



## THE CITY OF KEY WEST

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To: The City Commission for the City of Key West  
From: Ron Ramsingh, Chief Assistant City Attorney  
RE: Stephen Schumann and Laurie Margolin v CKW 2019-CA-1000-K  
Date of Accident: 5/9/2019  
Location: Intersection of Eaton and Grinnell Streets, Key West.

### **EXECUTIVE SUMMARY**

**A more detailed analysis has been sent to the City Commission pursuant to F.S.119.071(1)(d)**

Plaintiff is an 80-year-old retired resident of Key West. Plaintiff rode his bike daily for exercise. On 5/9/19, he was going NB on Grinnell and approached Eaton St. He proceeded through the green light and was struck by a city truck driven by a city employee. The employee was at the apex of a left and turn from SB Grinnell to EB Eaton Street, on his way back to the Palm Avenue Garage at the end of his shift.

Plaintiff claims in his deposition that he “didn’t know what happened, he was smacked by the truck, landed on the ground, and was helped up in pain”. Our driver/employee said that he “never saw him coming”.

Our driver was cited for Failure to Yield. He paid the ticket. This is a moving violation, so points were assessed.

#### Medicals:

BWC from the police officer shows Plaintiff in the ambulance and his left and right hands in bandages. Plaintiff has some blood on his left hand. He does not appear to be intoxicated. Plaintiff was transported to the hospital via ambulance and later was treated for injuries in his left hand that required 2 surgeries.

**Approximate past medicals to date: \$114,788.35**

Liability Analysis:

The fact that our driver was cited, and he paid the ticket on a moving violation will be difficult to overcome. Jury instruction 401.9 does allow the citation to be “Evidence of Negligence” and the citation hurts us for liability. After deposing all of the witnesses, I do not see a significant case for comparative negligence in this case. Plaintiff entered the intersection going straight on a green light and our driver had to yield to all oncoming traffic. Consideration must also be given to the Dangerous Instrumentality Doctrine. Florida is the only state that imputes vicarious liability to the vehicle owner under this doctrine. It also cannot be ignored that this is a commercial grade, F-250 with a flat steel bed, vs a bicycle being ridden by an older man.

Plaintiff’s wife, Laurie Margolin has filed a Loss of Consortium claim as well, which raises the statutory cap in this case to \$300k. Using the typical 3.5 multiplier for damages, the past pain and suffering can be up to \$399k based on the prior medicals thus far. When you add the past medicals to that, a realistic conservative verdict with the consortium claim could be \$544k. The Plaintiff’s attorney claims liability at \$834k, which I believe is unrealistic, and based on the belief that the Plaintiff will need and have a 3<sup>rd</sup> surgery that is not solidly on the table right now. Ultimately with these facts, I think that a verdict in excess of the statutory cap will be awarded by a jury. However, the verdict in this case would be limited to \$300k by statute. The question is whether we agree to settle for the \$200k in exchange for Laurie Margolin giving up her consortium claim, or to we go to trial and risk a \$300k verdict plus any costs. I think that Ms. Margolin does get an award for loss of consortium, but I think it will be more in the range of \$20k-\$30k. The realistic discount value to settling for cap will be the consortium claim, plus very limited remaining costs of litigation.

Mediation:

This case was mediated on March 30, 2021 with Wayne Miller. We agreed to a settlement of \$200k contingent upon approval of the City Commission with Laurie Margolin dismissing her claim for Loss of Consortium. Our excess carrier, has approved the \$200k

settlement. Of course, we are responsible for the first \$100k and the balance is on the insurance carrier.

Options:

- 1) Settle this case for \$200k as described above.
- 2) Take the case to trial. There is a good likelihood that a verdict would be returned for the Plaintiff will in excess of the cap. The Court will then reduce the amount paid to the Plaintiff to the \$200k cap, plus the Plaintiff's costs. Then there is the unknown about a verdict for his wife, Laurie Margolin for her Loss of Consortium claim. Her claim is capped at an additional \$100k. I think it is more likely to come back at around \$30k based on her deposition. Therefore, it is possible to have a verdict against the city of between \$230k and up to \$300k, plus litigation costs of the Plaintiff.

Recommendation:

I believe that this is a case where the liability portion of the trial will be a challenge to establish any comparative negligence on the part of the Plaintiff. It is also a challenge to overcome the fact that our driver was cited, and he elected to pay the ticket on a moving violation, which will be used as evidence of negligence against the City. These issues combined with the medical expenses leads me to analyze the case in terms of damages tempered by the statutory cap and the risk/rewards of going to trial. There is some significant room here with the proposed settlement under the statutory cap where I can recommend settling this case for 2/3 of the potential exposure. This is an analysis that our excess insurance carrier shares, who will be paying half of the proceeds.

Please do not hesitate to contact me with any questions or concerns advance of the Commission meeting.

Ron Ramsingh