

JOHNSON, ANSELMO, MURDOCH, BURKE, PIPER & HOCHMAN, P.A.

A PROFESSIONAL ASSOCIATION

DAMIAN H. ALBERT, P.A.
SCOTT D. ALEXANDER, P.A.
CHRISTOPHER AMBROSIO
MICHAEL T. BURKE *†
HUDSON C. GILL
JEFFREY L. HOCHMAN, P.A.
E. BRUCE JOHNSON *
J. MARCOS MARTINEZ

2455 EAST SUNRISE BOULEVARD
SUITE 1000
FORT LAUDERDALE, FL 33304

(954) 463-0100 Broward
(305) 945-2000 Dade
(561) 640-7448 WPB

TELECOPIER (954) 463-2444

ROBERT E. MURDOCH
MICHAEL R. PIPER *
ANASTASIA PROTOPAPADAKIS
DAVID M. SCHWEIGER, P.A.
TAMARA M. SCRUDDEERS†
CHRISTOPHER L. SMITH
CHRISTOPHER J. STEARNS, P.A.

RETIREE:
RONALD P. ANSELMO
BURL F. GEORGE

* BOARD CERTIFIED CIVIL TRIAL LAWYERS
† BOARD CERTIFIED APPELLATE LAWYERS

March 18, 2011

Via E-mail

Shawn Smith
City Attorney
City of Key West
P.O. Box 1409
Key West, 33041-1409

Re: Denton v. City of Key West
Case No. 2010-DR-937-K
File No. 01112/30-261-MTB

Dear Shawn:

As you know, the parties have agreed, subject to City Commission approval, to settle the above matter for the total sum of \$57,500. In my opinion, the proposed settlement is in the best interest of the City of Key West and I recommend City Commission approval of the same. The following is a brief summary of the case.

Assessment of Liability

During the early evening of November 24, 2009, a marked Key West Police vehicle northbound on White Street was turning left on to Southard Street. As the police vehicle made the left turn on to Southard, the left front quarter of the vehicle struck Plaintiff Denton as he was walking south on White Street within the crosswalk. The evidence is clear that Denton was well into the crosswalk at the time the police vehicle began its left turn and as a result the police vehicle had the obligation to yield the right of way. In my opinion, liability for the accident rests with the City of Key West and Plaintiff Denton does not have any comparative fault for the accident.

Assessment of Damages

As a result of the accident, Plaintiff Denton sustained a comminuted fracture of his right tibial plateau and fibula (right knee fracture). Dr. David Perry performed an open reduction with internal fixation to repair the injury. The surgery involved placement of a plate and screw to reduce the fracture. Plaintiff Denton spent four days in the hospital and was bedridden for many weeks following the accident. Thereafter, Denton received approximately 7 weeks of physical therapy.

Total medical charges for the accident equal approximately \$53,000. Medicare paid many of Plaintiff Denton's bills and as a result the charges were adjusted by the healthcare providers in order to obtain Medicare payments. The total medical charges paid and unpaid for the accident equals approximately \$14,000. Moreover, Plaintiff Denton has a limp and continues to have pain in his right knee which he attributes principally to the plate and screws which remain affixed. If this pain persists, Plaintiff Denton may need to have the plate and screws removed and this will result in additional medical expense which will approximate that incurred to repair the fracture (\$15,000).

Plaintiff Denton is 66 years old and retired from the United States Postal Service in 1998. Plaintiff Denton served in the United States Army during the Vietnam War and sustained a shrapnel wound to his right leg. Plaintiff Denton does not claim to have sustained any loss wages or diminished earning capacity as a result of the accident, but does claim extensive pain and suffering in addition to past and future medical expenses.

If the case is tried, Plaintiff Denton will recover approximately \$30,000 in past and future medical expenses, and an undetermined amount for past and future pain and suffering as well as litigation expenses of between \$5,000 and \$10,000. Moreover, a trial of the action would cost the City of Key West an additional \$7,500 to \$10,000.

Recommendation

Taking into account the past and future medical expenses, the amount of an award for past and future pain and suffering and the additional costs of the trial (\$15,000 to \$25,000), it is clear that the \$57,500 proposed settlement is in the City's best interest. As a result, I recommend City Commission approval of the same.

Very truly yours

/s/Michael T. Burke

Michael T. Burke

For the firm

MTB/npw