cervical and lumbar areas of her spine. Plaintiff's medical care involving 3 surgical procedures have amounted to \$387,000.00 in medical liens.

Issues:

Prior to them leaving their resort that day, they spent some time at the bar on property and lounged near the pool. The McElwees ordered a sandwich, a bottle of beer, and unknown "alcohol special" and a mojito shaker drink, which is the entire contents of a full shaker (about 2.5 drinks). I have assessed liability and I have asserted the defense of voluntary intoxication pursuant to F.S. 768.36. Because there was no BAC results, the defense would have to be asserted constructively, that is to say that Plaintiff was under the influence of drugs/alcohol to the extent that her normal faculties were impaired.

Evaluation:

If we were to get a jury instruction on voluntary intoxication with these facts, considering that the City had repaired this section of sidewalk a year before this fall, the best and most realistic outcome would be a liability split by the jury. When considering the typical pain and suffering multiplier, tempered by the set off for comparative negligence, the adjusted jury award would still likely exceed the statutory cap of \$200k.

Recommendation:

I spoke to the City's 3rd Party Administrator, as well as the city's excess carrier and they both agree to settle for the \$175k. The first \$100k will be the responsibility of the City under its self-insured retention and the \$75k would be from the excess carrier. I also agree to settle.

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