

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

A PROFESSIONAL ASSOCIATION

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

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

W. HAMPTON JOHNSON IV
J. MARCOS MARTINEZ
ROBERT E. MURDOCH
MICHAEL R. PIPER *
DAVID M. SCHWEIGER, P.A.
CHRISTOPHER L. SMITH
CHRISTOPHER J. STEARNS, P.A.

RETIRED:
RONALD P. ANSELMO
BURL F. GEORGE

* BOARD CERTIFIED CIVIL TRIAL LAWYERS

November 26, 2014

VIA EMAIL

Shawn D. Smith
CITY ATTORNEY
CITY OF KEY WEST
3128 Flagler Ave.
Key West, Florida 33040

Re: Kia Scott vs. City of Key West
Case No. 2011-CA-1269-K
File No. 31-508

The above matter is set to commence jury trial on December 15, 2014 and the case will be presided over by acting Circuit Court Judge Peary Fowler. Recently Plaintiff Scott and her attorneys communicated a willingness to accept the total sum of \$100,000 in settlement of the lawsuit and the City's insurer (PGIT) authorized payment of the settlement amount. The City has approximately \$13,000 left on its self insured retention (SIR), and as a result if the case is settled the City will contribute approximately \$13,000 toward the settlement and the remaining \$87,000 will ultimately be paid by the City's insurer. The City has a reimbursement insurance policy which requires that it first pay the settlement amount and obtain reimbursement from the insurer (PGIT) for amounts paid in excess of the SIR. In my opinion, approval of the settlement is in the best interest of the City of Key West.

The Plaintiff Kia Scott previously worked as a security custodian at the community pool, and in late September 2011 the City notified Plaintiff Scott that she had abandoned her job by failing to report to work during the week of September 12 and by failing to contact her supervisor to report the reason for her absence. At the time her employment ended Plaintiff Scott was several months pregnant, had used up all of her sick and vacation time and had missed a number of work days in July, August and September for reasons she attributed to an illness involving her minor son and complications of pregnancy. Plaintiff Scott asserted that she did report her absence from work during the week of September 12, 2011 to her then supervisor Lee Thompson, and on September 19, 2011 Plaintiff Scott produced a note from her obstetrician which stated that she had been on approved bed rest during the week of September 12. Supervisor Thompson disputed Plaintiff Scott's claim that she had called

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to report her absence during the week of September 12. Subsequent discovery had shown that Lee Thompson's cell phone billing records reflect that calls were placed to her by Plaintiff Scott's cell phone on September 12 and later in the week.

Plaintiff Scott seeks relief against the City of Key West for a violation of the Family Medical Leave Act and alleges that her termination constituted pregnancy discrimination in violation of Title VII and the Florida Civil Rights Act. Plaintiff Scott seeks reinstatement to her job, back pay and benefits, compensatory damages, pre-judgment interest as well as attorneys fees and litigation expenses. At the time Plaintiff Scott's employment ended she was earning \$11.22 per hour, or approximately \$448.80 per week plus benefits. If Plaintiff Scott prevails she will be entitled to recover \$75,730 in back pay, approximately an additional \$15,000 in the value of lost benefits, compensatory damages for emotional pain and suffering in an amount to be determined by the jury and attorneys fees and litigation costs of between \$125,000 and \$150,000. In addition, it will cost the City an additional \$15,000 to try the case. If Judge Fowler finds a willful violation of the FMLA, the back pay award will be doubled to \$151,460.

In my opinion, there is a very good likelihood that the City will prevail with respect to Plaintiff Scott's pregnancy discrimination claims. However, it is my opinion that Plaintiff Scott has a better than 50% chance of prevailing with respect to her FMLA claim. Essentially, this claim comes down to Plaintiff Scott's testimony that her absence from work was excused by her obstetrician and that she reported the absence to her supervisor. As set forth above, the supervisor disputes this testimony but cell phone billing records bolster Plaintiff Scott's claim.

Please don't hesitate to let me know if you have any questions or comments concerning the above or if you need any further information concerning the matter.

Very truly yours,

/s/Michael T. Burke

Michael T. Burke
For the Firm

MTB/ac

Shawn D. Smith

From: Shawn D. Smith
Sent: Wednesday, November 26, 2014 12:31 PM
To: City Commission; Jim Scholl
Subject: Fwd: Scott v City of Key West
Attachments: Smith 11-26-14.pdf; Smith 11-26-14.wpd; Smith 11-26-14.doc

Fyi on a settlement proposed by our insurer.

Sent on the new Sprint Network from my Samsung Galaxy S34.

----- Original message -----

From: Michael Burke
Date: 11/26/2014 11:47 AM (GMT-05:00)
To: "Shawn D. Smith, Esq." ,Amanda Willett-Ramirez
Subject: Scott v City of Key West

Shawn: Pursuant to your direction I have attached a summary of the case for public view. I have also attached a copy of my pretrial report previously provided to you and the City's insurance representatives. Since the proposed settlement has been approved by the insurer and is acceptable to the claimant I wanted to make sure you were aware of the following PGIT policy provision:

"The Trust shall not settle any Claim without the written consent of the Public Entity. If the Public Entity refuses to consent to a settlement or compromise recommended by the Trust and acceptable to the claimant, then the Trust's Limit of Liability under this Coverage Agreement with respect to such Claim shall be reduced to the amount of Damages for which the Claim could have been settled plus all Claims Expenses incurred up to the time the Trust made its recommendation to the Public Entity, which amount shall not exceed that portion of any applicable Aggregate Limit of Liability that remains unexhausted by payment of Damages and Claims Expenses, or by any combination thereof."

Although the insurance representatives have not brought up this provision, I wanted you to be aware of it. In short the City can get out of the case now for the cost of trying the case (approximately 13K) and avoid potential uninsured obligations for reinstatement of Ms. Scott and a doubling of the back pay award if the Judge Fowler finds that an FMLA violation was willful. In addition if Plaintiff Scott prevails, the amount of her fee and cost award will exceed the settlement amount.

Michael T. Burke, Esquire
Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A.
2455 E. Sunrise Blvd., Suite 1000
Ft. Lauderdale, Fl 33304
954/463-0100
954/463-2444 Facsimile