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October 19, 2018

VIA EMAIL

Shawn D. Smith
CITY ATTORNEY
CITY OF KEY WEST
1300 White Street
Key West, FL 33040

Re: Berthiaume vs. David T. Smith, individually and the City of Key West
Our File No: 01112/ 35-011

Dear Mr. Smith:

Pursuant to a request from the City's excess insurer, a proposed settlement, contingent on approval by the Key West City Commission has been negotiated in the above referenced matter. Specifically, the Plaintiff Raymond Berthiaume has agreed to accept the total sum of \$100,000 in full and complete settlement of all claims for damages, costs and attorneys fees as against the City of Key West and David Smith. Pursuant to the proposed settlement, Plaintiff will be required to resolve a hospital lien filed by the North Broward Hospital District and any claim for medical expenses by the Lower Keys Medical Center.

The City has exhausted its self insured retention applicable to this matter, and as a result all of the settlement proceeds will ultimately be paid by the City's excess insurer. The City has an indemnification insurance policy, and as a result the settlement will first have to be approved by the Key West City Commission, funded by the City and the City will then obtain reimbursement of the settlement proceeds from the excess insurer.

As you know, this case involves a claimed unreasonable seizure in violation of the Fourth Amendment to the United States Constitution (false arrest and excessive force) arising from the October 27, 2013 arrest of Plaintiff Berthiaume. During the incident, Plaintiff Berthiaume fell to the ground and sustained a fractured wrist and broken jaw. The case was previously tried to a jury in Key West, and on May 6, 2016 the jury returned a verdict in favor of the City and David Smith. The case was appealed to the United States Court of Appeals for the Eleventh Circuit and the final

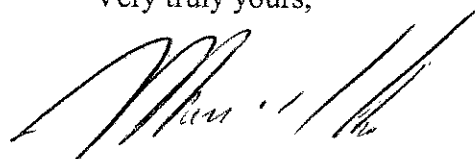
judgment in favor of the Defendants was reversed based upon the District Court's decision not to ask a question proposed by Plaintiff's counsel during the jury selection process. The case is now scheduled for retrial during the two week period commencing November 26, 2018.

In my opinion, a retrial of the case would more likely than not result in a jury verdict in favor of the City and David Smith. However, the retrial could result in a verdict in favor of the Plaintiff and will involve significant expense both for attorneys fees and costs and will require bringing Mr. Smith down from Tallahassee where he currently resides. There is a potential for a verdict in favor of the Plaintiff, and in the event of a Plaintiff verdict substantial attorneys fees would be awarded for the first trial, appeal and second trial. In the event of a jury verdict in favor of the Plaintiff, I estimate a fee and cost award of between \$150,000 and \$200,000. In addition, if the jury were to find in favor of the Plaintiff a damage award of between \$100,000 and \$250,000 could be expected.

In my opinion, approval of the proposed settlement is in the best interest of the City. First, all of the settlement proceeds will ultimately be paid by the City's excess insurer. Second, if the settlement is not approved, the City's excess insurance policy has a provision which may limit the City's available insurance coverage for the claim to the amount of the proposed settlement. Counsel for the Plaintiff is in the process of having Plaintiff Raymond Berthiaume sign a document committing to the settlement described above. I would appreciate the assistance of your office in putting the proposed settlement on the City Commission meeting agenda so that it can be addressed prior to the November 26, 2018 trial date.

Please don't hesitate to let me know if you have any questions or comments concerning the above or the status of the case in general.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael T. Burke", with a large, sweeping flourish extending to the right.

Michael T. Burke
For the Firm

MTB/ac