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THE CITY OF KEY WEST

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To: The City Commission for the City of Key West
From: Ron Ramsingh, Assistant City Attorney 
Date: March 26, 2015
RE: Settlement of Worker's Compensation case OJCC 14-5923RDM Craig Allen v. City of Key West

EXECUTIVE SUMMARY

Background: Mr. Allen is a 66-year old man who was born and raised in Key West, where he lives with wife. Mr. Allen has worked various construction type jobs in Key West since he was 22 years old and has an 11th grade education with a G.E.D. Allen is also a minister at the Trinity Methodist Church on Petronia Street. Mr. Allen has no prior serious history of motor vehicle accidents, trips/falls, or broken bones, but does have a history of diabetes, bladder surgery/cancer (remission). Mr. Allen worked for the city as a maintenance worker from 1997-1998 but resigned due to incarceration. Mr. Allen then applied again to the city in 2008, was hired, and had been employed with the city until October 2014, when he was unable to return to work within his medical restrictions.

Industrial Accident and Care: On January 10, 2012, Mr. Allen was working with a city crew at the Key West Bight. He was removing 6"x6"x16' posts and holding one end of the post over his head with both arms. Mr. Allen felt pain in his right shoulder and allowed his end of the post to rest on his right shoulder. Shortly thereafter, he began feeling pain, burning and stiffness in his right shoulder. Mr. Allen reported his injury to his supervisor, Dedrick Batheo. He was treated conservatively at first, then surgically, however, he then began complaining of pain in the left

shoulder due to over compensation while on light duty for the right shoulder. Mr. Allen's authorized treating physician opined that the left shoulder issues were compensable and treated same surgically. Mr. Allen was ultimately placed at Maximum Medical Improvement and assigned a whole body impairment rating and assigned significant work restrictions that make it very challenging for the city to accommodate given his skill set. Additionally, Mr. Allen had another industrial accident wherein he was working too close to a nail gun and experienced ringing in his ear. However, in order to close all potential claims with the city, the hearing loss claim is included in this settlement as well.

Exposure/ Risk: Mr. Allen is a 66-year old man with a life expectancy to 84 years old (18.8 years). Mr. Allen has filed a Petition for Benefits requesting permanent total disability. The standard for PTD is that the Claimant cannot obtain gainful employment within 50 miles of his residence, given his stated permanent restrictions. Of course, the City of Key West is geographically limited in the pool of possible work, given the scope is statutorily limited to Marathon 950 miles). This fact alone makes the city particularly vulnerable to these types of claims, but to complicate this case further, we have stated repeatedly, that we cannot accommodate his permanent and temporary restrictions. If he is successful in his PTD claim, he would receive benefits until he reaches 75 years of age. Mr. Allen's Compensation Rate is \$417.17. If the city administratively accepts his PTD claim, the present value has been calculated to be \$212,300.00; which includes future palliative medical care, as well as PTD payments until he is 75. If this case proceeds to trial, and if Mr. Allen is successful, the prevailing attorney's fee can be projected to be approximately an additional \$10,000.00- \$15,000.00. Any and all of the city's attorney fees have been saved by the city's Legal Department. Handling this matter in house from its inception.

Additionally, since Mr. Allen is over 62 years of age, a Medicare Set Aside must be established in order to protect Medicare's interests in Allen's future medical care. This is an account that Allen will need to fund and pay all of his related medical expenses from until it is exhausted. When it is exhausted, then Medicare will step in and the future medicals can be submitted to Medicare for payment at that time. In this case, the MSA was set at \$38,646.00 for his shoulders

and \$0 for his hearing loss. These numbers were submitted to Center for Medicare Services and were approved. Therefore, no additional funding will be required for the MSA.

The undersigned entered settlement negotiations with opposing counsel and we were able to agree to a global settlement of \$130,000.00 inclusive of all fees, costs and the MSA. The city will directly fund the MSA and the balance would go to Mr. Allen, less his attorney's fees, costs, and a separate attorney fee lien by Allen's attorney's former law firm.

Given Allen's limited education, age, permanent restrictions and limited geography in terms of the labor market (as limited by statute to 50 miles), I think that there is a good likelihood that Mr. Allen will be successful in his claim to obtain PTD benefits. Therefore, by settling this case for \$130,000.00 I project a savings to the city of \$120,000.00.

Options:

1. Agree to the proposed settlement with Craig Allen in the amount of \$130,000.00 inclusive of all fees, costs, and the MSA.
2. Decline to settle this matter and the case will continue on to trial to decide the PTD issue. I believe that the city has less than a 50% chance at success given the aforementioned factors and risks.

Recommendation: Agree to enter into a settlement with Craig Allen.