



THE CITY OF KEY WEST

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Executive summary

To: The Mayor & City Commissioners for The City of Key West

From: Ron Ramsingh, Chief Assistant City Attorney

April 25, 2019

RE: Settlement of Jennifer Weinstock v. City of Key West 2017-CA-730-K

Background

Ms. Weinstock (Plaintiff) is a 46-year old Key West resident, originally from New York. Plaintiff has an Associate's degree from the Fashion Institute of Technology in NYC. At the time of this injury, Plaintiff worked as a veterinary tech, but is no longer so employed. She currently works for the Key West Theater. She is not married, nor does she have any children.

Injury

Plaintiff attended a wedding at West Martello Tower on October 23, 2016 from approximately 5pm to 7pm. After driving home to her Love Lane residence after the wedding, she walked to The Whistle Bar, where she met up with a friend from 10pm to 3am. After several hours at The Whistle, she and her friend were walking to his scooter, that was parked on the Caroline Street side of the business. Plaintiff was wearing 4" wedged heeled shoes. She walked over a cracked sidewalk on her way to the scooter, rolled her ankle, and sustained a non-displaced bimalleolar fracture to her right ankle. Plaintiff was transported to LKMC via ambulance, where she underwent an open reduction and internal fixation performed by Dr. Perry on 10/23/2016. She treated post-operatively with home exercises and medications. She missed 5 days of work.

Prior Health History

Plaintiff has no significant prior medical issues that are directly related to this claim.

Issues

The city raised voluntary intoxication as an affirmative defense pursuant to F.S. 768.36. Plaintiff admits to drinking 5 Corona beers at the wedding, but indicates that she had only 1 Corona in the 5 hours at the Whistle; until 3am. The KWFD paramedic report indicates that she appeared to have been drinking. However, given the condition of the sidewalk, and the burden of proof to prove a 768.36 defense¹, a contingent settlement was reached for \$50,000.00. There is no dispute that the city owns the sidewalk where the Plaintiff fell. Pictures are attached regarding the condition of the sidewalk. Given the fact that this is a highly travelled sidewalk, it will be hard pressed to argue that we were not at least constructively put on notice of the cracked sidewalk.

Recommendation

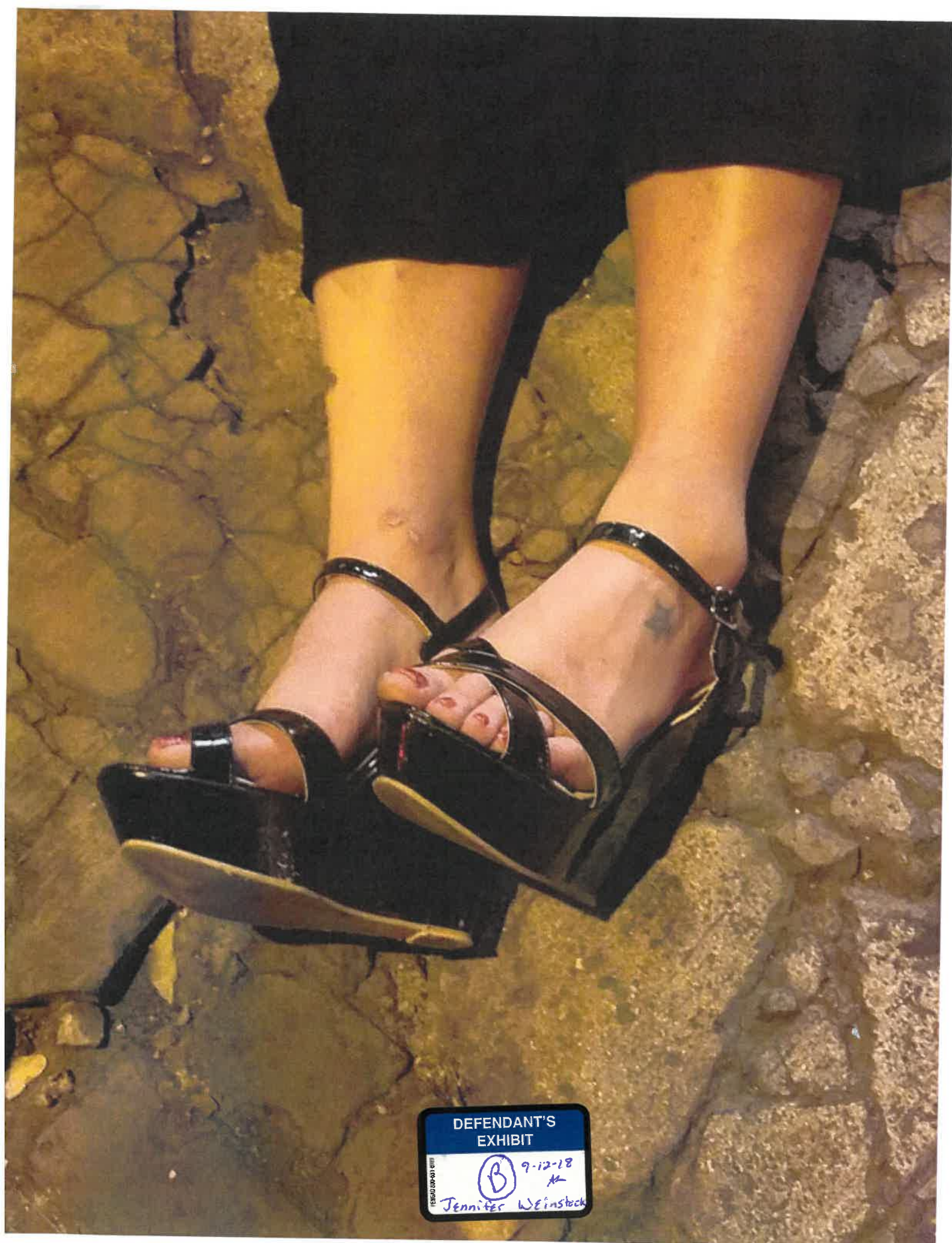
I have handled this case from the inception and I estimate that the city has saved approximately \$20k in attorney fees and costs thus far. I recommend that the city commission approve this \$50,000.00 settlement.

¹ The Defense of voluntary intoxication requires some level of proof that the Plaintiff had a blood alcohol level of .08 or above, or that she was intoxicated to the extent that her normal faculties were impaired. This is the DUI standard. We do not have any blood or breath tests that were performed, nor were field sobriety exercises performed.



DEFENDANT'S
EXHIBIT

9-12-18
M A
Jennifer Weinstock

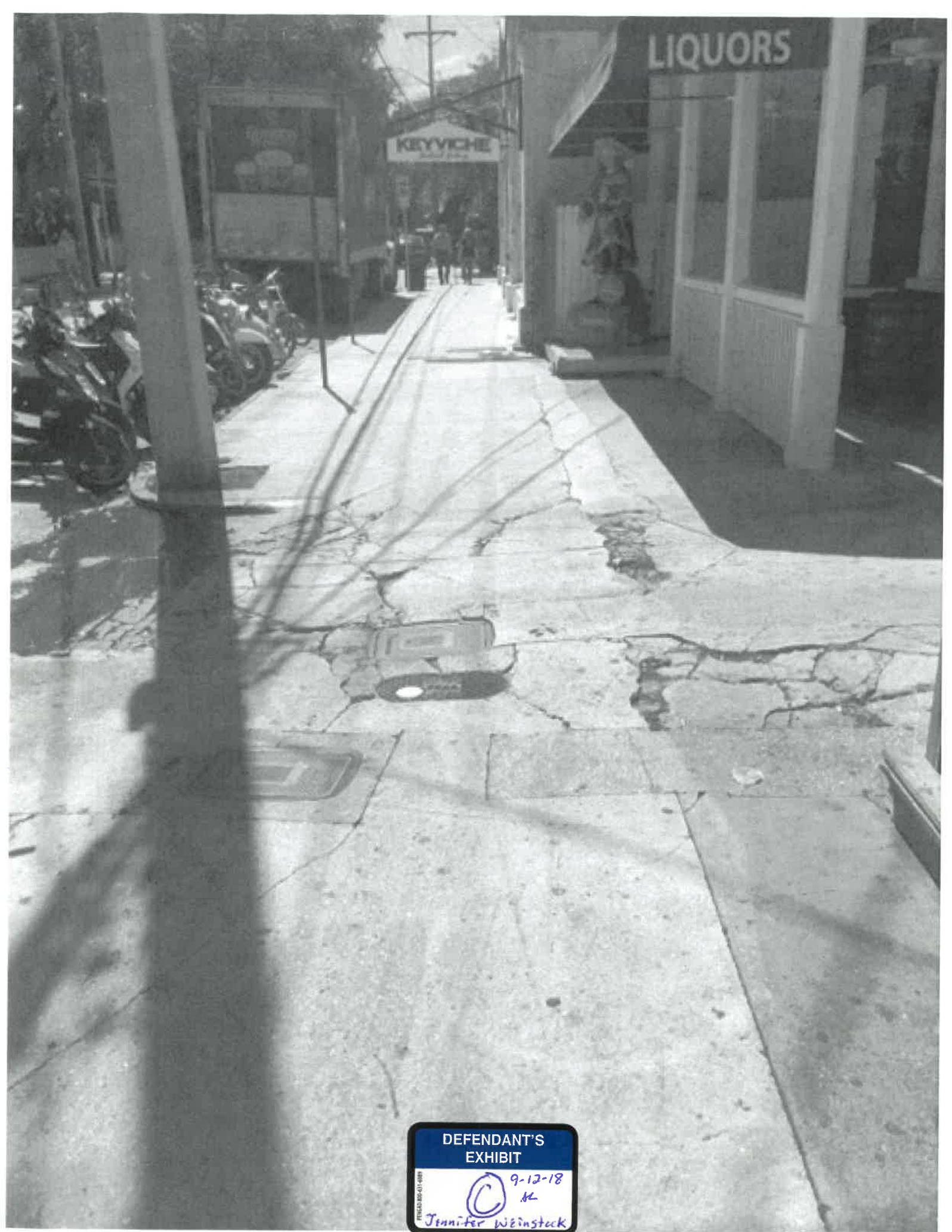


DEFENDANT'S
EXHIBIT

(B) 9-12-18
JK

Jennifer Weinstock

PHOTOGRAPHY



DEFENDANT'S
EXHIBIT

9-12-18
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Jennifer Weinstock